Dated: September 13, 2007.

Michele M. Leonhart,

Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 637

[FHWA Docket No. FHWA–2006–26501]

RIN 2125–AF21

Crash Test Laboratory Requirements for FHWA Roadside Safety Hardware Acceptance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final Rule.

SUMMARY: The FHWA is revising its regulation that establishes the general requirements for quality assurance procedures for construction on all Federal-aid highway projects on the National Highway System (NHS).[1] Specifically, the FHWA will require accreditation of laboratories that conduct crash tests on roadside hardware by an accrediting body that is recognized by the National Cooperation for Laboratory Accreditation (NACLA) or is a signatory to an International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), an Asia Pacific Laboratory Accreditation Cooperation (APLAC) MRA, or another comparable accreditation body approved by FHWA. This rule will improve the agency's ability to determine that crash test laboratories are qualified to conduct and evaluate tests intended to determine the crashworthiness of roadside safety features. Laboratory accreditation is widely recognized as a reliable indicator of technical competence.

DATES: Effective October 24, 2007.

FOR FURTHER INFORMATION CONTACT: Matt Lupes, Office of Safety Design, HSSD, (202) 366–6994, Nicholas Artimovich, Office of Safety Design, HSSD, (202) 366–1331, or Raymond Cuprill, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document, the notice of proposed rulemaking (NPRM), and all of the comments received may be viewed online through the Document Management System (DMS) at *http://dms.dot.gov*. 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 by accessing the Office of the Federal Register's home page at *http://www.archives.gov* or the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Background

Section 109(c) of title 23, United States Code, as amended by section 304 of the National Highway System Designation Act of 1995 (Pub. L. 104–59; 109 Stat. 188; Nov. 28, 1995), requires the Secretary, in cooperation with the State transportation departments, to approve design and construction standards on the NHS, regardless of funding source. These design standards include not only elements pertaining to the roadway itself, but also to any appurtenances installed along the roadway, such as traffic barriers (roadside and median barriers, and bridge railings), sign and luminaire supports and crash cushions.

The FHWA proposed to amend 23 CFR 637.209 by adding 637.209(a)(5) that would require all laboratories that perform crash testing for acceptance of roadside safety hardware to be accredited by an accreditation body that is recognized by NACLA or is a signatory to the APLAC MRA, ILAC MRA, or another comparable accreditation body approved by FHWA. To FHWA's knowledge, NACLA and the laboratory accreditation bodies that are members of ILAC and APLAC are the only laboratory accreditation bodies that exist. Information on accrediting bodies that are signatories to APLAC's MRA and ILAC's MRA, including estimated costs and application procedures for laboratory accreditation, can be found at their respective Web sites *http://www.aplac.org* and *http://www.ilac.org;* similar information on NACLA's accrediting bodies can be found at *http://nacla.net.* Formal accreditation assesses factors such as the technical competency of laboratory personnel, the validity of test methods, the calibration and maintenance of test equipment, and the quality assurance of calibration and test data.

Laboratory accreditation will be assessed according to the current International Standard ISO/IEC 17025:2005, General Requirements for the Competence of Testing and Calibration of Laboratories. The ISO/IEC 17025:2005 standard is divided into management and technical requirements that ensure the competence of the laboratory to produce valid data and results. Many other countries require organizations and testing laboratories to be accredited to the ISO/IEC 17025 standard for any test results used for establishing compliance. The FHWA acknowledges the ISO/IEC 17025:2005 standard as the benchmark for assessing the competence of the testing and calibration laboratories.

This final rule provides a 2-year phase-in period from the date of issuance to allow adequate time to prepare documentation and budgeting for formal accreditation. Based on the experience of the two accredited labs in the U.S., we estimate that adequate preparation for accreditation could vary depending on the size of the labs and could take 2 to 6 months.

Discussion of Comments Received to the Notice of Proposed Rulemaking (NPRM)

On April 9, 2007, the FHWA published a NPRM in the **Federal Register** at 72 FR 17447 to provide an opportunity for public comment on the proposed addition to 23 CFR 637.209. In response to the NPRM, the FHWA received comments to the docket from one State Transportation Agency (Minnesota) and one private company (Transport Research Laboratory). Both comments to the docket expressed support for adopting this final rule. The FHWA received no other comments on this rulemaking and therefore adopts the regulation as proposed in the NPRM.

Rulemaking Analyses and Notices

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. Currently, two of the test laboratories in the U.S. are already accredited and this regulation has no effect on those entities. The two currently accredited

[1] The National Highway System (NHS) includes the Interstate Highway System as well as other roads important to the Nation's economy, defense, and mobility. See 23 U.S.C. 103(b). The NHS was developed by the U.S. Department of Transportation (DOT) in cooperation with the States, local officials, and metropolitan planning organizations (MPOs).

laboratories, E-Tech Testing Services Incorporated in Rocklin, California and Safe Technologies Incorporated in Rio Vista, California provided an estimate of direct time and costs incurred to receive initial accreditation as 480 to 960 person-work hours to prepare documentation and $9,000 in direct costs. The initial fee of $9,000 included a one-time registration fee of $5,000, a 3-day on-site assessment visit costing $3,000, and materials and equipment costs of $1,000. It is expected that the amount of person work hours and costs associated with document preparation will vary depending on the size of the laboratory and the extent to which its operating procedures are already formalized. We believe that the time and cost to gain accreditation is not a burden. Laboratory accreditation renewal is required bi-annually and includes an annual review. The two laboratories mentioned above cite recurring annual costs of maintaining formal accreditation to be 160 person work hours and only $3,000 annually.

This rulemaking provides a 2-year phase-in period from the date of issuance to allow adequate time to prepare documentation and budgeting for formal accreditation. We believe that 2 years is more than adequate time for laboratories to obtain the necessary accreditation. The FHWA expects that this rule will not adversely affect, in a material way, any sector of the economy. In addition, this rule 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 action on small entities, including small governments. The FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities. There are about ten agencies that test roadside hardware for crashworthiness and two of these have already been certified under the requirements of this final rule. Estimated time and cost for an initial certification is 3 days on-site and $9,000. Re-certification is required bi-annually at an estimated annual cost of $3,000.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and the FHWA has determined that this action would not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policy making discretion of the States and local governments.

Unfunded Mandates Reform Act

This 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 rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532).

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. The FHWA has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, to eliminate ambiguity, and to reduce burden.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

This action would not affect 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 13211 (Energy Effects)

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this is not a significant energy action under this 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.

Executive Order 13175 (Tribal Consultation)

Since none of the existing test laboratories are owned, operated, or in any way controlled by Indian tribes, the FHWA believes that it will not have any 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.

National Environmental Policy Act

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule uses voluntary consensus standards.

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 637

Construction inspection and approval; Highways and roads.

Issued on: August 6, 2007.

J. Richard Capka,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 637, as set forth below:

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

■ 1. The authority citation for part 637 continues to read as follows:

Authority: Sec. 1307, Pub. L. 105–178, 112 Stat. 107; 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

■ 2. In § 637.209, add paragraph (a)(5) to read as follows:

§ 637.209 Laboratory and sampling and testing personnel qualifications.

* * * * *

(a) * * *

(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.

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[FR Doc. E7–18725 Filed 9–21–07; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–HA–0210]

RIN 0720–AB12

32 CFR Part 199

TRICARE; TRICARE Retiree Dental Program (TRDP) Basic Benefit Descriptions and Administrative Corrections

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends TRICARE Retiree Dental Program (TRDP) Basic benefit descriptions by replacing specific American Dental Association (ADA) dental procedure codes and nomenclature with general benefit categories and descriptions. This revision is necessary to keep the regulation current, since dental procedure codes are added, revised, and deleted on a regular basis. This final rule does not change or eliminate any benefits that are currently available under the TRDP program. This final rule also revises several incorrect, obsolete, or historical terms pertaining to the TRICARE program, and removes an inaccurate statement regarding appeals and grievances.

DATES: *Effective Date:* October 24, 2007.

ADDRESSES: TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Debra Hatzel, Program Requirements Division, TRICARE Management Activity, telephone (303) 676–3572.

SUPPLEMENTARY INFORMATION:

1. Introduction and Background

A. Provisions of the Rule Regarding Dental Procedure Codes and Nomenclature. This final rule amends TRICARE Retiree Dental Program (TRDP) Basic benefit descriptions by removing specific American Dental Association (ADA) dental procedure codes and nomenclature, and replacing them with general benefit categories and descriptions from the most recent Current Dental Terminology (CDT) Manual (CDT–2005). This action is required because dental procedure codes and nomenclature are added, revised, and deleted by the ADA every two years; when this occurs, the regulation must also be revised to reflect the new codes and nomenclature. Maintaining specific procedure codes and nomenclature in the regulation is unnecessary, since the TRDP contract and TRDP marketing materials (available at *http://www.tricare.osd.mil/dental/dm2.cfm*) already contain detailed benefit descriptions. Also, the TRDP contractor and enrollees are notified when the Government directs any changes to TRDP benefits, limits, or exclusions. The TRDP contract and TRDP marketing materials will continue to be the primary vehicles for communicating specific benefit information to the TRDP contractor and beneficiaries. Removal of specific procedure codes and nomenclature from this section does not change or eliminate any benefits that are currently available under the TRDP. The general categories of benefits that are listed in this final rule will be adjusted periodically to conform to the current CDT Manual.

Although there are many similarities between the TRDP and the TRICARE Dental Program (TDP), the benefits are not identical. Also, there are different dental benefits available under the TRDP Basic program and the TRDP Enhanced program. The general benefit categories in this TRDP final rule differ from the TDP benefit categories listed in 32 CFR Part 199.13. This variance exists because some of the benefits offered under the TDP are not benefits under the TRDP Basic program (e.g., prosthodontic and orthodontic services), and because the TDP benefit categories were derived from an earlier version of the CDT Manual.

B. Provisions of the Rule Regarding the Administrative Correction of Incorrect, Obsolete, or Historical Terms and Inaccurate Information. The proposed rule addressed the revision of several incorrect, obsolete or historical terms that appear in the regulation. Specifically, ''Director, OCHAMPUS'' was proposed to be amended to ''Director, TRICARE Management Activity''; ''Assistant Secretary of Defense (Human Affairs)'' was proposed to be amended to ''Assistant Secretary of Defense (Health Affairs)''; ''Active Duty Dependents Dental Program'' was proposed to be amended to ''TRICARE Dental Program''; ''CHAMPUS'' was proposed to be amended to ''TRICARE/CHAMPUS''; and ''OCHAMPUS'' was proposed to be amended to ''TRICARE Management Activity.''

Subsequent to the publication of the proposed rule, TRICARE Management Activity identified a long-standing error in the regulation regarding appeals and grievances. Specifically, 32 CFR 199.22(k)(1) currently states, ''Appeal and hearing procedures. All levels of appeals and grievances established by the Contractor for internal review shall be exhausted prior to forwarding to OCHAMPUS for a final review. Procedures comparable to those established under Sec. 199.13(h) of this part shall apply.'' The first sentence in this paragraph is inaccurate. TRDP grievances are written complaints regarding non-appealable issues involving a perceived failure of a provider or contractor staff to furnish the expected level or quality of care (e.g., demeanor or behavior of providers or their staff). The TRDP contractor is responsible for the investigation and resolution of grievances; since they are not forwarded to TMA for ''final review'', the current CFR language is incorrect. Appeals involve decisions related to TRICARE benefits (e.g., denial of preauthorization for requested services, or denial of TRICARE payment for services received). Appeals are initially sent to the TRDP contractor for reconsideration. If the original denial is upheld (and the amount in dispute is $50 or more), the beneficiary may