



April 10, 2020

J. Richard Willis, PhD  
Vice President for Engineering, Research, and Technology  
National Asphalt Pavement Association  
6406 Ivy Lane  
Greenbelt, MD 20770

Dear Dr. Willis:

Thank you for your letter regarding the impacts of the coronavirus disease 2019 (COVID-19) on the asphalt industry. You urged the Federal Highway Administration (FHWA), the State departments of transportation (DOT), and the asphalt industry to work together to address the challenges brought about by the pandemic.

The FHWA continues to work closely with State DOTs and industry stakeholders. As noted in your letter, Title 23, Code of Federal Regulations (CFR), Part 637, Subpart B, on Quality Assurance Procedures for Construction discusses qualified sampling and testing personnel (commonly called certification by State DOTs):

- Section 203 states, “Personnel who are capable as defined by appropriate programs established by each STD.”
- Section 205(a) states, “Each STD shall develop a quality assurance program which will assure that the materials and workmanship incorporated into each Federal-aid highway construction project on the NHS are in conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207 and be approved by the FHWA.”

These regulations provide State DOTs the flexibility to develop and modify programs to meet their current needs. The FHWA works with State DOTs to ensure that programs are implemented in accordance with Federal regulations.

We expect State DOTs to follow their own policies and contract provisions in reviewing claims or time extension requests related to material or labor shortages. The standard specifications for many State DOTs provide for excusable, non-compensable time extensions for regional material shortages. The FHWA’s contracting procedures in 23 CFR Part 635 address many issues that may arise for COVID-19 related delays during construction. See the following sections for details:

- §635.109 Standardized changed condition clauses,
- §635.120 Changes and extra work,

- §635.121 Contract time and contract time extensions,
- §635.124 Participation in contract claim awards and settlements, and
- §635.125 Termination of contract.

Please do not hesitate to contact my staff or me if you have any additional comments.

Sincerely yours,

Hari Kalla  
Associate Administrator for Infrastructure