



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: INFORMATION: Oklahoma Warranty Clauses

Date: September 10, 1996

From: Director, Office of Engineering

Reply to
Attn. of: HNG-22

To: Mr. Edward A. Wueste
Regional Administrator (HRA-06)
Fort Worth, Texas

This is in response to your July 30 memorandum concerning Oklahoma Department of Transportation's request to use a general warranty bond on Federal-aid highway construction projects.

We believe that the Oklahoma Maintenance Bond is broad and general in nature, and does not meet the requirements of 23 CFR 635.413. It is not limited to a specific construction product or feature as required by the Federal Highway Administration's (FHWA) regulation. As written, it could require contractors to take maintenance responsibility for items that are not under their control.

During the rulemaking process, FHWA received several comments from individuals who were concerned that the warranty provision would have an adverse impact on bonding capacity. In the final rule, the FHWA specifically stated that the warranties allowed by the regulation are limited to a specific construction product or feature. The regulation does not apply to design engineering or full project warranties. The FHWA believes that this will limit the warranties given and, in turn, the contractor's exposure.

For this reason, we cannot approve the use of Oklahoma's General Maintenance Bond on National Highway System (NHS) projects. As noted in Mr. James Erickson's July 16 letter, the Oklahoma General Maintenance Bond may be included in non-NHS projects in accordance with 23 CFR 635.413(d).

If you have any questions regarding this matter, please contact Mr. Gerald Yakowenko at 202-366-1562.


Gerald L. Eller

FHWA:HNG-22:GYakowenko:jk:08/06/96:jk:9/4/96:jk/9/9/96
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