

Subpart A—Highway Planning and Research and Development—Programing of Funds

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420.101 Purpose.
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AUTHORITY: 23 U.S.C. 104, 307, and 315; and 49 CFR 1.48(b).

Subpart A—Highway Planning and Research and Development—Programing of Funds

§ 420.101 Purpose.

The purpose of this subpart is to prescribe Federal Highway Administration (FHWA) policies and procedures related to programing and authorization of highway planning and research and development projects undertaken with Federal-aid funds in accordance with 23 U.S.C. 104(f) and 307(c), as amended. Procedures for allocating and matching of Metropolitan planning funds authorized under 23 U.S.C. 104(f)(1) (PL funds) and information regarding programing procedures for these funds that are available specifically to designated Metropolitan Planning Organizations (MPO) are also discussed in the Federal-Aid Highway Program Manual.¹

§ 420.102 Definitions.

(a) Class of Fund—Refers to each of the several Federal-aid funds in 23 U.S.C. 104(b) which provide the source of the 1½ percent funds authorized under 23 U.S.C. 307(c)(2) (HPR funds) and the optional one-half percent funds authorized under 23 U.S.C. 307(c)(3) (PR funds).

(b) Type of Fund—Refers to HPR, PR and PL funds.

(c) Annual HP&R Work Program—Refers to the total highway planning and research and development effort described in an annual statement of proposed work and estimated cost.

§ 420.103 Policy.

(a) HPR and PL funds shall each be administered as a single fund.

(b) Under authority of 23 U.S.C. 104 (f) (3) and pursuant to the Secretary's delegation of authority in 49 CFR 1.48 (b) (3), the Federal Highway Administrator has determined that a matching ratio other than that set forth in 23 U.S.C. 120 be established; and accordingly the Federal share payable on account of work performed using PL funds shall not be less than 80 percent.

(c) The State highway agency (SHA) shall have primary responsibility for administering PL funds.

§ 420.104 Fiscal procedures.

(a) Upon receipt of notice of apportionment of Federal-aid funds for each fiscal year, the SHA shall give notice to the MPO of the amount of Federal funds

to be made available to that organization according to the approved distribution formula (Volume 4, Chapter 4, section 7, paragraph 3) for that State.

(b) The SHA shall be responsible for identifying programed amounts, expenditures, and unprogramed balances of PL funds for each designated MPO.

§ 420.105 Programing procedures.

PL funds and HPR funds are each administered as a single fund with separate programing documents required for each.

§ 420.106 Authorization procedures.

(a) The approval of the HP&R work program and subsequent authorization to the SHA to proceed with either the Part I or Part II portion of a work program in Stage 2 will establish the obligation of Federal funds.

(b) The project agreement (PR-2) may be executed when the SHA has been authorized to proceed with the work program in whole or in part. However, in the event the project agreement is executed for only part of the work program, the project agreement shall be amended at such time as the SHA is authorized to proceed with the remaining part and when it has been advanced to Stage 2.

[FR Doc.74-23644 Filed 10-9-74; 8:45 am]

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 630—PRECONSTRUCTION PROCEDURES

Plans, Specifications, and Estimates

Subchapter G of Chapter I of Title 23 Code of Federal Regulations is amended by adding to Part 630—Preconstruction Procedures a new Subpart B—Plans, Specifications, and Estimates. Subpart B codifies policies and procedures formerly contained in Federal Highway Administration Policy and Procedures Memorandum 21-5.

General notice of proposed rulemaking is not required inasmuch as the material published relates to grants, benefits or contracts pursuant to 5 U.S.C. 553(a)(2).

This regulation will be effective on October 1, 1974.

Subpart A—[Reserved]

Subpart B—Plans, Specifications, and Estimates

- Sec.
630.201 Purpose.
630.202 Applicability.
630.203 Submission and approval.
630.204 Policies and guidance for preparation.

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b).

Subpart A—[Reserved]

Subpart B—Plans, Specifications, and Estimates

§ 630.201 Purpose.

The purpose of this part is to prescribe policies and procedures to implement 23 U.S.C. 106(a) relating to the preparation, submission and approval of plans, specifications and estimates and supporting

documents for Federal-aid projects, commonly referred to as PS&E.

§ 630.202 Applicability.

The provisions of this part apply to all highway construction projects financed in whole or in part with Federal-aid highway funds and to be undertaken by a State or political subdivision thereof pursuant to agreements between the State highway department and the Federal Highway Administration (FHWA), except for projects carried out pursuant to 23 U.S.C. 117 relative to certification acceptance or a secondary road plan as appropriate.

§ 630.203 Submission and approval.

(a) PS&E assemblies for Federal-aid highway projects shall be submitted to the FHWA for approval.

(b) The contents and number of copies of the PS&E assembly shall be determined by the FHWA.

(c) The State highway department shall be advised of approval of the PS&E by the FHWA.

(d) No project or part thereof for actual construction shall be advertised for contract nor work commenced by force account until PS&E have been approved by the FHWA and the State highway department has been so notified.

§ 630.204 Policy and guidance for preparation.

Plans and specifications shall describe the location and design features and the construction requirements in sufficient detail to facilitate the construction, the contract control and the estimation of construction costs of the project. The estimate shall reflect the anticipated cost of the project in sufficient detail to provide an initial prediction of the financial obligations to be incurred by the State and FHWA and to permit an effective review and comparison of the bids received.

Issued on: October 1, 1974.

L. P. LAMM,
Acting Executive Director,
Federal Highway Administrator.

[FR Doc.74-23642 Filed 10-9-74; 8:45 am]

PART 630—PRECONSTRUCTION PROCEDURES

Bridges on Federal Dams

Part 630—Preconstruction Procedures of Subchapter G—Engineering and Traffic Operations is amended by adding a new Subpart H—Bridges on Federal Dams.

Policy and Procedure Memorandum 28-1 concerning the financing and construction of bridges on Federal dams has been incorporated into the Federal Highway Administration Program Manual as Volume 6, chapter 3, section 2, subsection 6. Regulatory portions of this directive are hereby published.

General notice of proposed rulemaking is not required since the material published relates to grants, benefits or contracts pursuant to 5 U.S.C. section 553

¹ The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR, Part 7, Appendix D.

(a)(2). The regulations become effective on October 1, 1974.

Issued on October 1, 1974.

L. P. LAMM,
Acting Executive Director,
Federal Highway Administrator.

Subpart H—Bridges on Federal Dams

Sec.
630.801 Purpose.
630.802 Applicability.
630.803 Procedures.

Subpart H—Bridges on Federal Dams

AUTHORITY: 23 U.S.C. secs. 315 and 320;
49 CFR 1.48; 23 CFR 1.32.

§ 630.801 Purpose.

The purpose of this subpart is to prescribe procedures for the construction and financing, by an agency of the Federal Government, of public highway bridges over dams constructed and owned by or for the United States.

§ 630.802 Applicability.

A proposed bridge over a dam, together with the approach roads to connect the bridge with existing public highways, must be eligible for inclusion in the Federal-aid highway system, if not already a part thereof.

§ 630.803 Procedures.

A State's application to qualify a project under this subpart will include:

(a) A certification that the bridge is economically desirable and needed as a link in the Federal-aid highway system.

(b) A statement showing the source and availability of funds to be used in construction of the roadway approaches.

(c) A statement of any obligation on the part of the agency constructing the dam to provide such bridge or approach roads to satisfy a legal liability incurred independently of this subpart.

[FR Doc. 74-23641 Filed 10-9-74; 8:45 am]

PART 645—UTILITIES

PART 646—RAILROADS

Railroad-Highway Insurance Protection

The Federal Highway Administration is amending Part 645, Subchapter G, Chapter I of Title 23, Code of Federal Regulations, by retitling Part 645 to read "Utilities" and adding a new Part 646 to read "Railroads."

A Federal-aid to highways directive of longstanding (PPM 20-12) sets forth policies and procedures relating to railroad-highway insurance protection required of Federal-aid highway contractors. The directive has been revised for inclusion in the Federal-Aid Highway Program Manual. Inasmuch as portions of the Manual addition impose obligations on States which must be complied with to obtain Federal assistance, these portions are hereby published.

This regulation converts Policy and Procedures Memorandum 20-12 to Part 646, Subpart A of Chapter I of Title 23 of the Code of Federal Regulations.

Since the matters affected relate to grants, benefits or contracts within the purview of 5 U.S.C. 553(a)(2), general

notice of proposed rulemaking is not required.

This regulation will be effective on October 1, 1974.

Issued on October 1, 1974.

L. P. LAMM,
Acting Executive Director,
Federal Highway Administrator.

1. The title of Part 645 is revised to read:

Part 645—Utilities.

2. Part 646 is added to read as follows:

Subpart A—Railroad-Highway Insurance Protection

Sec.
646.101 Purpose.
646.103 Application.
646.105 Contractor's public liability and property damage insurance.
646.107 Railroad protective insurance.
646.109 Types of coverage.
646.111 Amount of coverage.
646.113 Scope of coverage.
646.115 Negligence of the railroad.
646.117 Real property.
646.119 Exclusion of liabilities under certain laws.
646.121 Exclusion of liability assumed by the railroad under special contracts.
646.123 Termination of liability.
646.125 Duplication of coverage.
646.127 Form of insurance policy.
Appendix A Standard provisions for general liability policies.

Subpart A—Railroad-Highway Insurance Protection

AUTHORITY: 23 U.S.C. 315; 49 CFR 1.48(b).

§ 646.101 Purpose.

The purpose of this part is to prescribe provisions under which Federal funds may be applied to the costs of public liability and property damage insurance obtained by contractors (a) for their own operations, and (b) on behalf of railroads on or about whose right-of-way the contractors are required to work in the construction of highway projects financed in whole or in part with Federal funds.

§ 646.103 Application.

(a) This part applies:

(1) To a contractor's legal liability for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(2) To the liability which may attach to railroads for bodily injury to, or death of, persons and for injury to, or destruction of, property.

(3) To damage to property owned by or in the care, custody or control of the railroads, both as such liability or damage may arise out of the contractor's operations, or may result from work performed by railroads at or about railroad rights-of-way in connection with projects financed in whole or in part with Federal funds.

(b) Where the highway construction is under the direct supervision of the Federal Highway Administration (FHWA), all references herein to the State shall be considered as references to the FHWA.

§ 646.105 Contractor's public liability and property damage insurance.

(a) Contractors may be subject to liability with respect to bodily injury to

or death of persons, and injury to, or destruction of property, which may be suffered by persons other than their own employees as a result of their operations in connection with construction of highway projects located in whole or in part within railroad right-of-way and financed in whole or in part with Federal funds. Protection to cover such liability of contractors shall be furnished under regular contractors' public liability and property damage insurance policies issued in the names of the contractors. Such policies shall be so written as to furnish protection to contractors respecting their operations in performing work covered by their contract.

(b) Where a contractor sublets a part of the work on any project to a subcontractor, the contractor shall be required to secure insurance protection in his own behalf under contractor's public liability and property damage insurance policies to cover any liability imposed on him by law for damages because of bodily injury to, or death of, persons and injury to, or destruction of, property as a result of work undertaken by such subcontractors. In addition, the contractor shall provide for and on behalf of any such subcontractors protection to cover like liability imposed upon the latter as a result of their operations by means of separate and individual contractor's public liability and property damage policies; or, in the alternative, each subcontractor shall provide satisfactory insurance on his own behalf to cover his individual operations.

(c) The contractor shall furnish to the State highway department evidence satisfactory to such department and to the FHWA that the insurance coverages required herein have been provided. The contractor shall also furnish a copy of such evidence to the railroad or railroads involved. The insurance specified shall be kept in force until all work required to be performed shall have been satisfactorily completed and accepted in accordance with the contract under which the construction work is undertaken.

§ 646.107 Railroad protective insurance.

In connection with highway projects for the elimination of hazards of railroad-highway crossings and other highway construction projects located in whole or in part within railroad right-of-way, railroad protective liability insurance shall be purchased on behalf of the railroad by the contractor. The standards for railroad protective insurance established by §§ 646.109 through 646.127 shall be adhered to insofar as the insurance laws of the State will permit.

§ 646.109 Types of coverage.

(a) Coverage shall be limited to damage suffered by the railroad on account of occurrences arising out of the work of the contractor on or about the railroad right-of-way, independent of the railroad's general supervision or control, except as noted in § 646.109(b)(4).

(b) Coverage shall include:

(1) Death of or bodily injury to passengers of the railroad and employees of

the railroad not covered by State workmen's compensation laws;

(2) Personal property owned by or in the care, custody or control of the railroad;

(3) The contractor, or any of his agents or employees who suffer bodily injury or death as the result of acts of the railroad or its agents, regardless of the negligence of the railroad;

(4) Negligence of only the following classes of railroad employees:

(i) Any supervisory employee of the railroad at the job site;

(ii) Any employee of the railroad while operating, attached to, or engaged on, work trains or other railroad equipment at the job site which are assigned exclusively to the contractor; or

(iii) Any employee of the railroad not within (i) or (ii) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection of property, the cost of whose services is borne specifically by the contractor or governmental authority.

§ 646.111 Amount of coverage.

(a) Dollar amounts of coverage to be reimbursed from Federal funds shall be limited generally to maximum amounts of \$500,000 for each individual and \$1 million for each occurrence with respect to bodily injury or death; and \$500,000 for each occurrence with an aggregate of \$1 million for the term of the policy with respect to property damage.

(b) In cases involving real and demonstrable danger of appreciably higher risks, higher dollar amounts of coverage for which premiums will be reimbursable from Federal funds shall be allowed. These larger amounts will depend on circumstances and shall be written for the individual project in accordance with standard underwriting practices upon approval of the FHWA.

§ 646.113 Scope of coverage.

(a) Since railroad protective insurance differs somewhat from ordinary casualty insurance, the policies shall be written on an "occurrence" rather than on an "accident" basis. Furthermore, the railroads should be covered for such items as disease and other types of consequential damages not necessarily caused by accidents and damages resulting from intentional acts of the contractor or his employees.

(b) Policies should not be so written as to cover risks remotely or only indirectly connected with the actual project. The extent of coverage should be confined to occurrences arising out of acts or omissions on the part of the contractor, his agents or employees and the designated employees of the railroad noted in § 646.109(b)(4) related to the work in progress.

§ 646.115 Negligence of the railroad.

An exclusion should be made with respect to liability for damage resulting from the sole proximate cause of the railroad.

§ 646.117 Real property.

Insurance policies written in conformity with this part shall not cover dam-

age to real property owned by railroads caused by acts or omissions of contractors.

§ 646.119 Exclusion of liabilities under certain laws.

(a) Obligations under the insurance policies discussed herein shall exclude liability under State workmen's compensation laws, State unemployment compensation laws, disability benefit laws and other similar State laws.

(b) The Federal Employers' Liability Act should be specifically excepted so that damages awarded under the Act will be compensable from the insurance written in compliance with this part.

§ 646.121 Exclusion of liability assumed by the railroad under special contracts.

When a railroad assumes liability under contracts or agreements, other than as a common carrier or as a bailee, lessee or operator of property including rolling stock or equipment, such liability shall be excluded from policies written in accordance with these standards. The liability under the policy shall be limited to contracts made as a common carrier.

§ 646.123 Termination of liability.

Liability under these policies shall terminate following notification to the railroad of the acceptance of the work by the State highway department. Excepted from this provision are damages resulting from bodily injury, property damage or loss resulting from the existence or removal of tools, uninstalled equipment and abandoned or unused materials.

§ 646.125 Duplication of coverage.

The policy shall contain a clause providing that the insurance afforded by it shall be primary insurance.

§ 646.127 Form of insurance policy.

The standards established by this part are incorporated in a form of insurance policy which is set forth in Appendix A to this part. Use of this form is required for all projects subject to this part.

APPENDIX A—STANDARD PROVISIONS FOR GENERAL LIABILITY POLICIES

RAILROAD PROTECTIVE LIABILITY FORM FOR USE ON STATE OR FEDERAL HIGHWAY PROJECTS (INCLUDING INSTRUCTIONS FOR PREPARATION OF POLICIES BY COMPANIES)

General Instructions

1. *Standard language.* This form is expressed in standard language which may not be amended and no part of which may be omitted except (a) as indicated by these instructions, or (b) as indicated in reference notes shown below referring to specific portions of the form, or (c) by an endorsement which states an amendment or exclusion of some provision of the form in accordance with the provisions of a manual rule, the form of which endorsement has been approved, if required, by the supervising authority of the State in which the policy is issued.

2. *Optional sequence and arrangement.* The several parts of the form, viz. "Insuring Agreements," "Exclusions," "Conditions" and "Declarations" may appear in the policy in such sequence as the company may elect and the sequence and arrangement of the

several provisions of those parts are also optional with the company.

3. *Descriptive headings—identifying or indexing designations.* The descriptive headings of the parts of the form (as quoted above) and of the major insuring agreements ("Bodily Injury Liability," "Property Damage Liability," etc.) are standard expressions which may not be amended or omitted, but all other identifying or indexing designations (such as "Coverage A," "Defense, Settlement, Supplementary Payments," "Cancellation," etc.), including literal or numerical designations or paragraphs or phrases, may be amended or omitted at the company's option. When such identifying or indexing designations, used for the purpose of reference in the text of the form or any endorsement form applicable thereto, are amended or omitted, descriptive designations shall be substituted therefor.

4. *Additional coverages or companies, explanatory or connective language.* When policies are issued to provide insurance in this form together with insurance covering other risks, the addition of necessary explanatory or connective language which does not amend the expression of this form is permissible and the introductory language of the "Insuring Agreements" which provides for the issuance of a policy by two companies may be used and, if necessary, paraphrased to permit such policies to be issued by more than two companies.

5. *Declarations—including other risks.* A common set of declarations may be used in those cases where policies in this form are issued with policies covering other risks.

6. *Installment premium payment.* Policies written to provide for payment of premium in installments may provide for lapse or suspension of the policy upon default of payment when due.

7. *Addition of coverage by endorsement.* When insuring agreements and other provisions relating to any particular class of insurance are added to this policy by endorsement, such additional insurance must be expressed in approved standard language relating to the particular class and must be subject to all standard provisions applicable to that class by the expressions of the endorsement or of the policy or of both taken together.

8. *Definition of "standard" and "approved."* "Standard language" or "approved standard language" when used in these instructions means the form and endorsements either prescribed or approved by the insurance supervising authority of the State in which policy forms and endorsements are approved or prescribed. In those States where supervising authorities do not have the authority to approve or prescribe policies, forms and endorsements, the terms mean the forms and endorsements adopted by the companies for use in such States.

9. *Premium statement.* The statement with respect to payment of premium may be amended by an endorsement to make necessary provision with respect to payment of premium, payment of additional premium and return of premium and dividends under the policy.

10. *Special conditions for mutuals, reciprocals, and participating stock companies.* When the policy is issued by a mutual company, a reciprocal association or a participating stock company having special provisions applicable to its membership or policyholders, such provisions, when approved by the supervising authority of the State in which

the policy is issued if such approval is required, may be inserted in the policy.

**BLANK INDEMNITY COMPANY
BLANK INSURANCE COMPANY**

[Railroad Protective Liability
Policy No. _____
(State or Federal Highway
Projects)]¹

¹ Matter in brackets may be included, omitted or amended at the option of the company.

DECLARATIONS

Item 1. Named Insured _____

Address _____

(No. Street Town [or City] County State

Item 2. Policy Period: _____

From _____ to _____
12:01 A.M., standard time at the designated
job site as stated herein.

Item 3. The insurance afforded is only
with respect to such of the following cover-
ages as are indicated [in Item 6] by specific
premium charge or charges. The limit of
the company's liability against such coverage
or coverages shall be as stated herein, subject

Item 6. Designation
of the job site and
description of work

Premium bases

Rates—Coverage A,
Coverages B and C

Advance premiums—
Coverage A,
Coverages B and C

Contract cost _____
Rental cost _____

Per \$100 of cost _____
Per \$100 of rental cost _____

[If policy Period more than 1 year:]
[Premium is payable: On effective date of
Policy \$_____ 1st Anniversary \$_____ 2nd An-
niversary]

[Date and Place of Issue _____]
Countersigned [_____ 19____, at _____]
By _____

[A. Renewal of policy number.]
[B. The named insured is a corporation.]
[C. Endorsement serial numbers.]
[D. Rating plan or premium discount.]

(For policy issued by one company):

[(Name and Location of
Indemnity Company)]

[A (type of company) insurance company,
herein called the company,] agrees with the
insured, named in the declarations made a
part hereof, in consideration of the payment
of the premium and in reliance upon the
statements in the declarations made by the
named insured and subject to all of the terms
of this policy:

(For policy issued by two companies):

[(Name and Location of
Indemnity Company)]

[and]

[(Name and Location of
Insurance Company)]

[Each a (type of company) insurance com-
pany, herein called the company,] severally
agree with the insured, named in the declara-
tions made a part hereof, in consideration of
the payment of the premium and in reliance
upon the statements in the declarations
made by the named insured and subject to
all of the terms of this policy, provided the
Blank Indemnity Company shall be the in-
surer with respect to coverage _____
and no other and the Blank Insurance Com-
pany shall be the insurer with respect to cov-
erage _____ and no other.

Insuring Agreements

I. Coverage A—bodily injury liability. To
pay on behalf of the insured all sums which
the insured shall become legally obligated to
pay as damages because of bodily injury,

to all the terms of this policy having refer-
ence thereto. (A statement may be added
that a definite notation may be made in the
premium column to show that a particular
coverage is not afforded.)

Limits of Liability

Coverages

[Blank Indemnity Company]:

A—Bodily injury liability _____

\$_____ each person.

\$_____ each occurrence.

[Blank Insurance Company]:

B—Property damage liability; C—Physical
damage to property.

\$_____ each occurrence.

\$_____ aggregate.

Item 4. Name and Address of Contractor _____

Item 5. Name and Address of Govern-
mental Authority for whom the work by
the Contractor is being performed _____

sickness, or disease, including death at any
time resulting therefrom, hereinafter called
"bodily injury," either (1) sustained by any
person arising out of acts or omissions at
the designated job site which are related to
or are in connection with the work described
in Item 6 of the Declarations, or (2) sus-
tained at the designated job site by the con-
tractor or any employee of the contractor,
or by any employee of the governmental au-
thority specified in Item 5 of the Declara-
tions, or by any designated employee of the
insured, whether or not arising out of such
acts or omissions.

Coverage B—property damage liability. To
pay on behalf of the insured all sums which
the insured shall become legally obligated to
pay as damages because of physical injury to
or destruction of property, including loss of
use of any property due to such injury or
destruction, hereinafter called "property
damage" arising out of acts or omissions at
the designated job site which are related to
or are in connection with the work described
in Item 6 of the declarations.

Coverage C—physical damage to property.
To pay for direct and accidental loss of or
damage to rolling stock and their contents,
mechanical construction equipment, or mo-
tive power equipment, hereinafter called loss,
arising out of acts or omissions at the desig-
nated job site which are related to or are in
connection with the work described in Item 6
of the declarations; provided such property
is owned by the named insured or is leased
or entrusted to the named insured under a
lease or trust agreement.

II. Definitions. (a) *Insured*. The unquali-
fied word "insured" includes the named in-
sured and also includes any executive officer,
director or stockholder thereof while acting
within the scope of his duties as such.

(b) *Contractor*. The word "contractor"
means the contractor designated in Item 4
of the declarations and includes all subcon-
tractors of said contractor but shall not in-
clude the named insured.

(c) *Designated employee of the insured*.
The words "designated employee of the in-
sured" mean:

(1) Any supervisory employee of the in-
sured at the job site,

(2) Any employee of the insured while op-
erating, attached to or engaged on work
trains or other railroad equipment at the job
site which are assigned exclusively to the
contractor, or

(3) Any employee of the insured not within
(1) or (2) who is specifically loaned or as-
signed to the work of the contractor for pre-
vention of accidents or protection of prop-
erty, the cost of whose services is borne spe-
cifically by the contractor or by governmental
authority.

(d) *Contract*. The word "contract" means
any contract or agreement to carry a person
or property for a consideration or any lease,
trust or interchange contract or agreement
respecting motive power, rolling stock or me-
chanical construction equipment.

III. Defense, settlement, supplementary
payments. With respect to such insurance as
is afforded by this policy under coverages A
and B, the company shall:

(a) Defend any suit against the insured al-
leging such bodily injury or property damage
and seeking damages which are payable
under the terms of this policy, even if any of
the allegations of the suit are groundless,
false or fraudulent, but the company may
make such investigation and settlement of
any claim or suit as it deems expedient;

(b) Pay, in addition to the applicable
limits of liability:

(1) All expenses incurred by the company,
all costs taxed against the insured in any
such suit and all interest on the entire
amount of any judgment therein which ac-
crued after entry of the judgment and before
the company has paid or tendered or de-
posited in court that part of the judgment
which does not exceed the limit of the com-
pany's liability thereon;

(2) Premiums on appeal bonds required in
any such suit, premiums on bonds to release
attachments for an amount not in excess of
the applicable limit of liability of this policy,
but without obligation to apply for or fur-
nish any such bonds;

(3) Expenses incurred by the insured for
such immediate medical and surgical relief
to others as shall be imperative at the time
of the occurrence;

(4) All reasonable expenses, other than
loss of earnings, incurred by the insured at
the company's request.

IV. Policy period, territory. This policy ap-
plies only to occurrences and losses during
the policy period and within the United
States of America, its territories or posses-
sions, or Canada.

Exclusions

This policy does not apply:

(a) To liability assumed by the insured
under any contract or agreement except a
contract as defined herein;

(b) To bodily injury or property damage
caused intentionally by or at the direction of
the insured;

(c) To bodily injury, property damage or
loss which occurs after notification to the
named insured of the acceptance of the work
by the governmental authority, other than
bodily injury, property damage or loss re-
sulting from the existence or removal of tools,
uninstalled equipment and abandoned or
unused materials;

(d) Under Coverages A(1), B and C to
bodily injury, property damage or loss, the
sole proximate cause of which is an act or
omission of any insured other than acts or
omissions of any designated employee of
any insured;

(e) Under Coverage A, to any obligation
for which the insured or any carrier as his
insurer may be held liable under any work-
men's compensation, unemployment com-
pensation or disability benefits law, or under
any similar law; provided that the Federal

Employers' Liability Act, U.S. Code (1946) Title 45, sections 51-60, as amended, shall for the purposes of this insurance be deemed not to be any similar law;

(f) Under Coverage B, to injury to or destruction of property (1) owned by the named insured or (2) leased or entrusted to the named insured under a lease or trust agreement.

(g) 1. Under any Liability Coverage, to injury, sickness, disease, death or destruction:

(a) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) Resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, of any agency thereof, with any person or organization.

2. Under any Medical Payments Coverage, or under any Supplementary-Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

3. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) The nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or disposed therefrom;

(b) The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or

(c) The injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possession or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

4. As used in this exclusion:

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear material" means source material, special nuclear material or byproduct material;

"Source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"Waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) below;

"Nuclear facility" means:

(a) Any nuclear reactor;

(b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;

(c) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material; with respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

(h) Under Coverage C, to loss due to nuclear reaction, nuclear radiation or radioactive contamination, or to any act or condition incident to any of the foregoing.

Conditions

[The conditions, except conditions 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, apply to all coverages. Conditions 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 apply only to the coverage noted thereunder.]

1. **Premium.** The premium bases and rates for the hazards described in the declarations are stated therein. Premium bases and rates for hazards not so described are those applicable in accordance with the manuals in use by the company.

The term "contract cost" means the total cost of all work described in Item 6 of the declarations.

The term "rental cost" means the total cost to the contractor for rental of work trailers or other railroad equipment, including the remuneration of all employees of the insured while operating, attached to or engaged thereon.

The advance premium stated in the declarations is an estimated premium only. Upon termination of this policy the earned premium shall be computed in accordance with the company's rules, rates, rating plans, premiums and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the company shall look to the contractor specified in the declarations for any such excess; if less, the company shall return to the said contractor the unearned portion paid.

In no event shall payment of premium be an obligation of the named insured.

2. **Inspection.** The named insured shall make available to the company records of information relating to the subject matter of this insurance.

The company shall be permitted to inspect all operations in connection with the work described in Item 6 of the declarations.

3. **Limits of liability—coverage A.** The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to

"each occurrence" is, subject to the above provision respecting each person, the total limit of the company's liability for all such damage arising out of bodily injury sustained by two or more persons as the result of any one occurrence.

4. **Limits of liability—coverages B and C.** The limit of liability under coverages B and C stated in the declarations as applicable to "each occurrence" is the total limit of the company's liability for all damages and all loss under coverages B and C combined arising out of physical injury to, destruction or loss of all property of one or more persons or organizations, including the loss of use of any property due to such injury or destruction under coverage B, as the result of any one occurrence.

Subject to the above provision respecting "each occurrence," the limit of liability under coverages B and C stated in the declaration as "aggregate" is the total limit of the company's liability for all damages and all loss under coverages B and C combined arising out of physical injury to, destruction or loss of property, including the loss of use of any property due to such injury or destruction under coverage B.

Under coverage C, the limit of the company's liability for loss shall not exceed the actual cash value of the property, or if the loss is of a part thereof the actual cash value of such part, at time of loss, not what it would then cost to repair or replace the property or such part thereof with other of like kind and quality.

5. **Severability of interests—coverages A and B.** The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

6. **Notice.** In the event of an occurrence or loss, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable. If claim is made or suit is brought against the insured, he shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

7. **Assistance and cooperation of the insured—coverages A and B.** The insured shall cooperate with the company and, upon the company's request, attend hearings and trials and assist in making settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

8. **Action against company—coverages A and B.** No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

9. Action against company—coverage C. No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms on this policy nor until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.

10. Insured's duties in event of loss—coverage C. In the event of loss the insured shall:

(a) Protect the property, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expenses incurred in affording such protection shall be deemed incurred at the company's request;

(b) File with the company, as soon as practicable after loss, his sworn proof of loss in such form and including such information as the company may reasonably require and shall, upon the company's request, exhibit the damaged property.

11. Appraisal—coverage C. If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after the proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and competent and disinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

12. Payment of loss—coverage C. The company may pay for the loss in money but there shall be no abandonment of the damaged property to the company.

13. No benefit to bailee—coverage C. The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee, other than the named insured, liable for loss to the property.

14. Subrogation. In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

15. Application of insurance. The insurance afforded by this policy is primary insurance.

16. Three year policy. A policy period of 3 years is comprised of 3 consecutive annual periods. Computation and adjustment of earned premium shall be made at the end of each annual period. Aggregate limits of liability as stated in this policy shall apply separately to each annual period.

17. Changes. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy [signed by _____ (here insert titles of authorized company officials or representatives)]; provided, however, changes may be made in the written portion of the declaration by _____ (here insert titles of authorized company representatives)

when initialed by such _____ (here insert titles of authorized company representatives) or by endorsement issued to form a part of this policy signed by such _____ (here insert titles of authorized company representatives)].

18. Assignment. Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon.

19. Cancellation. This policy may be canceled by the named insured by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the named insured, contractor and governmental authority at the respective addresses shown in this policy written notice stating when not less than 30 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

20. Declarations. By acceptance of this policy the named insured agrees that such statement in the declarations as are made by him are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

(For policy issued by one company):

[In witness whereof, the Blank Indemnity Company has caused this policy to be signed by its president and a secretary at _____ and countersigned on the declarations page by a duly authorized agent of the company.]

[(Facsimile of signature),
President.]

[(Facsimile of signature),
Secretary.]

(For policy issued by two companies):

[In witness whereof, the Blank Indemnity Company has caused this policy, with respect to coverages _____ and such other parts of the policy as are applicable thereto, to be signed by its president and a secretary at _____, and countersigned on the declarations page by a duly authorized agent of the company.]

[(Facsimile of signature),
President.]

[(Facsimile of signature),
Secretary.]

[In witness whereof, the Blank Insurance Company has caused this policy, with respect to coverages _____ and such other parts of the policy as are applicable thereto, to be signed by its president and a secretary at _____, and countersigned on the declarations page by a duly authorized agent of the company.]

[(Facsimile of signature),
President.]

[(Facsimile of signature),
Secretary.]

[FR Doc.74-23640 Filed 10-9-74;8:45 am]

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 753—ACQUISITION PROCEDURES FOR LANDSCAPING AND SCENIC ENHANCEMENT

Correction

The document published at 39 FR 32033 on Wednesday, September 4, 1974 is corrected by renumbering § 753.104 to § 753.4.

Effective date: August 22, 1974.

(23 U.S.C. 315, 23 U.S.C. 319, 23 CFR 1.32 and 49 CFR 1.48)

Issued on: October 1, 1974.

L. P. LAMM,
Acting Executive Director,
Federal Highway Administrator.

[FR Doc.74-23643 Filed 10-9-74;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT—FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION), DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-74-296]

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Financing of Air Conditioning

The Department of Housing and Urban Development is amending Part 201 of Title 24 of the Code of Federal Regulations, Subpart B, "Mobile Home Loans," to permit mobile home loans to include the cost of skirting and central air conditioning units sold by mobile home dealers to the mobile home purchaser.

The Secretary has determined that it is impracticable to provide for public comment prior to the adoption of this amendment and that this change should become effective upon publication. However, interested persons are invited to submit data, views, and suggestions with respect to the rule, to the Rules Docket Clerk, Office of General Counsel, Room 10245, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. All relevant material received will be considered for any future modification of the section.

The rule is issued pursuant to Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d).

Accordingly, § 201.530 is amended by adding paragraphs (b) (6) and (7) to read as follows:

§ 201.530 Maximum loan amount.

* * * * *

(b) Cost of skirting not to exceed actual cost or \$100.00, whichever amount is the lesser.

(7) Cost of central air conditioning, if not installed by the mobile home manufacturer, not to exceed: