

of 23 U.S.C. 307(c)(1) (up to 1½ percent) and 23 U.S.C. 134(a) (up to ½ percent).

*Metropolitan planning area* means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act (49 U.S.C. app. 1607) must be carried out.

*Metropolitan planning organization (MPO)* means the forum for cooperative transportation decisionmaking for a metropolitan planning area.

*National pooled-fund study* means a planning or RD&T study or activity expected to solve problems of national significance, usually administered by the FHWA headquarters office in cooperation with States and/or MPOs, that is funded by State and/or MPO contributions of FHWA planning and research funds, with or without matching funds.

*Procurement contract* means a legal instrument between an awarding agency and recipient where the principal purpose is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

*Regional pooled-fund study* means a planning or RD&T study expected to solve problems of regional significance, usually administered by an FHWA region office in cooperation with a lead State and/or MPO, that is funded by State and/or MPO contributions of FHWA planning and research funds, with or without matching funds.

*State transportation agency (STA)* means the State highway department, transportation department, or other State transportation agency to which Federal-aid highway funds are apportioned.

*Work program* means a periodic statement of proposed work and estimated costs that document the eligible activities to be undertaken with FHWA planning and research funds during the next 1 or 2-year period by STAs and/or their subrecipients.

#### § 420.105 Policy.

(a) Within the limitations of available funding and with the understanding that planning activities of national significance, identified in paragraph (b) of this section, and the requirements of 23 U.S.C. 134, 135, 303, and

307(c) are being adequately addressed, the FHWA will allow STAs and their subrecipients:

(1) Maximum possible flexibility in the use of FHWA planning and research funds to meet highway and multimodal transportation planning and RD&T needs at the national, State, and local levels while ensuring legal use of such funds and avoiding unnecessary duplication of efforts; and

(2) To determine which eligible planning and RD&T activities they desire to support with FHWA planning and research funds and at what funding level.

(b) The STAs shall provide data that support the FHWA's responsibilities to the Congress and to the public. These data include, but are not limited to, information required for: Preparing proposed legislation and reports to the Congress; evaluating the extent, performance, condition, and use of the Nation's transportation systems; analyzing existing and proposed Federal-aid funding methods and levels and the assignment of user cost responsibility; maintaining a critical information base on fuel availability, use, and revenues generated; and calculating apportionment factors.

(The information collection requirements in paragraph (b) of § 420.105 have been approved by the Office of Management and Budget (OMB) under control numbers 2125-0028 and 2125-0032.)

#### § 420.107 SPR minimum research, development, and technology transfer expenditure.

(a) In accordance with the provisions of 23 U.S.C. 307(c), not less than 25 percent of the SPR funds apportioned to a State for a fiscal year shall be expended for RD&T activities relating to highway, public transportation, and intermodal transportation systems, unless the State certifies, and the FHWA accepts the State's certification, that total expenditures by the State during the fiscal year for transportation planning under 23 U.S.C. 134 and 135 will exceed 75 percent of the amount apportioned for the fiscal year.

(b) Prior to submitting a request for an exception to the 25 percent requirement, the State shall ensure that:

(1) The additional planning activities are essential and there are no other

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reasonable options available for funding these planning activities (including the use of National Highway System, Surface Transportation Program, or Federal Transit Administration Section 26(a)(2) funds or by deferment of lower priority planning activities);

(2) The planning activities have a higher priority than RD&T activities in overall needs of the State for a given year; and

(3) The total level of effort by the State in RD&T (using both Federal and State funds) is adequate.

(c) If the State chooses to pursue an exception, the request, along with supporting justification, shall be sent to the FHWA Division Administrator for action by the FHWA Associate Administrator for Research and Development. The Associate Administrator's decision shall be based upon the following considerations:

(1) Whether the State has a process for identifying RD&T needs and for implementing a viable RD&T program.

(2) Whether the State is contributing to cooperative RD&T programs or activities, such as the National Cooperative Highway Research Program, the Transportation Research Board, the implementation of products of the Strategic Highway Research Program, and pooled-fund studies.

(3) Whether the State is using SPR funds for technology transfer and for transit or intermodal research and development to help meet the 25 percent minimum requirement.

(4) The percentage or amount of the State's FHWA planning and research funds that were used for RD&T prior to enactment of the 25 percent requirement and whether the percentage or amount will increase if the exception is approved.

(5) If an exception is approved for the fiscal year, whether the State can demonstrate that it will meet the requirement or substantially increase its RD&T expenditures over a multi-year period.

(6) Whether the amount of Federal funds needed for planning for the program period exceeds the total of the 75 percent limit for the fiscal year and any unexpended (including unused funds that can be released from com-

pleted projects) funds for planning from previous apportionments.

(d) If the State's request for an exception is approved, the exception will be valid only for the fiscal year in which the exception is approved. A new request must be submitted in subsequent fiscal years.

**§ 420.109 Distribution of PL funds.**

(a) States shall make all PL funds authorized by 23 U.S.C. 104(f) available to the MPOs in accordance with a formula developed by the State, in consultation with the MPOs, and approved by the FHWA. The State shall not use any PL funds for grant or subgrant administration.

(b) In developing the formula for distributing PL funds, the State shall consider population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of 23 U.S.C. 134 and other applicable requirements of Federal law.

(c) As soon as practicable after PL funds have been apportioned by the FHWA to the States, the STAs shall inform the MPOs and the FHWA of the amounts allocated to each MPO.

(d) If the STA, in a State receiving the minimum apportionment of PL funds under the provisions of 23 U.S.C. 104(f)(2), determines that the share of funds to be allocated to any MPO results in the MPO receiving more funds than necessary to carry out the provisions of 23 U.S.C. 134(a), the STA may, after considering the views of the affected MPOs and with the approval of the FHWA, use these funds to finance transportation planning outside of metropolitan planning areas.

(e) In accordance with the provisions of 23 U.S.C. 134(n), any PL funds not needed for carrying out the metropolitan planning provisions of 23 U.S.C. 134 may be made available by the MPOs to the State for funding statewide planning activities under 23 U.S.C. 135, subject to approval by the FHWA.

(f) Any State PL fund distribution formula that does not meet the requirements of paragraphs (a) or (b) of this section shall be brought into conformance with such requirements as