

**§ 209.335 Publication.**

(a) Section 4 of the Administrative Procedure Act requires publication of general notice of proposed rule making in the FEDERAL REGISTER (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law), except to the extent that there is involved: (1) Any military, naval, or foreign affairs function of the United States or (2) any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. Except where notice of hearing is required by statute, this requirement does not apply to interpretative rules, general statements of policy, rules of agency organization, procedure, or practice, or in any situation in which the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(b) General notice of proposed rule making published in accordance with the above will include: (1) A statement of the time, place, and nature of public rule making proceedings; (2) reference to the authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

**§ 209.340 Laboratory investigations and materials testing.**

(a) *Purpose.* The purpose of this section is to define and establish policies and procedures applicable to the performance of investigations and tests at Corps of Engineers laboratory installations for other governmental agencies and private organizations.

(b) *Applicability.* This regulation applies to Corps of Engineers Divisions and Districts operating soils, concrete, water quality and hydraulic laboratories, and to the Inter-Agency Sedimentation Project.

- (c) *References.* (1) AR 37-20.  
 (2) AR 37-27.  
 (3) ER 1-1-6.  
 (4) ER 10-1-3, Appendix XIII.  
 (5) ER 1110-1-8100.  
 (6) ER 1140-2-303.

(d) *Policy.* Subject to the authority limitations contained in paragraph (f) of this section, laboratory investigations and materials testing may be performed for other agencies of the Federal Government, State and local units of government, foreign governments and private firms under the following conditions:

(1) The work will be performed on a cost reimbursable basis.

(2) Work may be performed for State and local units of government, foreign governments or private firms only when it is firmly established that private commercial laboratory facilities capable of performing such work are not available, or because of location or for other reasons it is clearly impractical to utilize such private commercial laboratory services. The requesting entity must further certify that such services cannot be procured reasonably and expeditiously through ordinary business channels.

(3) Performance of the work will not interfere with provisions of services essential to the mission of the Corps.

(4) Performance of the work will not require an increase in the permanent staff of the facility.

(5) Performance of the work will not require expansion of normal facilities.

(6) The work is within the scope of authorized activities of the laboratory at which the work is to be performed.

(7) Performance of the work will not be adverse to the public interest.

(8) Prior to undertaking laboratory investigations or materials testing for private firms, written certification will be obtained from such firms stating that the results of the work will not be used in litigation or for promotional purposes.

(e) *Terms of providing reimbursement for work performed—*(1) *Federal agencies.* Reimbursement for work for the Department of Defense, the Department of the Army, and other Federal Agencies will be in accordance with the procedures prescribed in AR 37-27.

(2) *State and local units of Government.* Funds to cover the total estimated cost of the work or an initial increment of

the estimated cost based on an approved schedule of payment will be deposited with the installation performing the work before any obligations or expenses in connection with the work are incurred; and when funds are being deposited on an approved schedule no obligations or expenses will be incurred in connection with the work in excess of funds on deposit.

(3) *Private concerns and foreign governments.* Funds will be deposited in advance of the work as required in paragraph (e)(2) of this section. Charges shall include a surcharge of 15 percent of all applicable costs, except under the following conditions.

(i) When the final product will directly contribute to a specific planning, design, or construction activity which derives its principal support from Federal funds in the form of a grant or otherwise.

(ii) Where an exception is granted based on a direct benefit to the Government. Adequate justification, outlining the direct benefits which are expected to accrue to the Government, will be forwarded to HQDA (DAEN-CWE-DC) Washington, DC 20314, for review and approval prior to deletion of the surcharge.

(f) *Authority.* The following delegations of authority to perform laboratory investigations and materials testing apply.

(1) *Division materials laboratories.* Division Engineers are delegated the authority to approve laboratory work for Federal, State and local units of government when the total estimated cost of each investigation or test project is \$15,000 or less. Division Engineers are also delegated the authority to approve laboratory work for private firms and foreign Governments when the total estimated cost of each investigation or test project is \$5,000 or less. Approval is required when the estimated or actual costs exceed those delegations of authority. Requests for approval shall be addressed to DAEN-CWE-DC.

(2) *Hydraulic laboratories.* Division Engineers and District Engineers operating hydraulic laboratories or hydraulic model laboratories are delegated the authority to approve laboratory work for others within the same limitations and in accordance with the

same procedures as apply to Division Materials Laboratories.

(3) *Inter-Agency Sedimentation Project, St. Anthony Falls Laboratory, University of Minnesota, Minneapolis, Minnesota.* The District Engineer, St. Paul is authorized to perform work required in procurement, testing and calibration of specialized sediment sampling equipment developed at the Inter-Agency Sedimentation Project. Equipment of this nature will be made available to Federal, State and local governmental agencies at cost. The District Engineer, St. Paul, is also authorized to approve the performance of testing and calibration work for U.S. private firms that fabricate this specialized equipment for commercial sale when the estimated cost for services of Corps personnel is \$5,000 or less for a single order. Approval is required when the estimated single order cost for a private firm exceeds \$5,000 and when the total cost of work during a fiscal year for any one private firm exceeds \$15,000. Requests for approval shall be addressed to HQDA (DAEN-CWE-HY) Washington, DC 20314.

(g) *Reports of testing results.* Final reports of results will be submitted in accordance with instructions provided by the sponsoring organization, with two copies to HDQA (DAEN-CWE-DC) Washington, DC 20314.

Copies of reports of scientific or technical activities will be transmitted to the Defense Documentation Center as required by AR 70-31. (RCS OSD-1366)

(Sec. 3012, 70A Stat 157; 10 U.S.C. 3012)

[44 FR 50338, Aug. 28, 1979]

#### § 209.345 Water resource policies and authorities.

##### REIMBURSEMENT FOR ADVANCE NON-FEDERAL PARTICIPATION IN CIVIL WORKS PROJECTS

(a) *Purpose.* This regulation gives general instructions on use of section 215 of the Flood Control Act of 1968 (Pub. L. 90-483) to reimburse a non-Federal public body for construction of part of an authorized Federal project, part of an authorized Federal project. It establishes general policies, outlines procedures to be followed in reaching