

of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Based on the record of the proceeding, the Secretary shall determine whether the State is in nonconformity with this subpart. If the Secretary determines that the State is in nonconformity, the provisions of paragraph (a) of this section shall take effect immediately.

(4) The Secretary may reduce 10 percent of a State's apportionment of funds under 23 U.S.C. 104 prior to the administrative determination under this section in order to prevent the apportionment to the State of funds which would be affected by a determination of nonconformity.

(5) Funds withheld pursuant to a final administrative determination under this section shall be reapportioned to all other eligible States one year from the date of this determination, unless before this time the Secretary determines, on the basis of information submitted by the State and the FHWA, that the State has come into conformity with this section. If the Secretary determines that the State has come into conformity, the withheld funds shall be released to the State.

(6) The reapportionment of funds under paragraph (b)(5) of this section shall be stayed during the pendency of any proceeding for judicial review of a final administrative determination of nonconformity made by the Secretary.

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

Subpart A [Reserved]

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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).

SOURCE: 60 FR 33717, June 29, 1995, unless otherwise noted.

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.

Qualified sampling and testing personnel. Personnel who are capable as defined by appropriate programs established by each SHA.

Quality assurance. All those planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality.

Quality control. All contractor/vendor operational techniques and activities that are performed or conducted to fulfill the contract requirements.