

(ii) Testing personnel shall be evaluated by observations and split samples or proficiency samples.

(iii) A prompt comparison and documentation shall be made of test results obtained by the tester being evaluated and the IA tester. The STD shall develop guidelines including tolerance limits for the comparison of test results.

(iv) If the STD uses the system approach to the IA program, the STD shall provide an annual report to the FHWA summarizing the results of the IA program.

(3) The preparation of a materials certification, conforming in substance to appendix A of this subpart, shall be submitted to the FHWA Division Administrator for each construction project which is subject to FHWA construction oversight activities.

(b) In the case of a design-build project funded under title 23, U.S. Code, the STD's quality assurance program should consider the specific contractual needs of the design-build project. All provisions of paragraph (a) of this section are applicable to design-build projects. In addition, the quality assurance program may include the following:

(1) Reliance on a combination of contractual provisions and acceptance methods;

(2) Reliance on quality control sampling and testing as part of the acceptance decision, provided that adequate verification of the design-builder's quality control sampling and testing is performed to ensure that the design-builder is providing the quality of materials and construction required by the contract documents.

(3) Contractual provisions which require the operation of the completed facility for a specific time period.

[60 FR 33717, June 29, 1995, as amended at 67 FR 75934, Dec. 10, 2002]

**§ 637.209 Laboratory and sampling and testing personnel qualifications.**

(a) Laboratories.

(1) After June 29, 2000, all contractor, vendor, and STD testing used in the acceptance decision shall be performed by qualified laboratories.

(2) After June 30, 1997, each STD shall have its central laboratory accredited

by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(3) After June 29, 2000, any non-STD designated laboratory which performs IA sampling and testing shall be accredited in the testing to be performed by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(4) After June 29, 2000, any non-STD laboratory that is used in dispute resolution sampling and testing shall be accredited in the testing to be performed by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(5) After September 24, 2009, laboratories that perform crash testing for acceptance of roadside hardware by the FHWA shall be accredited by a laboratory accreditation body that is recognized by the National Cooperation for Laboratory Accreditation (NACLA), is a signatory to the Asia Pacific Laboratory Accreditation Cooperation (APLAC) Mutual Recognition Arrangement (MRA), is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), or another accreditation body acceptable to FHWA.

(b) Sampling and testing personnel. After June 29, 2000, all sampling and testing data to be used in the acceptance decision or the IA program shall be executed by qualified sampling and testing personnel.

(c) Conflict of interest. In order to avoid an appearance of a conflict of interest, any qualified non-STD laboratory shall perform only one of the following types of testing on the same project: Verification testing, quality control testing, IA testing, or dispute resolution testing.

[60 FR 33717, June 29, 1995, as amended at 72 FR 54212, Sept. 24, 2007]

APPENDIX A TO SUBPART B OF PART 637—GUIDE LETTER OF CERTIFICATION BY STATE ENGINEER

Date \_\_\_\_\_  
Project No. \_\_\_\_\_  
This is to certify that:

The results of the tests used in the acceptance program indicate that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications. (The following sentence should be added if the IA testing frequencies are based on project quantities. All independent assurance samples and tests are within tolerance limits of the samples and tests that are used in the acceptance program.)

Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).

Director of STD Laboratory or other appropriate STD Official.

## PART 645—UTILITIES

### Subpart A—Utility Relocations, Adjustments, and Reimbursement

- Sec.  
 645.101 Purpose.  
 645.103 Applicability.  
 645.105 Definitions.  
 645.107 Eligibility.  
 645.109 Preliminary engineering.  
 645.111 Right-of-way.  
 645.113 Agreements and authorizations.  
 645.115 Construction.  
 645.117 Cost development and reimbursement.  
 645.119 Alternate procedure.

### Subpart B—Accommodation of Utilities

- 645.201 Purpose.  
 645.203 Applicability.  
 645.205 Policy.  
 645.207 Definitions.  
 645.209 General requirements.  
 645.211 State transportation department accommodation policies.  
 645.213 Use and occupancy agreements (permits).  
 645.215 Approvals.

AUTHORITY: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 26961 (May 24, 1977).

EDITORIAL NOTE: Nomenclature changes to part 645 appear at 65 FR 70311, Nov. 22, 2000.

### Subpart A—Utility Relocations, Adjustments, and Reimbursement

SOURCE: 50 FR 20345, May 15, 1985, unless otherwise noted.

#### § 645.101 Purpose.

To prescribe the policies, procedures, and reimbursement provisions for the

adjustment and relocation of utility facilities on Federal-aid and direct Federal projects.

#### § 645.103 Applicability.

(a) The provisions of this regulation apply to reimbursement claimed by a State transportation department (STD) for costs incurred under an approved and properly executed transportation department (TD)/utility agreement and for payment of costs incurred under all Federal Highway Administration (FHWA)/utility agreements.

(b) Procedures on the accommodation of utilities are set forth in 23 CFR part 645, subpart B, Accommodation of Utilities.

(c) When the lines or facilities to be relocated or adjusted due to highway construction are privately owned, located on the owner's land, devoted exclusively to private use and not directly or indirectly serving the public, the provisions of the FHWA's right-of-way procedures in 23 CFR 710.203, apply. When applicable, under the foregoing conditions, the provisions of this regulation may be used as a guide to establish a cost-to-cure.

(d) The FHWA's reimbursement to the STD will be governed by State law (or State regulation) or the provisions of this regulation, whichever is more restrictive. When State law or regulation differs from this regulation, a determination shall be made by the STD subject to the concurrence of the FHWA as to which standards will govern, and the record documented accordingly, for each relocation encountered.

(e) For direct Federal projects, all references herein to the STD or TD are inapplicable, and it is intended that the FHWA be considered in the relative position of the STD or TD.

[50 FR 20345, May 15, 1985, as amended at 64 FR 71289, Dec. 21, 1999]

#### § 645.105 Definitions.

For the purposes of this regulation, the following definitions shall apply:

*Authorization*—for Federal-aid projects authorization to the STD by the FHWA, or for direct Federal projects authorization to the utility by the FHWA, to proceed with any phase of a project. The date of authorization establishes the date of eligibility for