

existing regulations. The regulation requires testers and laboratories to be qualified. However, it gives the States the flexibility to establish those qualifications. In addition, the final rule modified Section 637.207 to remove the requirement for a specific comparison procedure to validate the quality of the material. The rule clarifies existing policy and procedures and provides additional guidance on the use of contractor-supplied test results in acceptance plans.

One commenter questioned the title and purpose of the proposed rule, indicating that the rule covers materials and not construction. Over 50 percent of the cost of construction is the cost of the material. In addition, the rule requires each State to inspect construction to insure that the construction procedures do not adversely affect the properties of the material. Therefore, the title of this rule remains unchanged.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation's regulatory policies and procedures. The FHWA, at 23 CFR 637, currently has regulations covering sampling and testing. The rule provides the States with additional flexibility in comparison to the current regulations. States will be allowed to use contractor test results in making acceptance decisions and consultants to perform independent assurance testing. Other changes update the current regulations to accommodate contractor-performed sampling and testing and reinforce existing policy. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. The FHWA concluded that this action may provide some small testing firms with an opportunity to perform more work than was allowed by the previous regulations. Although the regulation will have a positive impact on these testing firms, the number of firms affected will be small and the amount of additional work would be insignificant. Therefore, the FHWA hereby certifies that this rulemaking will not have a

significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The rule provides the States with additional flexibility over the current regulations. States will be allowed to use contractor test results in making acceptance decisions and consultants to perform IA testing. Therefore, it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

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 this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

This rulemaking does not have any effect on the environment. It does not constitute a major action having a significant effect on the environment, and therefore does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

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

Grant programs—transportation, Highways and roads, Quality assurance, Materials sampling and testing.

Issued on: June 22, 1995.

Rodney E. Slater,

Federal Highway Administrator

In consideration of the foregoing, the FHWA is amending title 23, Code of

Federal Regulations, by revising part 637 to read as follows:

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

Subpart A—[Reserved]

Subpart B—Quality Assurance Procedures for Construction

Sec.

- 637.201 Purpose.
- 637.203 Definitions.
- 637.205 Policy.
- 637.207 Quality assurance program.
- 637.209 Laboratory and sampling and testing personnel qualifications.

Appendix A to Subpart B—Guide Letter of Certification by State Engineer

Authority: 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

Subpart A—[Reserved]

Subpart B—Quality Assurance Procedures for Construction

§ 637.201 Purpose.

To prescribe policies, procedures, and guidelines to assure the quality of materials and construction in all Federal-aid highway projects on the National Highway System.

§ 637.203 Definitions.

Acceptance program. All factors that comprise the State highway agency's (SHA) determination of the quality of the product as specified in the contract requirements. These factors include verification sampling, testing, and inspection and may include results of quality control sampling and testing.

Independent assurance program. Activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the acceptance program. Test procedures used in the acceptance program which are performed in the SHA's central laboratory would not be covered by an independent assurance program.

Proficiency samples. Homogeneous samples that are distributed and tested by two or more laboratories. The test results are compared to assure that the laboratories are obtaining the same results.

Qualified laboratories. Laboratories that are capable as defined by appropriate programs established by each SHA. As a minimum, the qualification program shall include provisions for checking test equipment and the laboratory shall keep records of calibration checks.