FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2641]

Fleetwood Enterprises, Inc.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and vacate the order.

SUMMARY: Fleetwood Enterprises, Inc., a corporate respondent in the order in Docket No. C-2641, has requested the Federal Trade Commission to vacate a 1974 consent order issued against it concerning its mobile home owners warranty and warranty practices. This document announces the public comment period on the petition.

DATE: Deadline for filing comments in this matter is December 20, 1987.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. The requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. C-2641 was published at 40 FR 18983 on May 1, 1975. The petitioner, Fleetwood Enterprises, Inc., manufacturers mobile homes which are sold to the public through authorized dealers. Petitioner seeks to have the order vacated in its entirety. The order requires Fleetwood to offer a warranty that describes the identity and address of the warrantor, the nature and extent of the warranty offered, the remedies available to the purchaser under the warranty, the manner in which Fleetwood intends to provide for performance of warranty obligations, any requirements which must be fulfilled by purchasers in order to obtain warranty service, a uniform procedure to be followed by purchasers in order to request warranty performance, and a uniform procedure available to purchasers to resolve warranty disputes; that Fleetwood enter into formal agreements with its dealers setting forth the dealers' warranty service obligations; that all mobile homes be inspected prior to delivery to purchasers for defects and reinspected 90 days after delivery; and that warranty repairs be completed within specified time frames.

List of subjects in 16 CFR Part 13

Mobile Homes.

Emily H. Rock,

Secretary.

[FR Doc. 87-27524 Filed 11-30-87; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2642]

Skyline Corporation

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and vacate the order.

SUMMARY: Skyline Corporation, a corporate respondent in the order in Docket No. C-2642, has petitioned the Federal Trade Commission to vacate a 1974 consent order issued against it concerning its mobile home owners warranty and warranty practices. This document announces the public comment period on the petition.

DATE: Deadline for filing comments in this matter is December 20, 1987.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. C-2642 was published at 40 FR 19460 on May 5, 1975. The petitioner, Skyline Corporation, manufactures mobile homes which are sold to the public through authorized dealers. Petitioner seeks to have the order vacated in its entirety. The order requires Skyline to offer a warranty that describes the identity and address of the warrantor, the nature and extent of the warranty offered, the remedies available to the purchaser under the warranty, the manner in which Skyline intends to provide for performance of warranty obligations, any requirements which must be fulfilled by purchasers in order to obtain warranty service, a uniform procedure to be followed by purchasers in order to request warranty performance, and a uniform procedure available to purchasers to resolve warranty disputes; that Skyline enter into formal agreements with its dealers setting forth the dealers' warranty service obligations, that all mobile homes be inspected prior to delivery to purchasers for defects and reinspected 90 days after delivery and that warranty repairs be completed within specified time frames. The petition was placed on the public record on November 20, 1987.

List of Subjects in 16 CFR Part 13

Mobile homes, Trade practices.

Emily H. Rock,

Secretary.

[FR Doc. 87-27525 Filed 11-30-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 87-15]

Construction and Maintenance; Contract Procedures; Standardized Contract Clauses

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to revise its regulations on contract procedures to implement the provision mandated by section 111(c) of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 which became law on April 2, 1987. Section 111(c) amends Section 112 of Title 23, United States Code, to direct the Secretary of Transportation to issue regulations establishing and requiring certain standardized contract clauses in all Federal-aid highway contracts unless otherwise provided for by State law. The standardized contract clauses will provide for the equitable adjustment of contract terms: (1) Where site conditions differ from those specified in the contract, (2) where work has been suspended by order of the contracting agency (other than a suspension of work caused by the fault of the contractor or by weather), and (3) where there are material changes in the scope of work specified in the contract.

DATES: Comments must be received on or before February 1, 1988.

ADDRESSES: Submit written, signed, comments, preferably in triplicate, to the Federal Highway Administration, HCC-10, FHWA Docket No. 87-15, Room 4205, 400 Seventh Street SW., Washington, DC 20590. All comments and suggestions received will be available for

examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Highway Operations, 202–366–1548, or Mr. Wilbert Baccus, Office of Chief Counsel, 202–366–1396, Federal Highway Administration, 400 seventh Street SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Under the Federal-aid highway program, federally assisted projects are generally constructed by private contractors under contract to the State highway agencies (SHA's) or local governmental agencies. Payment to the contractors is based on the amount of work performed in accordance with the terms of the contract. The FHWA reimburses the statutory Federal share of the costs to the SHA's as the projects are constructed and the costs are incurred.

The plans, specifications, and estimates (PS&E) are prepared by the SHA's or their representatives. Due to the nature of highway construction and conditions under which the work is performed, it is sometimes impractical for the designer to accurately determine and describe in the contract documents all the subsurface or latent conditions existing at project sites. Consequently, in some instances the subsurface conditions which are found during construction may be different from those shown in the plans or may not be shown in the plans at all. These unanticipated conditions may cause a change in construction costs.

There also may be some situations which develop during construction requiring the contracting agency (SHA or local governmental agency) to order the contractor to slow down or stop the progress of construction through no fault of the contractor and not due to weather conditions. These situations may occur, for example, when a defect in the design is found and the contracting agency needs time to study the problem and correct the design or when a third party, not part of the Federal-aid contract, does not perform as originally anticipated. These slow downs or stoppages in the work may also cause a change in construction costs.

There also may be some situations encountered during construction which require the contracting agency to make alterations in the design. When these occur, the contract quantities are normally changed to reflect the alteration, and the contract is modified accordingly.

Some of these alterations, however, could also significantly increase or decrease the contractor's production costs in addition to the change in the amount of work required by the contract.

These possible unanticipated variations in contract costs in some instances add up to sizable amounts of money and may constitute an additional risk to the contractor or contracting agency. In those States where the contracting agency shifts the responsibility of such costs to the contractor, the contract documents normally do not provide for a mechanism to allow the contracting agency to legally adjust the contract to recover the decrease in costs or to compensate the contractor for the increases. Thus, the contracting agency does not normally recover the decreases and the contractor can only recover the increases by anticipating such costs and increasing the amount bid accordingly or by submitting claims. Claims and the possible resulting litigation process can be quite lengthy and costly and often yield unsatisfactory results to both parties. On the other hand, the contractor's contingency amount included in the increased bid may exceed the actual costs and thus result in an unreasonable windfall unnecessarily increasing the construction costs to the public.

Previous FHWA policy did not mandate any specific contract provisions to address resolution of these situations, but encouraged the adoption of contract language, such as clauses 104.02 and 108.07 of the American Association of State Highway and Transportation Officials (AASHTO) "Guide Specifications for Highway Construction" (available from AASHTO, 444 North Capitol Street NW., Suite 225, Washington, DC 20001) which provides for an equitable adjustment of the contract terms in the event of such unanticipated variations in contract costs. Section 111(c) of the STURAA of 1987, Pub. L. 100–17, 101 Stat. 132, 147, however, makes it a requirement for the Secretary of Transportation to develop and require a standardized contract clause addressing the equitable adjustment of the contract terms for differing site conditions, material changes in the scope of work, and suspensions of work ordered by the contracting agency other than those caused by the fault of the contractor or by weather, unless otherwise provided for by State law.

Highway contractor organizations have voiced their concerns for a changed conditions clause and have indicated that contractors should not have to gamble on the possibility of differing site conditions, material changes in the scope of the work, or suspensions of work for the convenience of the contracting agency. Contractors should be able to bid a project with the expectation of being compensated for all the acceptable work which is performed in accordance with the terms of the contract. In addition, they have indicated that a standardized arrangement should provide more uniformity among the States thus eliminating much of the frustration being experienced by contractors who deal with several States at the same time.

The standardized clauses proposed by the FHWA under the new regulation, developed to implement the congressional mandate, address each of the factors mandated by the act.

A significant number of contracting agencies have already adopted changed conditions clauses. Many of these use language similar to AASHTO, or to the Federal Acquisition Regulations (FAR). Therefore, in order to provide as much continuity as possible, the proposed changed conditions clauses follow closely, where possible, the language of both the AASHTO "Guide Specifications for Highway Construction" and the FAR. (The FAR are contained in 48 CFR, Parts 1 to 99, and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The FAR only apply by regulation to contracts entered directly by the Federal Government. Therefore, they are not mandatory on Federal-aid highway contracts because these contracts are between the SHA or local governmental agency and the contractor.)

The AASHTO language and the FAR language are substantially the same with respect to the differing site conditions clause except that AASHTO does not provide adjustment for impact costs (also known as "ripple damages"—increased costs attributable to the differing site conditions but not part of the changed work). The proposed standardized clause adopts the FAR approach in providing adjustment for impact costs to the extent that the impacted work must also be part of the contract. Under the proposed clause, either the contractor or the contracting agency may initiate an adjustment to the terms of the contract. The adjustment may be for or against the contractor; however, no adjustment for the benefit

of the contractor is allowed unless the contractor notifies the contracting agency in writing prior to performance of the affected work or disturbing the alleged differing site conditions.

There is no AASHTO Guide Specification which is comparable to the FAR suspension of work clause. The FAR suspension of work clause recognizes "constructive suspensions" (where the contracting agency causes delay, due to action or inaction, without issuing a suspension order). The proposed standardized clause differs from FAR in that constructive suspensions are not covered. As in FAR, the proposed clause does not allow the recovery of profit on costs due to suspensions of work and the suspensions must be for unreasonable periods. Therefore, the suspension periods do not include brief, customary suspensions for reasons inherent to highway construction, such as for the collection of material samples; testing of materials; approvals of shop drawings, material sources, etc.; and other reasonable and customary suspensions necessary for the orderly supervision of construction by the contracting agency.

In the case of the material changes in the scope of work clause, the FAR and the AASHTO clauses are quite different. The FAR clause is very specific regarding the types of changes, provides for impact costs, and also covers "constructive change orders." A constructive change order occurs when the contracting agency causes a change but does not issue a written order. The AASHTO language is of general nature, recognizes formal change orders only, and does not provide for impact costs. The proposed standardized clause adopts the AASTO approach except that it also provides for impact costs to the extent that the impacted work must also be part of the contract. The proposed clause does not specify the threshold amount increase or decrease in quantities that would justify a request for an adjustment to the contract based on changed production costs because this is normally defined in the contracting agency's standard specifications.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The new regulation will impose new mandatory requirements on State and local governments because it requires the inclusion of a changed conditions contract clause in all Federal-aid highway contracts unless the State adopts or has adopted by statute a formal procedure for the development of a changed conditions contract clause or adopts or has adopted a statute which does not permit inclusion of such a contract clause. A changed conditions contract clause should be of benefit to both the contractors and contracting agencies; furthermore, its inclusion in Federal-aid highway contracts is mandated by the STURAA of 1987.

The proposed regulation should have a positive economic impact because it should: (1) Reduce the construction costs in general by reducing the uncertainties which the contractor must price during the bidding process, (2) reduce the number of claims reaching litigation thus reducing the legal expenses of both the contractor and contracting agencies, and (3) promote a better working relationship between the contractors and contracting agencies.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this proposal, if promulgated, will not have a significant economic impact on substantial number of small entities and the preparation of a full regulatory evaluation is not required.

In consideration of the foregoing, the FHWA proposes to amend Part 635, Subpart A of Chapter I of Title 23, Code of Federal Regulations as set forth below.

(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)

List of Subjects in 23 CFR Part 635

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

Issued on: November 23, 1987.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

The FHWA proposes to amend 23 CFR Part 635, Subpart A, as follows:

PART 635—CONSTRUCTION AND MAINTENANCE

Subpart A—Contract Procedures

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6506; 42 U.S.C. 3334, 4601 *et seq.*; 49 CFR 1.48(b), unless otherwise noted.

2. Part 635, Subpart A is amended by adding a new § 635.129 to read as follows:

§ 635.129 Differing site conditions, suspensions of work, and material changes in the scope of work.

(a) Except as provided in paragraph (b) of this section, the following contract clauses shall be made part of and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) *Differing site conditions.* (i) Should the contractor encounter during the progress of the work subsurface or latent physical conditions at the site differing materially from those indicated in the contract or unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the contract, the contractor shall promptly notify the engineer in writing of the specific differing conditions before they are disturbed or the affected work is performed.

(ii) Upon written notification, the engineer will promptly investigate the conditions, and if the engineer determines that they do materially differ and cause an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the contract whether or not changed as a result of the conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(iii) No contract adjustment for the benefit of the contractor shall be allowed unless the contractor has given the written notice required.

(2) *Suspensions of work ordered by the engineer.* (i) The engineer reserves the right to suspend all or any portion of the work for any reasons or convenience of the engineer at anytime during the execution of the work. If the performance of all or any portion of the work is suspended for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor deems that additional compensation and/or contract time is due the contractor as a result of such suspension, the contractor shall submit to the engineer in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer shall immediately consider the contractor's request. If the engineer agrees that the

cost of and/or the time required for the performance of the contract has been increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, subcontractors at any tier, or by weather, the engineer shall make an equitable adjustment (excluding profit) and modify the contract in writing accordingly.

(iii) No contract adjustment shall be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment shall be allowed under this clause for any suspension to the extent that performance would have been so suspended by any other cause or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(3) *Material changes in scope of work.* (i) The engineer reserves the right to make, at any time during the progress of the work, such increases or decreases in quantities and such alterations in the work as necessary to satisfactorily complete the project. Such increases or decreases and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) Unless such alterations and increases or decreases materially change the character of the work to be performed under this contract or the cost thereof, the altered work shall be paid for at the same unit prices as other parts of the work.

(iii) If, however, the magnitude of the alteration is such as to alter the scope of work specified in the contract by materially changing either the character or the unit costs of the work under the contract, whether or not changed by any such alteration, an adjustment will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work; if a basis cannot be agreed upon, then an adjustment shall be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State highway agency has adopted, by State statute, a formal procedure for the development of one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses as developed by the State highway agency may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section upon the Division Administrator's determination that the proposed clause or clauses are comparable to the corresponding clause of paragraph (a) of this section.

[FR Doc. 87-27521 Filed 11-30-87; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

31 CFR Part 0

Minimum Standards of Conduct

AGENCY: Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of the Treasury's Minimum Standards of Conduct. The amendment is total, and this proposed rule would substitute for the existing Standards.

The Ethics in Government Act of 1978, as amended, made a number of changes in the post-employment restrictions of 18 U.S.C. 207, as well as imposing new and distinctly different financial disclosure requirements on certain Federal employees. These changes in the law are not reflected in the Department's current Minimum Standards of Conduct. Recognizing that an amendment to the Standards was required, the Department formed an internal task force to review the entire Standards for needed changes. This proposed rule is the result of that review.

DATE: Comments must be received on or before February 1, 1988.

ADDRESS: Deputy General Counsel, Room 3000, 1500 Pennsylvania Avenue, NW., 20220.

FOR FURTHER INFORMATION CONTACT: William L. Murphy (202) 566-2327.

SUPPLEMENTARY INFORMATION: The intended effect of the proposed rule is to amend the Department's Minimum Standards of Conduct to: Make changes required by the Ethics in Government Act and Executive Order 12565 of September 25, 1986; amend and reorganize the Standards to make them more understandable; remove single gender pronouns; and clearly established authority and responsibility in matters related to the Standards. In addition, the proposed rule contains a waiver pursuant to 18 U.S.C. 208(b)(2) for financial interests "[T]oo remote or too inconsequential to affect the integrity of Government officers' or employees' services.".

Executive Order 12291 and Regulatory Flexibility Act

Because this proposed rule relates solely to the internal management, operations, and personnel of the Treasury Department, Executive Order 12291 does not apply and a regulatory impact analysis is not required. For similar reasons, and although the Department is soliciting public comments, no notice of proposed rulemaking is required by 5 U.S.C. 553 or any other law. Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply and a regulatory flexibility analysis is not required.

Drafting Information

The principal author of these regulations is Mr. William L. Murphy, Senior Counsel, Department of the Treasury. Other present and former personnel in the Treasury Department participated in the development of the regulations, both as to substance and style.

List of Subjects in 31 CFR Part 0

Standards of conduct.

D. Edward Wilson, Jr.,
Acting General Counsel.

31 CFR Subtitle A is amended by revising Part 0 to read as follows:

PART 0—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.
0.735–1 Purpose.
0.735–2 Scope.
0.735–3 Policy.
0.735–4 Definitions.

Responsibilities

0.735–5 Assignment of responsibilities.
0.735–6 Department.
0.735–7 The Department's counselor.
0.735–8 Deputy counselor.
0.735–9 Role of personnel officers.
0.735–10 Bureaus.
0.735–11 Supervisors.
0.735–12 Employees.

Subpart B—Rules of Conduct

Conflicts of Interest Statutes

0.735–20 General.
0.735–21 Summary of provisions of criminal code which define conflicts of interest.

Rules of Conduct

0.735–30 Proscribed actions; responsibilities.
0.735–31 Political activity.
0.735–32 Strikers.
0.735–33 Gifts or gratuities from Government employees.
0.735–34 Gifts or gratuities from outside sources.