

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–75–AD.

Applicability: Model 757–200, –200CB, and –200PF series airplanes, line numbers 1 through 895 inclusive; and Model 767–200, –300, and –300F series airplanes, line numbers 1 through 759 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To provide a second air/ground signal to the auto-speedbrake control system to prevent uncommanded deployment of the auto-speedbrake spoilers during flight, which could result in reduced controllability of the airplane, accomplish the following:

Modifications

(a) Within 36 months after the effective date of this AD: Modify the right main landing gear and auto-speedbrake control system according to Work Packages 1 through 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–27A0130, dated August 31, 2000 (for Model 757 series airplanes), or Work Packages 1 through 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0160, dated December 20, 2000 (for Model 767 series airplanes), as applicable.

Note 2: Boeing Alert Service Bulletin 757–27A0130 specifies that each work package can be done independently or at the same time, in any sequence, but the functional tests in Work Package 3 should be done last. Boeing Alert Service Bulletin 767–27A0160 specifies that each work package can be done independently or at the same time, in any sequence, but Work Package 4 should be done last.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 20, 2001.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–29428 Filed 11–26–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 420

[FHWA Docket No. FHWA–2001–8874]

RIN 2125–AE84

Planning and Research Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to amend the regulation on planning and research program administration to reflect legislative changes due to enactment of the Transportation Equity Act for the 21st Century (TEA–21); remove provisions that are no longer necessary; and make several changes in terminology. Most notable among the changes are renumbering of the State planning and research (SPR) funds section in title 23, United States Code, Highways (title 23, U.S.C.) from section

307(c) to section 505; revisions to 23 U.S.C. 302 that now allow a State transportation department to be reimbursed for indirect costs; and changes in the Federal-aid highway program categories from which SPR funds are set aside.

DATES: Comments must be received on or before January 28, 2002.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit>. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For 23 CFR part 420, subpart A: Mr. Tony Solury, (202) 366–5003, Planning and Environment Core Business Unit, HEP–2, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; for 23 CFR part 420, subpart B: Jowell Parks or William Zaccagnino, Office of Program Development and Evaluation, HRPD–1, (202) 493–3166, Federal Highway Administration, Research, Development, and Technology Service Business Unit, 6300 Georgetown Pike, McLean, VA 22101. For legal questions: Reid Alsop, Office of the Chief Counsel, HCC–30, (202) 366–1371. Office hours are from 7 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

An electronic copy of this document may also be downloaded from the

Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661 by using a computer, modem, and suitable communications software. Internet users may also reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's web page at: <http://www.access.gpo.gov/nara>.

Background

The FHWA's regulations for Planning and Research Program Administration were last revised on July 22, 1994, (59 FR 37548) prior to the enactment of the TEA-21 (Pub. L. 105-178, 112 Stat. 107(1998)). Section 5119(b) of TEA-21 repealed the SPR funds section in 23 U.S.C. 307(c) and section 5105 of TEA-21 added a new SPR funds section 505 to title 23, United States Code. Changes in the Federal-aid highway program in TEA-21 also resulted in changes in the Federal-aid highway program categories from which SPR funds are set aside. Section 1212 of TEA-21 revised 23 U.S.C. 302 to allow a State transportation department (STD) to be reimbursed for indirect costs.

Based on experience since the 1994 revision, we are proposing revisions to clarify the meaning and applicability of several sections of the regulation, and to replace the phrase "peer review" with "peer exchange" to describe the transfer of research, development, and technology transfer (RD&T) related information and best practices between STDs, the FHWA, universities and public and private sector transportation organizations. In addition, we propose to add a definition of "transportation pooled fund study" to reflect current practice and the conditions under which the non-Federal share of an SPR or metropolitan planning (PL) funded project may be waived would be clarified.

General Discussion of the Proposal

We propose to reword the title of each section of the regulation into a question format to better indicate the content of the sections. In addition, this action proposes to add references to 49 CFR part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, in appropriate sections throughout the regulation since FHWA planning and research funds are often passed through to entities covered by Part 19. Furthermore, in all appropriate places throughout the regulation where an approval action or review is required by an FHWA Division Office, we propose to replace the term "FHWA" with "FHWA

Division Administrator" to clarify which FHWA office has the approval responsibility.

Section-by-Section Discussion

Section 420.101 What Is the Purpose of This Part?

This section would be revised to more clearly indicate the applicability of 23 CFR part 420 and subparts A and B.

Section 420.103 How Does the FHWA Define the Terms Used in This Part?

In the definition of FHWA planning and research funds, references to 23 U.S.C. 307(c) would be changed to 23 U.S.C. 505. In the definition of FHWA planning and research funds under item 1, the words "or allocated" would be added after "apportioned" since under the TEA-21, SPR funds are now also derived from funds allocated under the minimum guarantee program. The reference to minimum allocation funds would be deleted, since such funds were not continued under the TEA-21, and the new TEA-21 category of minimum guarantee funds would be added.

We propose to revise the wording of the definition of "grant agreement" to be more consistent with the definition in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301 *et seq.*) and "subrecipient" would be added to help clarify when a subaward by a recipient is considered to be a subgrant.

The FHWA proposes to revise the definition of "metropolitan planning area" to update the reference to the metropolitan transportation planning requirements from "section 8 of the Federal Transit Act" to "49 U.S.C. 5303-5305."

We propose to move the definition of National Cooperative Highway Research Program (NCHRP) currently in § 420.203 to § 420.103 since that term is now used in subpart A.

We propose to replace the definitions of "national pooled fund study" and "regional pooled fund study" with a definition of "transportation pooled fund study" to reflect current pooled fund study practices and the elimination of FHWA regional offices.

The FHWA proposes to slightly revise the definition of "procurement contract" to be more consistent with the definition in the Federal Grant and Cooperative Agreement Act and "subrecipient" would be added to help clarify when a subaward by a recipient is considered to be a subcontract.

This action proposes to delete the definition of "State transportation agency (STA)" and to replace the term throughout part 420 with "State

transportation department (STD)" which is defined in section 101(a) of title 23, U.S.C.

We further propose to add a definition of "Transportation management area" since the term is used in the regulation.

This action also proposes to delete the phrase "during the next 1 or 2-year period" from the definition of "work program" to allow STDs and metropolitan planning organizations (MPOs) greater flexibility to follow procedures that best meet their own needs.

Section 420.105 What Is the FHWA's Policy on Use of FHWA Planning and Research Funds?

In this section, the FHWA proposes to make the following changes:

Paragraph (a) would be reworded for clarity and the reference "23 U.S.C. 307(c)" would be changed to "23 U.S.C. 505."

The word "multimodal" in paragraph (a)(1) would be changed to "intermodal" for consistency with current usage within the FHWA.

A new paragraph (c) would be added to more clearly indicate that the FHWA has the authority and responsibility to determine which activities are eligible for Federal funding.

Section 420.107 What Is the Minimum Required Expenditure of State Planning and Research Funds for Research, Development and Technology Transfer?

We propose the following amendments to this section:

The reference "23 U.S.C. 307(c)" in paragraph (a) would be changed to "23 U.S.C. 505."

Paragraph (b)(1) would be revised to update the reference to Federal Transit Act State planning and research funds from "Section 26(a)(2)" to "49 U.S.C. 5313(b)."

In paragraph (c), the title "Associate Administrator" would be changed to "Director" to reflect organizational changes in the FHWA. In paragraph (c)(2), and all other places where it is in the existing regulation, "pooled fund" would be changed to "transportation pooled fund" to reflect the revised definition discussed above. Since data on expenditures for RD&T prior to enactment of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, is no longer readily available, paragraph (c)(4) would be removed and paragraphs (5) and (6) would be renumbered (4) and (5), respectively. The language in renumbered paragraphs (c)(4)'(5) and in (d) would be revised for clarity.

Section 420.109 What Are the Requirements for Distribution of Metropolitan Planning Funds?

The FHWA proposes to make the following changes in this section:

Paragraph (a) would be revised by adding language that recognizes that a State's PL fund distribution formula, which must be developed in cooperation with the MPOs, may include provisions that allow funds to be used for activities that benefit all MPOs in the State or for discretionary awards to those MPOs to supplement their allocated share of the funds.

Paragraph (f) would be revised to require that a State's PL fund distribution formula be in compliance with the provisions of paragraphs (a) and (b) before distribution of any new apportionment of PL funds to MPOs.

Section 420.111 What Are the Documentation Requirements for Use of FHWA Planning and Research Funds?

We propose to add the language "or other document that describes the work to be accomplished" in paragraph (a) to clarify the FHWA's long-standing practice of allowing projects to be funded separately from a work program if such projects can be better administered separately. For example, if a project is expected to take several years to complete and is funded under a consultant contract, it may be easier to administer if funds needed during each year of the contract did not need to be shown in each corresponding annual work program. If funded as a separate Federal-aid project, the project would stay open until all work has been completed, as for highway construction projects. The third sentence of the existing paragraph, which discussed separate or combined planning and RD&T projects, would be removed since it is a fiscal issue that is covered in § 420.115.

Existing paragraph (b) would be amended by moving the requirement for each work program to include a summary of the amounts and sources of funds from existing paragraph (c)(1) through (c)(4) to revised paragraph (b)(1)(i) through (iv) and the remainder of existing paragraph (c) would become revised paragraph (d).

The provisions in 23 CFR part 450 that allow metropolitan areas that are not TMAs to use simplified statements of work in lieu of a more detailed work program would be included in new paragraph (c) to clearly indicate this option.

Existing paragraph (d) would become paragraph (e) and the reference to 23 CFR Part 450 would be removed since it is not necessary.

Section 420.113 What Costs Are Eligible?

Prior to revision of 23 U.S.C. 302 by section 1212(a) of the TEA-21, STDs were not allowed to charge indirect costs to title 23, U.S.C., funded projects. However, STDs were allowed to charge salaries of certain planning and research unit administrative staff directly to SPR funds on a prorata basis. The MPOs and other subgrantees could charge indirect costs in accordance with the Office of Management and Budget (OMB) cost principles applicable to those subgrantees. Paragraphs (b)-(d) of existing § 420.113 specify the allowability of indirect costs for each of these types of grantee and subgrantee. With the amendment to 23 U.S.C. 302, STDs can now also claim reimbursement for indirect costs in compliance with OMB Circular A-87, Cost Principles for Grants, and Cooperative Agreements with State, Local, and Indian Tribal Governments. Therefore, existing paragraphs (b) through (d) would be deleted and replaced with a new paragraph (b) that covers indirect costs of the STDs and their subgrantees.

Section 420.115 What Are the FHWA Approval and Authorization Requirements?

We propose to add the words "or other documents that describe the work to be performed" after "work program" in paragraph (a) for consistency with the change to § 420.111(a) described above and a reference to 49 CFR 19.25 would be added to indicate where the provisions for changes can be found when the subrecipient is a non-profit organization or institution of higher education.

Section 420.117 What Are the Program Monitoring and Reporting Requirements?

In order to indicate where the provisions for reporting can be found when the subrecipient is a non-profit organization or institution of higher education, we propose to add a reference to 49 CFR 19.14 to paragraph (c).

Paragraph (e), which requires preparation of reports to document work performed with FHWA planning and research funds, would be revised to remove the reference to the Federal-aid project agreement since this report requirement is no longer in the agreement.

Section 420.119 What Are the Fiscal Requirements?

We propose to delete existing paragraphs (a) and (b) because they

include internal FHWA fiscal procedures that do not apply to grantees.

Existing paragraph (d) would be split into a new paragraph (a) and revised paragraph (d) and revised for clarity. Existing paragraph (e), which includes a reference to matching provisions in 49 CFR 18.24 would be moved to new paragraph (a) and a citation to the matching provision for non-profits and institutions of higher education in 49 CFR 19.23 would be added.

We propose to add a new paragraph (b) to incorporate the requirements in 49 CFR 18.24 and 49 CFR 19.23 that apply to use of the value of in kind services as a match for FHWA planning and research funds.

A new paragraph (c) would be added to address additional options, such as toll credits, for matching FHWA planning and research funds.

In revised paragraph (d) we propose to more clearly indicate the applicability and procedures for FHWA waiver of the non-Federal fund matching requirements for SPR and PL funds. This provision does not apply to other 23 U.S.C funds that may be used for planning and research. The reference to 23 U.S.C. 307(c)(3) would be updated to 23 U.S.C. 505(c). Minimum Guarantee (MG) funds would be added to the list of funds that this provision does not apply to. The titles of the FHWA officials who may approve the matching fund waiver would be updated to reflect the previously mentioned FHWA reorganization.

Existing paragraph (c) would become (e) and would be revised for clarity by replacing the term "optional" with the specific categories of funds, by removing the reference to minimum allocation funds because they no longer exist, and by adding MG funds. The reference to 23 CFR part 450 would be replaced with the specific transportation improvement program provisions in part 450.

We propose to revise existing paragraph (f) by adding a reference to the payment provisions for non-profits and institutions of higher education in 49 CFR 19.22.

Section 420.121 What Other Requirements Apply to the Administration of FHWA Planning and Research Funds?

For ease of finding specific requirements, we propose to put the provisions in existing § 420.121 into alphabetical order by subject.

Existing paragraph (c) on audits would become paragraph (a) and would be revised by deleting the reference to

49 CFR part 90 because this part has been rescinded.

Existing paragraph (g) on procurement would become paragraph (j) and would be revised by adding “and (i)” after “49 CFR 18.36(a)” to clarify that the provisions in 49 CFR 18.36(i) are applicable to STD procurements with FHWA planning and research funds. We further propose to move the provisions regarding suspension and debarment to a new paragraph (o) that would more clearly indicate the restrictions on awards of Federal funds to suspended or debarred parties.

Existing paragraph (n) would become paragraph (c) and would be revised to reference the most recent disadvantaged business enterprise legislative and regulatory provisions that are applicable to FHWA planning and research funds.

We propose to delete paragraph (p) because it specified that reports produced with FHWA planning and research funds were to be in metric and we believe that is unnecessary.

Section 420.201 What Is the Purpose of This Subpart?

We propose to rewrite this section for clarity.

Section 420.203 How Does the FHWA Define the Terms Used in This Subpart?

The FHWA proposes to amend this section in the following manner:

The terms “applied research,” “basic research,” and “development” would be revised to be more consistent with definitions used by the National Science Foundation.

The term “cooperatively funded study” would be removed since it would not be used in the revised regulation.

The term “peer review” would be replaced with “peer exchange” to describe the transfer of RD&T related information and best practices between STDs, the FHWA, universities and public and private sector transportation organizations.

The term “RD&T activity” would be revised for clarity.

The term “research” would be removed to avoid redundancy in light of the definitions for applied research and basic research.

The Term “Transportation Research Information Service” would be revised to reflect the partnership between the Transportation Research Board and the National Transportation Library.

Section 420.205 What Is the FHWA’s Policy for Research, Development, and Technology Transfer Funding?

In paragraph (b) peer review would be replaced with peer exchange.

New language would be added to paragraph (c) to encourage STDs to include technology transfer programs to share the results of research efforts and promote the use of new technology. The second sentence in paragraph (c) would become new paragraph (d) and language would be added to new paragraph (d) encouraging STDs to pool their funds as a means to leverage resources.

Existing paragraphs (d) through (g) would be renumbered (e) through (h), respectively, and the reference to the FHWA Regional offices in existing paragraph (g) would be amended to Resource Center.

Section 420.207 What Are the Requirements for Research, Development, and Technology Transfer Work Programs?

We propose to redesignate existing § 420.209 as § 420.207 and in this section we propose to replace “national” and “regional” with “transportation” in reference to pooled fund studies in paragraph (a). Language would be added to indicate that a previously funded study needs to be included in the work program until the final report for the study is completed.

In addition, we propose adding language to paragraph (a) that would require that studies funded under previous work programs be shown in

subsequent work programs until a final report has been completed for the studies. This provision will enable the FHWA to track work performed under previous grants so that closing of those grants can proceed in a timely manner.

Section 420.209 What Are the Conditions for Approval?

Because of the overlap or redundancy among the provisions in existing §§ 420.207, 420.211, and 420.213, we are proposing to combine and revise these three sections into new § 420.209. The following changes are proposed:

“National” and “regional” would be replaced with “transportation” in reference to pooled fund studies in paragraph (a)(2).

The reference to “peer reviews” in paragraph (a)(5) would be changed to “peer exchanges.”

Former paragraph (c) would be revised for clarity and redesignated as paragraph (a)(7).

Former paragraph (c) would be redesignated as paragraph (b) and the reference to “peer reviews” would be changed to “peer exchanges.”

Former paragraph (b) would be redesignated (c) and reworded for clarity. The provisions regarding the FHWA selection of reviewers would be removed.

Former § 420.113, Certification requirements, would be rewritten to remove outdated material and consolidated in new paragraph 420.209 (c). The STDs would still need to certify that it is in compliance with the requirements of 23 CFR part 420, subpart B.

Former § 420.115, Procedure for withdrawal of approval, would be rewritten to remove outdated material and consolidated in new § 420.209 (c).

Distribution Table

For ease of reference, a distribution table is provided for the current sections and the proposed sections as follows:

DISTRIBUTION TABLE

Old section	New section
420.101	420.101 Revised.
420.103	420.103 Revised.
FHWA planning and research funds	Revised.
Grant agreement	Revised.
Metropolitan planning area	Revised.
Metropolitan planning organization	Unchanged.
National Cooperative Highway Research Program (NCHRP)	Added.
National pooled-fund study	Removed.
Procurement contract	Revised.
Regional pooled-fund study	Removed.
State transportation agency	Removed.
Transportation management area	Added.
Transportation pooled-fund study	Added.

DISTRIBUTION TABLE—Continued

Old section	New section
Work program	Revised.
420.105(a) Introductory Paragraph	420.105(a) Introductory Paragraph Revised.
420.105(a)(1)	420.105(a)(1) Revised.
420.105(a)(2)	420.105(a)(2) Unchanged.
420.105(b)	420.105(b) Revised.
None	420.105(c) Added.
420.107(a)	420.107(a) Revised.
420.107(b)	420.107(b) Revised.
420.107(c)(1) through (3)	420.107(c)(1) through (3) Revised.
420.107(c)(4)	Removed.
420.107(c)(5)	420.107(c)(4) Revised.
420.107(c)(6)	420.107(c)(5) Revised.
420.107(d)	420.107(d) Revised.
420.109	420.109 Revised.
420.111(a)	420.111(a) Revised.
420.111(b) 1st Sentence	420.111(b)(1) Revised.
420.111(b) 2d Sentence	420.111(b)(2) Revised.
420.111(c)(1) through (4)	420.111(b)(1)(i) through (iv).
None	420.111(c) Added.
420.111(c) introductory paragraph	420.111(d) Revised.
420.111(d)	420.111(e) Revised.
420.113(a)(1)	420.113(a)(1) Unchanged.
420.113(a)(2)	420.113(a)(2) Revised.
420.113(a)(3) to (a)(5)	420.113(a)(3) to (a)(5) Unchanged.
420.113(b)	420.113(b) Revised.
420.113(c)	420.113(b) Revised.
420.113(d)	420.113(b) Revised.
420.115(a)	420.115(a) Revised.
420.115(b)	420.115(b) Revised.
420.115(c)	420.115(c) Revised.
420.117(a)	420.117(a) Revised.
420.117(b)(1)	420.117(b)(1) Revised.
420.117(b)(2)	420.117(b)(2) Unchanged.
420.117(c)	420.117(c) Revised.
420.117(d)	420.117(d) Revised.
420.117(e)	420.117(e) Revised.
420.119(a)	Removed.
420.119(b)	Removed.
420.119(c)	420.119(d) Revised.
None	420.119(c).
420.119(d), 1st Sentence	420.119(a) Revised.
420.119(d), 2nd and 3rd Sentences	420.119(b) Revised.
420.119(e)	420.119(a) Revised.
420.119(f)	420.119(f) Revised.
420.121(a)	420.121(f) Revised.
420.121(b)	420.121(k) Revised.
420.121(c)	420.121(a) Revised.
420.121(d)	420.121(e) Revised.
420.121(e)	420.121(p) Revised.
420.121(f)	420.121(b) Revised.
420.121(g), 1st Sentence	420.121(j) Revised.
420.121(g), 2nd Sentence	420.121(o) Revised.
420.121(h)	420.121(m) Revised.
420.121(i)	420.121(l) Revised.
420.121(j)	420.121(i) Revised.
420.121(k)	420.121(d) Revised.
420.121(l)	420.121(g) Revised.
420.121(m)	420.121(h) Revised.
420.121(n)	420.121(c) Revised.
420.121(o)	420.121(n) Revised.
420.121(p)	Removed.
420.201	420.201 Revised.
420.203	420.203 Revised.
Applied research	Revised.
Basic research	Revised.
Cooperatively funded study	Removed.
Development	Revised.
Final report	Unchanged.
Intermodal RD&T	Unchanged.
National Cooperative Highway Research Program (NCHRP)	420.103 Revised.
Peer review	Peer exchange. Revised.
RD&T activity	Revised.

DISTRIBUTION TABLE—Continued

Old section	New section
Research	Revised.
Technology transfer	Unchanged.
Transportation Research Information Services (TRIS)	Revised.
420.205(a)	420.205(a).
420.205(b)	420.205(b) Revised.
420.205(c)	420.205(c) Revised.
420.205(c), 2nd Sentence	420.205(d) Revised.
420.205 (d) through (g)	420.205(e) through (h) Revised.
420.207(a)	420.209(a) Revised.
420.207(a)(1)	420.209(a)(1) Revised.
420.207(a)(2)	420.209(a)(2) Revised.
420.207(a)(3)–(4)	420.209(a)(3)–(4).
420.207(a)(5)	420.209(a)(5) Revised.
420.207(a)(6)	420.209(a)(6).
420.207(b)	420.209(a)(7) Revised.
420.207(c)	420.209(b) Revised.
420.209(a)–(c)	420.207(a)–(c) Revised.
420.211	Removed.
420.213(a)–(c)	420.209(c) Revised.
420.215(a)–(d)	420.209(d) Revised.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The proposed changes would update the existing rule to conform to changes included in the TEA–21 and amend the current rule to make it clearer and easier to understand. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a

full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the FHWA has evaluated the effects of this proposed action on small entities. This rule addresses the administrative procedures and requirements that STDs must comply with when using FHWA planning and research funds provided under title 23, U.S.C. This rule would not impose any direct requirement on small entities that would result in increased economic costs. The proposed changes would update the existing rule to conform to provisions in the TEA–21 and make it clearer and easier to understand. Based on this evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1532). The proposed changes will update the existing rule to conform to provisions in the TEA–21 and make it clearer and easier to understand. The costs of compliance with the provisions of this rule are minor and are eligible for Federal funding.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. The rule provides STDs the authority and flexibility to manage their federally assisted State planning and research programs using their own procedures to the extent permitted under the principles and criteria contained in OMB Circular A–102, Grants and Cooperative Agreements with State and Local Governments. Accordingly, the FHWA certifies that this rule does not have sufficient Federalism implications to warrant the preparation of a full Federalism Assessment under the principles and criteria contained in Executive Order 13132.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to FHWA planning and research fund grants. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Although 23 CFR part 420 also includes administrative requirements and procedures for funds provided for Metropolitan Planning Organizations (MPOs) to carry out the requirements of 23 U.S.C. 134, the FHWA clearance only covers transportation planning and research, development and technology (RD&T) work performed by State Departments of Transportation (State DOTs) with funds provided under the provisions of 23 U.S.C. 505 or, at a State DOT's option, other 23 U.S.C. sections as identified in the definition of FHWA planning and research funds in 23 CFR 420.103. The FHWA has determined that this proposal contains collection of information requirements for the purposes of the PRA. The information collection requirements referenced in § 420.105(b) have been approved by the OMB and have been assigned OMB control numbers 2125-0028 (expiration date, February 28, 2003) and 2125-0032 (expiration date, March 31, 2003). The information collection requirements in §§ 420.111, 420.117, and 420.213 for State planning and RD&T activities have been approved by the OMB and assigned control number 2125-0039 (expiration date, April 30, 2004). The information collection requirements in §§ 420.111, and 420.117 for work performed by the MPOs is a joint FHWA/FTA requirement that is covered under the FTA OMB Control Number 2132-0529 (expiration date, March 31, 2004). The information collection requirements in § 420.115, Preparation and Execution of the Project Agreement and Modifications, for project agreements has been approved by the OMB and have been assigned OMB control number 2125-0529 (expiration date June 30, 2204).

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of

Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000, and believes that the proposed action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 420

Accounting, Grant programs—transportation, Highways and roads, Planning, Reporting and recordkeeping requirements, Research.

Issued on: November 19, 2001

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend, title 23, Code of Federal Regulations by revising, part 420 to read as set forth below:

PART 420—PLANNING AND RESEARCH PROGRAM ADMINISTRATION

Subpart A—Administration of FHWA Planning and Research Funds

Sec.

- 420.101 What is the purpose of this part?
- 420.103 How does the FHWA define the terms used in this part?
- 420.105 What is the FHWA's policy on use of FHWA planning and research funds?
- 420.107 What is the minimum required expenditure of State planning and research funds for research development and technology transfer?
- 420.109 What are the requirements for distribution of metropolitan planning funds?
- 420.111 What are the documentation requirements for use of FHWA planning and research funds?
- 420.113 What costs are eligible?
- 420.115 What are the FHWA approval and authorization requirements?
- 420.117 What are the program monitoring and reporting requirements?
- 420.119 What are the fiscal requirements?
- 420.121 What other requirements apply to the administration of FHWA planning and research funds?

Subpart B—Research, Development, and Technology Transfer Program Management

Sec.

- 420.201 What is the purpose of this subpart?
- 420.203 How does the FHWA define the terms used in this subpart?
- 420.205 What is FHWA's for policy research development and technology transfer funding?
- 420.207 What are the requirements for research, development, and technology transfer work programs?
- 420.209 What are the conditions for approval?

Authority: 23 U.S.C. 103(b)(6), 104(f), 115, 120, 133(b), 134(n), 303(g), 505, and 315; and 49 CFR 1.48(b).

Subpart A—Administration of FHWA Planning and Research Funds

§ 420.101 What is the purpose of this part?

This part prescribes the Federal Highway Administration (FHWA) policies and procedures for the administration of activities undertaken

by State transportation departments (STDs) and their subrecipients, including metropolitan planning organizations (MPOs), with FHWA planning and research funds. This subpart A identifies the administrative requirements that apply to use of FHWA planning and research funds both for planning and for research, development, and technology transfer (RD&T) activities. Subpart B of this part describes the policies and procedures that relate to the approval and authorization of RD&T work programs. The requirements in this part supplement those in 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49 CFR part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

§ 420.103 How does FHWA define the terms used in this part?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

FHWA planning and research funds include:

(1) State planning and research (SPR) funds (the two percent set aside of funds apportioned or allocated to a STD for activities authorized under 23 U.S.C. 505);

(2) Metropolitan planning (PL) funds (the one percent of funds authorized under 23 U.S.C. 104(f) to carry out the provisions of 23 U.S.C. 134);

(3) National highway system (NHS) funds authorized under 23 U.S.C. 104(b)(1) used for transportation planning in accordance with 23 U.S.C. 134 and 135, highway research and planning in accordance with 23 U.S.C. 505, highway-related technology transfer activities, or development and establishment of management systems under 23 U.S.C. 303;

(4) Surface transportation program (STP) funds authorized under 23 U.S.C. 104(b)(3) used for highway and transit research and development and technology transfer programs, surface transportation planning programs, or development and establishment of management systems under 23 U.S.C. 303; and

(5) Minimum guarantee (MG) funds authorized under 23 U.S.C. 505 used for transportation planning and research, development and technology transfer activities that are eligible under title 23, U.S.C.

Grant agreement means a legal instrument reflecting a relationship between an awarding agency and a recipient or subrecipient when the principal purpose of the relationship is to transfer a thing of value to the recipient or subrecipient to carry out a public purpose of support or stimulation authorized by a law instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5305 must be carried out.

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

National Cooperative Highway Research Program (NCHRP) means the cooperative RD&T program directed toward solving problems of national or regional significance identified by STDs and the FHWA, and administered by the Transportation Research Board, National Academy of Sciences.

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

Transportation management area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the Federal Transit Administration (FTA).

Transportation pooled fund study means a planning, research, development, or technology transfer activity administered by the FHWA, a lead STD, or other organization that is supported by two or more participants and that addresses an issue of significant or widespread interest related to highway, public, or intermodal transportation. A transportation pooled fund study is intended to address a new area or provide information that will complement or advance previous investigations of the subject matter.

Work program means a periodic statement of proposed work and estimated costs that document eligible activities to be undertaken by STDs and/or their subrecipients with FHWA planning and research funds.

§ 420.105 What is the FHWA's policy on use of FHWA planning and research funds?

(a) If the FHWA determines 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 505 are being adequately addressed, the FHWA will allow STDs and MPOs:

(1) Maximum possible flexibility in the use of FHWA planning and research funds to meet highway and intermodal 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 STDs must 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.

(c) The policy in paragraph (a) of this section does not remove the FHWA's responsibility and authority to determine which activities are eligible for funding. Activities proposed to be funded with FHWA planning and research funds by the STDs and their subrecipients shall be documented and submitted for FHWA approval and authorization as prescribed in §§ 420.111 and 420.113.

(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 What is the minimum required expenditure of State planning and research funds for research development and technology transfer?

(a) An STD must expend no less than 25 percent of its annual SPR funds on RD&T activities relating to highway, public transportation, and intermodal transportation systems in accordance with the provisions of 23 U.S.C. 505(b), unless a STD certifies, and the FHWA accepts the STD's certification, that total expenditures by the STD 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 STD must ensure that:

(1) The additional planning activities are essential, and there are no other reasonable options available for funding these planning activities (including the use of NHS, STP, MG, or FTA State planning and research funds (49 U.S.C. 5313(b)) or by deferment of lower priority planning activities);

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

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

(c) If the STD chooses to pursue an exception, it must send the request, along with supporting justification, to the FHWA Division Administrator for action by the FHWA Director of Research, Development, and Technology. The Director's decision will be based upon the following considerations:

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

(2) Whether the STD is contributing to cooperative RD&T programs or activities, such as the National Cooperative Highway Research Program, the Transportation Research Board, and transportation pooled fund studies.

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

(4) Whether the STD can demonstrate that it will meet the requirement or substantially increase its RD&T expenditures over a multi-year period, if an exception is granted for the fiscal year.

(5) Whether Federal funds needed for planning exceed the 75 percent limit for the fiscal year and whether any unused planning funds are available from previous fiscal years.

(d) If the FHWA Director of Research, Development and Technology approves the STD's request for an exception, the exception is valid only for that fiscal year's funds. A new request must be submitted and approved for subsequent fiscal year funds.

§ 420.109 What are the requirements for distribution of metropolitan planning funds?

(a) The STDs 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 STD, in consultation with the MPOs, and approved by the FHWA Division Administrator. The formula may allow for a portion of the PL funds to be used by the STD, or other agency agreed to by the STD and the MPOs, for activities that benefit all MPOs in the State, but STDs shall not use any PL funds for grant or subgrant administration. The formula may also provide for a portion of the funds to be made available for discretionary grants to MPOs to supplement their annual amount received under the distribution formula.

(b) In developing the formula for distributing PL funds, the STD 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) The STDs shall inform the MPOs and the FHWA Division Office of the amounts allocated to each MPO as soon as possible after PL funds have been apportioned by the FHWA to the STDs.

(d) If the STD, 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, the STD may, after considering the views of the affected MPO(s) and with the approval of the FHWA Division Administrator, use those funds for 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 in any State may be made available by the MPO(s) to the STD for funding statewide planning activities under 23 U.S.C. 135, subject to approval by the FHWA Division Administrator.

(f) Any State PL fund distribution formula that does not meet the requirements of paragraphs (a) and (b) of this section shall be brought into conformance with those requirements before distribution on any new apportionment of PL funds.

§ 420.111 What are the documentation requirements for use of FHWA planning and research funds?

(a) Proposed use of FHWA planning and research funds must be documented by the STDs and subrecipients in a work program, or other document that describes the work to be accomplished,

that is acceptable to the FHWA Division Administrator. Statewide, metropolitan, other transportation planning activities, and transportation RD&T activities may be documented in separate programs, paired in various combinations, or brought together as a single work program. The expenditure of PL funds for transportation planning outside of metropolitan planning areas under § 420.109(d) may be included in the work program for statewide transportation planning activities or in a separate work program submitted by the STD.

(b)(1) A work program(s) for transportation planning activities must include a description of work to be accomplished and cost estimates by activity or task. In addition, each work program must include a summary that shows:

- (i) Federal share by type of fund;
- (ii) Matching rate by type of fund;
- (iii) State and/or local matching share;

and

- (iv) Other State or local funds.

(2) Additional information on metropolitan planning area work programs is contained in 23 CFR part 450. Additional information on RD&T work program content and format is contained in subpart B of this part.

(c) In areas not designated as TMAs, a simplified statement of work that describes who will perform the work and the work that will be accomplished using Federal funds may be used in lieu of a work program. If a simplified statement of work is used, it may be submitted separately or as part of the Statewide planning work program.

(d) The STDs that use separate Federal-aid projects in accordance with § 420.111(a) must submit an overall summary that identifies the amounts and sources of FHWA planning and research funds available, matching funds, and the amounts budgeted for each activity (e.g., statewide planning, RD&T, each metropolitan area, contributions to NCHRP and transportation pooled fund studies, etc.).

(e) The STDs and MPOs also are encouraged to include cost estimates for transportation planning, research, development, and technology transfer related activities funded with other Federal or State and/or local funds; particularly for producing the FHWA-required data specified in paragraph (b) of § 420.105, for planning for other transportation modes, and for air quality planning activities in areas designated as non-attainment for transportation-related pollutants in their work programs. The MPOs in TMAs must

include such information in their work programs.

(The information collection requirements in §§ 420.111 have been approved by the OMB and assigned control numbers 2125-0039 for States and 2132-0529 for MPOs.)

§ 420.113 What costs are eligible?

(a) Costs will be eligible for FHWA participation provided that the costs:

(1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;

(2) Are verifiable from the STD's or the subrecipient's records;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;

(4) Are included in the approved budget, or amendment thereto; and

(5) Were not incurred prior to FHWA authorization.

(b) Indirect costs of STDs and their subrecipients are allowable if supported by a cost allocation plan and indirect cost proposal prepared, submitted (if required), and approved by the cognizant or oversight agency in accordance with the OMB requirements applicable to the STD or subrecipient specified in 49 CFR 18.22(b).

§ 420.115 What are the FHWA approval and authorization requirements?

(a) The STD and its subrecipients must obtain approval and authorization to proceed prior to beginning work on activities to be undertaken with FHWA planning and research funds. Such approvals and authorizations should be based on final work programs or other documents that describe the work to be performed. The STD and its subrecipients also must obtain prior approval for budget and programmatic changes as specified in 49 CFR 18.30 or 49 CFR 19.25 and for those items of allowable costs which require approval in accordance with the cost principles specified in 49 CFR 18.22(b) applicable to the entity expending the funds.

(b) Authorization to proceed with the FHWA funded work in whole or in part is a contractual obligation of the Federal Government pursuant to 23 U.S.C. 106 and requires that appropriate funds be available for the full Federal share of the cost of work authorized. Those STDs that do not have sufficient FHWA planning and research funds or obligation authority available to obligate the full Federal share of a work program or project may utilize the advance construction provisions of 23 U.S.C.

115(a) in accordance with the requirements of 23 CFR Part 630, subpart G. The STDs that do not meet the advance construction provisions, or do not wish to utilize them, may request authorization to proceed with that portion of the work for which FHWA planning and research funds are available. In the latter case, authorization to proceed may be given for either selected work activities or for a portion of the program period, but such authorization does not constitute a commitment by the FHWA to fund the remaining portion of the work if additional funds do become available.

(c) A project agreement must be executed by the STD and the FHWA Division Office for each statewide transportation planning, metropolitan planning area, or RD&T work program, individual activity or study, or any combination administered as a single Federal-aid project. The project agreement may be executed concurrent with or after authorization has been given by the FHWA Division Administrator to proceed with the work in whole or in part. In the event that the project agreement is executed for only part of the work, the project agreement must be amended when authorization is given to proceed with additional work.

(The information collection requirements in §§ 420.115(c) have been approved by the OMB and assigned control numbers 2125-0529.)

§ 420.117 What are the program monitoring and reporting requirements?

(a) In accordance with 49 CFR 18.40, the STD shall monitor all activities performed by its staff or by subrecipients with FHWA planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met.

(b)(1) The STD must submit performance and expenditure reports, including a report from each subrecipient, that contain as a minimum:

(i) Comparison of actual performance with established goals;

(ii) Progress in meeting schedules;

(iii) Status of expenditures in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;

(iv) Cost overruns or underruns;

(v) Approved work program revisions; and

(vi) Other pertinent supporting data.

(2) Additional information on reporting requirements for individual RD&T studies is contained in subpart B of this part.

(c) Reports required by paragraph (b) of this section shall be annual unless more frequent reporting is determined to be necessary by the FHWA Division Administrator. The FHWA may not require more frequent than quarterly reporting unless the criteria in 49 CFR 18.12 or 49 CFR 19.14 are met. Reports are due 90 days after the end of the reporting period for annual and final reports and no later than 30 days after the end of the reporting period for other reports.

(d) Events that have significant impact on the work must be reported as soon as they become known. The types of events or conditions that require reporting include: problems, delays, or adverse conditions that will materially affect the ability to attain program objectives. This disclosure must be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(e) Suitable reports that document the results of activities performed with FHWA planning and research funds must be prepared by the STD or subrecipient and submitted for approval by the FHWA Division Administrator prior to publication. The FHWA Division Administrator may waive this requirement for prior approval. The FHWA's approval of reports constitutes acceptance of such reports as evidence of work performed but does not imply endorsement of a report's findings or recommendations. Reports prepared for FHWA-funded work must include appropriate credit references and disclaimer statements.

(The information collection requirements in §§ 420.117 have been approved by the OMB and assigned control numbers 2125-0039 for States and 2132-0529 for MPOs.)

§ 420.119 What are the fiscal requirements?

(a) The maximum rate of Federal participation for FHWA planning and research funds shall be as prescribed in title 23, U.S.C., for the specific class of funds used (i.e., SPR, PL, NHS, STP, or MG) except is specified in paragraph (d) of this section. The provisions of 49 CFR 18.24 or 49 CFR 19.23 are applicable to any necessary matching of FHWA planning and research funds.

(b) The value of third party in-kind contributions may be accepted as the match for FHWA planning and research funds, in accordance with the provisions of 49 CFR 18.24(a)(2) or 49 CFR 19.23(a) and may be on either a total planning work program basis or for specific line items or projects. The use of third party in-kind contributions

must be identified in the original work program/scope of work and the grant/subgrant agreement, or amendments thereto. The use of third-party in-kind contributions must be approved in advance by the FHWA Division Administrator and may not be made retroactive prior to approval of the work program/scope of work or an amendment thereto. The STD or subrecipient is responsible for ensuring that the following additional criteria are met:

(1) The third party performing the work agrees to allow the value of the work to be used as the match;

(2) The cost of the third party work is not paid for by other Federal funds or used as a match for other federally funded grants/subgrants;

(3) The work performed by the third party is an eligible transportation planning or RD&T related activity that benefits the federally funded work;

(4) The third party costs (i.e., salaries, fringe benefits, etc.) are allowable under the applicable Office of Management and Budget (OMB) cost principles (i.e., OMB Circular A-21, A-87, or A-122).¹

(5) The third party work is performed during the period to which the matching requirement applies;

(6) The third party in-kind contributions are verifiable from the records of the STD or subrecipient and these records show how the value placed on third party in-kind contributions was derived; and

(7) If the total amount of third party expenditures at the end of the program period is not sufficient to match the total expenditure of Federal funds by the a recipient/subrecipient, the recipient/subrecipient will need to make up any shortfall with its own funds.

(c) In accordance with the provisions of 23 U.S.C. 120(j), toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce may be used as a credit for the non-Federal share of an FHWA planning and research funded project.

(d) In accordance with 23 U.S.C. 505(c) or 23 U.S.C. 104(f)(3), the requirement for matching SPR or PL funds may be waived if the FHWA determines the interests of the Federal-aid highway program would be best served. Waiver of the matching requirement is intended to encourage STDs and/or MPOs to pool SPR and/or

PL funds to address national or regional high priority planning or RD&T problems that would benefit multiple States and/or MPOs. Requests for waiver of matching requirements must be submitted to the FHWA headquarters office for approval by the Program Manager for Planning and Environment (for planning activities) or the Director of Research, Development, and Technology (for RD&T activities). The matching requirement may not be waived for NHS, STP, or MG funds.

(e) NHS, STP, or MG funds used for eligible planning and RD&T purposes must be identified separately from SPR or PL funds in the work program(s) and must be administered and accounted for separately for fiscal purposes. In accordance with the statewide and metropolitan planning process requirements for fiscally constrained transportation improvement program (TIPs) planning or RD&T activities funded with NHS, STP, or MG funds must be included in the Statewide and/or metropolitan TIP(s) unless the STD and MPO (for a metropolitan area) agree that they may be excluded from the TIP.

(f) Payment shall be made in accordance with the provisions of 49 CFR 18.21 or 49 CFR 19.22.

§ 420.121 What other requirements apply to the administration of planning and research funds?

(a) *Audits.* Audits of the STDs and their subrecipients shall be performed in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.² Audits of for-profit contractors are to be performed in accordance with STD or subrecipient contract administration procedures.

(b) *Copyrights.* The STDs and their subrecipients may copyright any books, publications, or other copyrightable materials developed in the course of the FHWA planning and research funded project. The FHWA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

(c) *Disadvantaged business enterprises.* The STDs must administer the transportation planning and RD&T program(s) consistent with their overall efforts to implement section 1001(b) of the Transportation Equity Act for the 21st Century (Pub. L. 105-178) and 49 CFR part 26 regarding disadvantaged business enterprises.

(d) *Drug free workplace.* In accordance with the provisions of 49 CFR part 29, subpart F, STDs must

certify to the FHWA that they will provide a drug free workplace. This requirement may be satisfied through the annual certification for the Federal-aid highway program.

(e) *Equipment.* Acquisition, use, and disposition of equipment purchased with FHWA planning and research funds by the STDs must be in accordance with 49 CFR 18.32(b). Local government subrecipients of STDs must follow the procedures specified by the STD. Universities, hospitals, and other non-profit organizations must follow the procedures in 49 CFR 19.34.

(f) *Financial management systems.* The financial management systems of the STDs and their local government subrecipients must be in accordance with the provisions of 49 CFR 18.20(a). The financial management systems of universities, hospitals, and other non-profit organizations must be in accordance with 49 CFR 19.21.

(g) *Lobbying.* The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities are applicable to all tiers of recipients of FHWA planning and research funds.

(h) *Nondiscrimination.* The nondiscrimination provisions of 23 CFR parts 200 and 230 and 49 CFR part 21, with respect to Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, apply to all programs and activities of recipients, subrecipients, and contractors receiving FHWA planning and research funds whether or not those programs or activities are federally funded.

(i) *Patents.* The STDs and their subrecipients are subject to the provisions of 37 CFR part 401 governing patents and inventions and must include, the standard patent rights clause at 37 CFR 401.14, except for § 401.14(g), in all subgrants or contracts. In addition, STDs and their subrecipients must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: "The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions."

(j) *Procurement.* Procedures for the procurement of property and services with FHWA planning and research funds by the STDs must be in accordance with 49 CFR 18.36(a) and (i) and, if applicable, 18.36(t). Local government subrecipients of STDs must follow the procedures specified by the STD. Universities, hospitals, and other

¹ OMB Circulars are available on the Internet at <http://www.whitehouse.gov/omb/circulars/index.html>.

² See footnote 1.

non-profit organizations must follow the procedures in 49 CFR 19.40 to 19.48. The STDs and their subrecipients must not use FHWA funds for procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended in accordance with the provisions of 49 CFR part 29, subparts A through E.

(k) *Program income*. Program income, as defined in 49 CFR 18.25(b) or 49 CFR 19.24, must be shown and deducted from total expenditures to determine the Federal share to be reimbursed, unless the FHWA Division Administrator has given prior approval to use the program income to perform additional eligible work or as the non-Federal match.

(l) *Record retention*. Recordkeeping and retention requirements must be in accordance with 49 CFR 18.42 or 49 CFR 19.53.

(m) *Subgrants to local governments*. The STDs and subrecipients are responsible for administering FHWA planning and research funds passed through to MPOs and local governments, for ensuring that such funds are expended for eligible activities, and for ensuring that the funds are administered in accordance with this part, 49 CFR part 18, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments, and applicable OMB cost principles. The STDs shall follow State laws and procedures when awarding and administering subgrants to MPOs and local governments and must ensure that the requirements of 49 CFR 18.37(a) have been satisfied.

(n) *Subgrants to universities, hospitals, and other non-profit organizations*. The STDs and subrecipients are responsible for ensuring that FHWA planning and research funds passed through to universities, hospitals, and other non-profit organizations are expended for eligible activities and for ensuring that the funds are administered in accordance with this part, 49 CFR part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and applicable OMB cost principles.

(o) *Suspension and debarment*. (1) The STDs and their subrecipients shall not award grants or cooperative agreements to entities who are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549; and

(2) The STDs and their subrecipients shall comply with the provisions of 49 CFR part 29, subparts A through E, for

procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended.

(p) *Supplies*. Acquisition and disposition of supplies acquired by the STDs and their subrecipients with FHWA planning and research funds must be in accordance with 49 CFR 18.33 or 49 CFR 19.35.

Subpart B—Research, Development and Technology Transfer Program Management

§ 420.201 What is the purpose of this subpart?

The purpose of this subpart is to prescribe requirements for research, development, and technology transfer (RD&T) activities, programs, and studies undertaken by State transportation departments (STDs) and their subrecipients with FHWA planning and research funds.

§ 420.203 How does the FHWA define the terms used in this subpart?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and subpart A of this part, are applicable to this subpart. As used in this subpart:

Applied research means the study of phenomena to gain knowledge or understanding necessary for determining the means by which a recognized need may be met; the primary purpose of this kind of research is to answer a question or solve a problem.

Basic research means the study of phenomena, and of observable facts, without specific applications towards processes or products in mind; the primary purpose of this kind of research is to increase knowledge.

Development means the systematic use of the knowledge or understanding gained from research, directed toward the production of useful materials, devices, systems or methods, including design and development of prototypes and processes.

Final report means a report documenting a completed RD&T study or activity.

Intermodal RD&T means research, development, and technology transfer activities involving more than one mode of transportation, including transfer facilities between modes.

Peer exchange means a periodic review of an STD's RD&T program, or portion thereof, by representatives of other STD's, for the purpose of exchange of information or best practices. The STD may also invite the participation of the FHWA, and other Federal, State, regional or local transportation agencies,

the Transportation Research Board, academic institutions, foundations or private firms that support transportation research, development or technology transfer activities.

RD&T activity means a basic or applied research project or study, development or technology transfer activity.

Research means a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. Research can be basic or applied.

Technology transfer means those activities that lead to the adoption of a new technique or product by users and involves dissemination, demonstration, training, and other activities that lead to eventual innovation.

Transportation Research Information Services (TRIS) means the database produced and maintained by the Transportation Research Board and available online through the National Transportation Library. TRIS includes bibliographic records and abstracts of on-going and completed RD&T activities. TRIS Online also includes links to the full text of public-domain documents.

§ 420.205 What is the FHWA's policy for research, development, and technology transfer funding?

(a) It is the FHWA's policy to administer the RD&T program activities utilizing FHWA planning and research funds consistent with the policy specified in § 420.105 and the following general principles in paragraphs (b) through (g) of this section.

(b) The STDs must provide information necessary for peer exchanges.

(c) The STDs are encouraged to develop, establish, and implement an RD&T program, funded with Federal and STD resources that anticipates and addresses transportation concerns before they become critical problems. Further, the STDs are encouraged to include in this program development and technology transfer programs to share the results of their own research efforts and promote the use of new technology.

(d) To promote effective use of available resources, the STDs are encouraged to cooperate with other STDs, the FHWA, and other appropriate agencies to achieve RD&T objectives established at the national level and to develop a technology transfer program to promote and use those results. This includes contributing to cooperative RD&T programs such as the NCHRP, the TRB, and transportation pooled fund studies as a means of addressing

national and regional issues and as a means of leveraging funds.

(e) The STDs will be allowed the authority and flexibility to manage and direct their RD&T activities as presented in their work programs, and to initiate RD&T activities supported by FHWA planning and research funds, subject to the limitation of Federal funds and to compliance with program conditions set forth in subpart A of this part and § 420.207.

(f) The STDs will have primary responsibility for managing RD&T activities supported with FHWA planning and research funds carried out by other State agencies and organizations and for ensuring that such funds are expended for purposes consistent with this subpart.

(g) Each STD must develop, establish, and implement a management process that ensures effective use of available FHWA planning and research funds for RD&T activities on a statewide basis. Each STD is permitted to tailor its management process to meet State or local needs; however, the process must comply with the minimum requirements and conditions of this subpart.

(h) The STDs are encouraged to make effective use of the FHWA Division, Resource Center, and Headquarters office expertise in developing and carrying out their RD&T activities. Participation of the FHWA on advisory panels and in program exchange meetings is encouraged.

§ 420.207 What are the requirements for research, development, and technology transfer work programs?

(a) The STD's RD&T work program must, as a minimum, consist of a description of RD&T activities to be accomplished during the program period, estimated costs for each eligible activity, and a description of any cooperative activities including the STD's participation in any transportation pooled fund studies and the NCHRP. The STD's work program should include a list of the major items with a cost estimate for each item. The work program should also include any study funded under a previous work program until a final report has been completed for the study.

(b) The STD's RD&T work program must include financial summaries showing the funding levels and share (Federal, State, and other sources) for RD&T activities for the program year. STDs are encouraged to include any activity funded 100 percent with State or other funds for information purposes.

(c) Approval and authorization procedures in § 420.115 are applicable to the STD's RD&T work program.

§ 420.209 What are the conditions for approval?

(a) As a condition for approval of FHWA planning and research funds for RD&T activities, a STD must develop, establish, and implement a management process that identifies and results in implementation of RD&T activities expected to address high priority transportation issues. The management process must include:

(1) An interactive process for identification and prioritization of RD&T activities for inclusion in an RD&T work program;

(2) Use of all FHWA planning and research funds set aside for RD&T activities, either internally or for participation in transportation pooled fund studies or other cooperative RD&T programs, to the maximum extent possible;

(3) Procedures for tracking program activities, schedules, accomplishments, and fiscal commitments;

(4) Support and use of the TRIS database for program development, reporting of active RD&T activities, and input of the final report information;

(5) Procedures to determine the effectiveness of the STD's management process in implementing the RD&T program, to determine the utilization of the STD's RD&T outputs, and to facilitate peer exchanges of its RD&T Program on a periodic basis;

(6) Procedures for documenting RD&T activities through the preparation of final reports. As a minimum, the documentation must include the data collected, analyses performed, conclusions, and recommendations. The STD must actively implement appropriate research findings and should document benefits; and

(7) Participation in peer exchanges of its RD&T management process and of other STDs' programs on a periodic basis. To assist peer exchange teams in conducting an effective exchange, the STD must provide to them the information and documentation required to be collected and maintained under this subpart. Travel and other costs associated with the STD's peer exchange may be identified as a line item in the STD's work program and will be eligible for 100 percent Federal funding. The peer exchange team must prepare a written report of the exchange.

(b) Documentation that describes the STD's management process and the procedures for selecting and implementing RD&T activities must be developed by the STD and submitted to

the FHWA Division office for approval. Significant changes in the management process also must be submitted by the STD to the FHWA for approval. The STD must make the documentation available, as necessary, to facilitate peer exchanges.

(c) The STD must include a certification that it is in full compliance with the requirements of this subpart in each RD&T work program. If the STD is unable to certify full compliance, the FHWA Division Administrator may grant conditional approval of the STD's work program. A conditional approval must cite those areas of the STD's management process that are deficient and require that the deficiencies be corrected within 6 months of conditional approval. The certification must consist of a statement signed by the Administrator, or an official designated by the Administrator, of the STD certifying as follows: I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) is in compliance with all requirements of 23 U.S.C. 505 and its implementing regulations with respect to the research, development, and technology transfer program, and contemplate no changes in statutes, regulations, or administrative procedures which would affect such compliance.

(d) The FHWA Division Administrator shall periodically review the STD's management process to determine if the State is in compliance with the requirements of this subpart. If the Division Administrator determines that a STD is not complying with the requirements of this subpart, or is not performing in accordance with its RD&T management process, the FHWA Division Administrator shall issue a written notice of proposed determination of noncompliance to the STD. The notice will set forth the reasons for the proposed determination and inform the STD that it may reply in writing within 30 calendar days from the date of the notice. The STD's reply should address the deficiencies cited in the notice and provide documentation as necessary. If the STD and the Division Administrator cannot resolve the differences set forth in the determination of nonconformity, the STD may appeal to the Federal Highway Administrator whose action shall constitute the final decision of the FHWA. An adverse decision shall result in immediate withdrawal of approval of FHWA planning and research funds for

the STD's RD&T activities until the STD is in full compliance.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL-101-FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Illinois Department of Natural Resources, Office of Mines and Minerals (Illinois or Department) proposes revisions to and additions of regulations concerning regulatory coordination with requirements under other laws, permit processing requirements, permit fees, right of entry, performance bonds, revegetation timing, standards for measuring revegetation success of herbaceous wildlife, affected acreage, use of explosives, high capability lands, suspension or revocation of permits, and public and administrative hearings. Illinois also proposes to correct or remove outdated references in several regulations. Illinois intends to revise its program to be consistent with the corresponding Federal regulations, to clarify ambiguities, and to improve operational efficiency.

This document gives the times and locations that the Illinois program and the proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., e.s.t., December 27, 2001. If requested, we will hold a public hearing on the amendment on December 24, 2001. We will accept requests to speak at the hearing until 4 p.m., e.s.t. on December 12, 2001.

ADDRESSES: You should mail or hand deliver written comments and requests

to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director,
Indianapolis Field Office, Office of
Surface Mining, Minton-Capehart
Federal Building, 575 North
Pennsylvania Street, Room 301,
Indianapolis, IN 46204, Telephone:
(317) 226-6700.

Illinois Department of Natural
Resources, Office of Mines and
Minerals, Land Reclamation Division,
300 W. Jefferson Street, Suite 300,
Springfield, IL 62701, Telephone
(217) 782-4970.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Gilmore, Director,
Indianapolis Field Office. Telephone:
(317) 226-6700. Internet:
IFOMAIL@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, “* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Description of the Proposed Amendment

By letter dated October 15, 2001 (Administrative Record No. IL-5073), Illinois sent us an amendment to its program under SMCRA and the Federal regulations at 30 CFR 732.17(b). Illinois

sent the amendment at its own initiative. Illinois proposes to amend its surface coal mining and reclamation regulations at Title 62 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Miscellaneous Revisions

1. Illinois proposes to delete references to the “interagency committee” from 62 IAC 1700.11(b), 1773.12, 1780.21(f)(3)(D)(v), 1784.14(e)(3)(C)(v), and 1785.23(d)(4). Illinois is removing these references because the interagency committee was abolished by Illinois Public Act 90-0490 in 1997.

2. Illinois is removing its current office address from and adding a reference to the “Department's Springfield office” in 62 IAC 1700.12(a), 1780.21(a), 1784.14(a), 1816.116(a)(2)(C) and (5)(A), 1817.116(a)(2)(C) and (5)(A), and 1846.17(b)(1). Illinois is proposing these revisions so the regulations will not have to be corrected because of future address changes.

3. Illinois is correcting citation references and simplifying its use of numbers in 62 IAC 1700.11, 1700.12, 1773.13, 1777.17, 1780.21, 1785.23, 1825.14, 1843.13, and 1846.17.

B. 62 IAC 1773.12 Regulatory Coordination With Requirements Under Other Laws

Illinois proposes to remove the language from 62 IAC 1773.12 that required the Interagency Committee on Surface Mining Control to review permit applications and provide comments and recommendations for coordination with requirements under other laws. Illinois proposes to add the following provision to address how it currently provides for the coordination of review and issuance of permits with requirements under other laws.

The Department shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of State laws and regulations and the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); and Executive Order 11593.