owner has agreed, in writing, to maintain the flock, and all first generation progeny resulting from semen imported in accordance with this section, in compliance with all requirements of the Voluntary Scrapie Flock Certification Program until the flock, including all first generation progeny resulting from semen imported in accordance with this section, qualifies as a ''Certified'' flock.

(b) Sheep semen may be imported under paragraph (a) of this section only if the importer provides the Voluntary Scrapie Flock Certification Program identification number of the receiving flock as part of the application for an import permit.

(c) Sheep semen may be imported under paragraph (a)(1) of this section only if it comes from a donor animal in a flock in the country of origin that participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, and the flock has been determined by the Administrator to be at a level equivalent to ''Certified'' in the Voluntary Scrapie Flock Certification Program.

(d) Sheep semen may be imported under paragraph (a)(2) of this section only if it is transferred to animals in a Certifiable Class C flock participating in the Voluntary Scrapie Flock Certification Program; except, that if the semen comes from a donor animal whose flock in the country of origin participates in a program determined by the Administrator to be equivalent to the Voluntary Scrapie Flock Certification Program, then the semen may be used in a flock in the United States which would be classified at a level equivalent to or lower (i.e., at greater risk) than the certification level, as determined by the Administrator, of the flock of the donor animal.

(e) The flock to which the sheep semen is transferred pursuant to paragraph (a)(2) of this section must be monitored for scrapie disease until the flock, and all first generation progeny resulting from the semen imported in accordance with this section, qualifies as a ''Certified'' flock.

(f) Except for sheep semen being placed in Certifiable Class C flocks, the certificate accompanying the sheep semen imported under paragraph (a) of this section must contain the following statement: ''The semen identified on this certificate has been collected from a sire that has been monitored by a salaried veterinary officer of [*name of country of origin*], for [*number of months*], in the same source flock which had been determined by the Administrator, APHIS, prior to the exportation of the semen to the United States, to be equivalent to [*certification level*] of the Voluntary Scrapie Flock Certification Program authorized under 9 CFR part 54, subpart B.''

(1) The Administrator will determine, based upon information supplied by the importer, whether the donor animal's flock participates in a program in the country of origin that is equivalent to the Voluntary Scrapie Flock Certification Program, and if so, at what level the source flock would be classified.

(2) In order for the Administrator to make a determination, the importer must supply the following information with the application for an import permit, no less than 1 month prior to the anticipated date of importation:

(i) The name, title, and address of a knowledgeable official in the veterinary services of the country of origin;

(ii) The details of scrapie control programs in the country of origin, including information on disease surveillance and border control activities and the length of time these activities have been in effect;

(iii) Any available information concerning additions, within the 5 years immediately preceding collection of the semen, to the flock of the semen donor;

(iv) Any available data concerning disease incidence, within the 5 years immediately preceding collection of the semen in the donor animal's flock, including, but not limited to, the results of diagnostic tests, especially histopathology tests, conducted on any animals in the flock;

(v) Information concerning the health, within the 5 years immediately preceding collection of the semen, of other ruminants, flocks, and herds with which the donor animal and the donor animal's flock might have had physical contact, and a description of the type and frequency of the physical contact; and

(vi) Any other information requested by the Administrator in specific cases as needed to make a determination.

(g) All first generation progeny resulting from semen imported under this section are subject to the requirements of 9 CFR part 54 and all other applicable regulations.

(Approved by the Office of Management and Budget under control numbers 0579–0040 and 0579–0101)

Done in Washington, DC, this 9th day of April 1996.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–9266 Filed 4–18–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket 95–21]

RIN 2125–AD61

General Material Requirements; Warranty Clauses

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting, as final, a current interim final rule that revises the use of guaranty and warranty clauses on Federal-aid highway construction contracts. This final rule permits greater use of warranties in Federal-aid highway construction contracts within prescribed limits.

EFFECTIVE DATE: August 25, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. James Daves, Office of Engineering, (202) 366–0355 or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On August 25, 1995, the FHWA published in the Federal Register (60 FR 44271) an interim final rule along with a request for comments, revising its regulation regarding warranty clauses on Federal-aid highway construction contracts. That action permitted the greater use of warranties in Federal-aid highway construction contracts within prescribed limits.

Discussion of Comments

The public comment period for the interim final rule closed on October 24, 1995. The FHWA received 20 written responses from 19 organizations including 11 associations, six State Departments of Transportation (DOTs), and two private companies. The responses concerning this interim final rule are available for review at the Federal Highway Administration, Public Docket Room 4232, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590.

Of the 20 responses received, 13 comments did not support the interim final rule and seven did support the interim final rule. The significant comments are summarized in the following discussion.

Requiring Warranties

An association responding to the interim final rule stated that by revising its regulation the FHWA was requiring

the use of warranty clauses on Federal-aid highway construction contracts. This statement, however, is inaccurate. The FHWA removed its regulation prohibiting the use of warranty clauses, but left it to the State DOTs to decide when or if they will use warranty clauses. If warranty clauses are used on Federal-aid highway construction contracts, it will be because the State DOT chooses to use them, with FHWA concurrence.

Bonding Capacity

Four associations, two private companies and one DOT commented on the effect of warranty provisions on bonding capacity, particularly on smaller contractors. They noted that requiring warranties of several years typically requires the contractor to provide a performance bond for that period of time. The size of the performance bond could be quite large and, particularly in the case of smaller contractors, the effect on their overall bonding capacity could affect their ability to obtain work. The seven commenters argue that this would effectively stifle competition for contracts and ultimately increase the cost to the taxpayers. One commenter felt that the effect on smaller contractors violates the Regulatory Flexibility Act. Discussion of that comment is included in the following paragraphs, and later under the heading ''Regulatory Flexibility Act.''

The FHWA believes that removing the restriction on warranty clauses will not stifle competition or negatively affect smaller contractors' overall bonding capacity and ability to obtain work. In the first place, experience to date has shown no negative effect on the bonding capacity of small businesses. State DOTs have been following their own procedures regarding the inclusion of warranties in non-NHS Federal-aid contracts since the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914). These non-NHS projects constitute approximately one-third of the FHWA's Federal-aid highway program, and have amounted to several billions of dollars worth of construction each fiscal year. The FHWA has not observed any problem with the bonding capacity of smaller contractors who perform work eligible for such warranties. This regulation allows the FHWA simply to extend the option to use such warranty clauses by the State DOTs on the remaining two-thirds of the program, and the FHWA does not believe that this added flexibility will be used to an extent or in such a way as to negatively impact the bonding capacity of small businesses.

Secondly, the warranties allowed by this regulation are limited to a specific construction product or feature. This regulation does not apply to design engineering or full project warranties. The FHWA believes that this fact will limit the warranties given and, in turn, the contractor's exposure.

Thirdly, the FHWA anticipates these warranties will be primarily applied to small specialty or experimental item contracts. As a result, some small businesses may benefit from the ability to offer warranties on specialty or experimental items, either included as one element of the contract or as the main element of the contract. When warranties are prohibited, such items are often limited to experimental item contracts because the contracting agent (State DOT) has no assurance of the item's effectiveness. By removing the restriction on such warranties, the FHWA believes the smaller contractors may in fact have greater opportunity to enter the market with their experimental items because they can be guaranteed by a warranty.

Finally, the FHWA believes that the concern over this regulation's effect on the bonding capacity of smaller contractors is overstated. These warranties are expected to be relatively short term—five years or less. Given the type of contracts involved (relatively short term and for a specific product or item), the FHWA expects that the bonding capacity of smaller contractors will not be adversely affected.

Since publication of the interim final rule, one State DOT has proposed a warranty contract provision which eliminates the need for a long term bond and, in turn, the criticism that warranties affect bonding capacity. In this State's proposal, a portion of the contractor's bid amount is retained and paid to the contractor on an annual cycle based on satisfactory performance of the item which has been warranted. Using such an approach, no long term bond is required by the contractor. The FHWA sees this as a possible alternative to bonding warranties, which deserves monitoring to determine if it is effective.

Increased Flexibility

Six State DOTs (one DOT responded twice) responding to the interim final rule commented on the increased flexibility afforded to contracting agencies by the revision of the FHWA regulation. These commenters saw this as a positive change, and generally supported allowing contracting agencies to decide when to use warranty clauses within the framework of the revised regulation, with concurrence by the FHWA.

Design Liability

Four associations and one private company stated that they opposed the contractor being liable for the design of a project under the umbrella of a warranty. They felt that such design exposure was outside the control of the construction contractor and, therefore, inappropriate. The warranty regulation as revised by the FHWA states that the warranty provision shall be for a specific construction product or feature. There is no mention in the regulation of design being warranted, as these commenters assert. Furthermore, the warranty regulation states that the construction contractor will not be obligated for items over which the contractor has no control. A construction contractor does not typically have any control over the design of a project, therefore a warranty provision could not bind them to the project design.

Administrative Procedure Act

One association commenting on the interim final rule discussed the publication of an interim final rule as it relates to the Administrative Procedure Act (APA). That commenter criticized the FHWA's decision to waive the notice and comment requirements of the APA, 5 U.S.C. 553, and proceed directly to an interim final rule. The commenter stated that the interim final rule imposes ''significant new obligations on the States by granting the government the authority to mandate greater use of warranties on Federal-aid highway projects.'' In fact, the interim final rule relieves a restriction and imposes no new obligation or requirement on the States. It merely enables the States to include warranty clauses in Federal-aid highway construction contracts if they find such clauses would be beneficial. Warranty clauses have been found to enhance the quality of highway construction projects, so proceeding to an interim final rule in this instance was in the public interest. Moreover, the FHWA did solicit comments on this rulemaking and is considering and responding to those comments to the same extent it would be in the case of a notice of proposed rulemaking.

Semiannual Regulatory Agenda

One association commenting on the interim final rule noted its objection to the FHWA's failure to publish this rulemaking in the DOT's Semiannual Regulatory Agenda (Agenda) prior to publication of the interim final rule. (The current rulemaking was published

in the DOT's Semiannual Regulatory Agenda on November 28, 1995.) While the commenter is correct in noting that Executive Order 12866 and the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) require the DOT to prepare a semiannual regulations agenda for publication in the Federal Register, neither the Executive Order nor the RFA prevent the FHWA from publishing a rulemaking document which has not previously been listed in the Agenda. Section 602(d) explicitly provides that the requirement to publish such an agenda does not preclude the agency from considering or acting on any matter not listed in such agenda.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Policies and Procedures) 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 regulatory policies and procedures. The revisions would merely accommodate expanded use of warranty clauses on Federal-aid construction contracts. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

This final rule makes no changes to the interim final rule and merely informs the public that the interim final rule remains unchanged. Therefore, the FHWA finds that good cause exists to dispense with the 30-day delayed effective date requirement under 5 U.S.C. 553(d).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–345, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. As stated above, the FHWA made this determination based on the fact that: (1) experience to date with non-NHS Federal-aid projects that allow the use of warranties has shown no negative effect on the bonding capacity of small businesses for non-NHS Federal-aid projects; (2) some small businesses may benefit from the ability to enter the market with specialty or experimental items, either included as one element of the contract or as the main element of the contract; and (3) given the type of contracts involved (relatively short term and for a specific product or item), the FHWA expects that the bonding capacity of smaller contractors will not experience any significant adverse effect.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a separate Federalism assessment. Nothing in this document preempts any State law or regulation, and no new requirements or obligations are imposed on States or local governments by this action. Instead, this interim final rule provides States with additional discretion to determine for themselves whether to include warranty clauses in Federal-aid highway construction contracts for projects on the National Highway System.

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 635

Government contracts, Grant programs—transportation, Highways and roads.

In consideration of the foregoing and under the authority of 23 U.S.C. 315, the interim final rule amending the authority for 23 CFR part 635 and revising § 635.413 which was published at 60 FR 44271, August 25, 1995 is adopted as final without change.

Issued on: April 3, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96–9558 Filed 4–18–96; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 583

[Docket No. FR–3379–C–02]

RIN A506–AB45

Office of the Assistant Secretary for Community Planning and Development; Supportive Housing Program; Technical Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Technical correction.

SUMMARY: This document corrects the Department's regulations for the Supportive Housing Program. The definitions for the terms ''*Supportive housing*'' and ''*Supportive services*'' were incorrectly codified in the 1995 edition of the Code of Federal Regulations. This document will correct those definitions.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Jean Whaley, Program Development Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7260, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–2140. (This is not a toll-free number.) Hearing- or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The regulations in 24 CFR part 583 implement the Department's Supportive Housing Program, which provides assistance for housing and supportive services for homeless persons, as authorized by section 1403 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved