

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY: W. Va. Code 21-9-4 (2)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 19

TITLE OF RULE BEING AMENDED: West Virginia Manufactured Housing Construction and Safety
Standards Board

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 26, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Division of Labor
State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

LEGISLATIVE RULE TITLE: West Virginia Manufactured Housing Construction and Safety Standards Board

1. Authorizing statute(s) citation W. Va. Code 21-9-4 (2)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
July 17, 2008

b. What other notice, including advertising, did you give of the hearing?
Public comment period only. Proposed rule provided to the West Virginia Housing Institute, a trade association representing the manufactured housing industry.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
August 18, 2008

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received x

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

**WEST VIRGINIA MANUFACTURED HOUSING CONSTRUCTION
AND SAFETY STANDARDS BOARD**

Capitol Complex • Building 6, Room B-749 • Charleston, West Virginia 25305
Telephone: 304-558-7890 FAX: 304-558-2447

West Virginia Secretary of State
Betty Ireland
Administrative Law Division

To whom it may concern:

The purpose of this proposed Legislative rule change is to incorporate by reference two (2) additional Department of Housing and Urban Development Final Rules, see page 9 - §42-19-7.2 of the enclosed rule, with effective dates in 2008. This will ensure the West Virginia Manufactured Housing Construction & Safety Standards Board maintains its qualification and approval as a State Administrative Agency for HUD as required in §42-19-7.3.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Manufactured Housing Construction and Safety Standards Board

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Division of Labor

Address: State Capitol Complex
Building 6, Room B-749
Charleston, WV 25305

Phone Number: (304) 558-7980 Email: david.w.mullins@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed rule will have no fiscal impact on the Division of Labor.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues			

Rule Title: _____

Rule Title: West Virginia Manufactured Housing Construction and Safety Standards Board

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 7-17-08

Signature of Agency Head or Authorized Representative

David W. Mullis

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

42CSR19

**TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR**

**SERIES 19
WEST VIRGINIA MANUFACTURED HOUSING CONSTRUCTION
AND SAFETY STANDARDS BOARD**

§42-19-1. General.

- 1.1. Scope. - This legislative rule governs all matters arising pursuant to the Manufactured Housing Construction and Safety Standards Board's statutory authority and as a State Administrative Agency under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401 et seq.
- 1.2. Authority. - W. Va. Code §21-9-4.
- 1.3. Filing Date. - April 7, 2006
- 1.4. Effective Date. - July 1, 2006

§42-19-2. Application and Enforcement.

- 2.1. Application. - This legislative rule applies to the Board and to all persons, materials and transactions governed by or otherwise within the jurisdiction of the Board.
- 2.2. Enforcement. - The enforcement of this legislative rule is vested in the Board and the Division of Labor as authorized by the Board.

§42-19-3. Definitions.

- 3.1. "Aggrieved consumer" means a consumer qualifying for compensation or repairs from the recovery fund, bond or other financial assurance required pursuant to the provisions of this rule.
- 3.2. "Board" means the West Virginia Manufactured Housing Construction and Safety Standards Board.
- 3.3. "Business location" means each physically distinct operation maintained by a manufacturer, dealer or distributor of manufactured housing.
- 3.4. "Commissioner" means the Commissioner of the State of West Virginia Division of Labor.
- 3.5. "Contested case" or "formal presentation of views" is synonymous with the definition of "contested case" found at W. Va. Code §29A-1-2(b).
- 3.6. "Contractor" or "installer" means any person who performs operations in the State at the occupancy site which render a manufactured home fit for habitation. This definition does not include a person who does work on a manufactured home which is owned or leased by that

person. The operations include without limitation: installation or construction of the foundation; positioning; blocking; leveling; supporting; tying down; connecting utility systems; making minor adjustments; or assembling multiple or expandable units. The operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission. These terms specifically include primary contractors and subcontractors.

- 3.7. "DAPIA" means the Design Approval Primary Inspection Agency specified in the federal standards.
- 3.8. "Dealer" means any person engaged in business in this State in the sale, accepting on consignment, leasing, or distribution of manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale. The phrase "engaged in business in this State" includes operating business locations physically within West Virginia and operating business locations physically outside West Virginia when the dealer knows or should know that the manufactured home is to be first located at an occupancy site in West Virginia.
- 3.9. "Defect" includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to the occupants of the affected manufactured home.
- 3.10. "Distributor" means any person engaged in business in the State in the sale and distribution of manufactured homes for resale. The phrase "engaged in business in this State" includes operating business locations physically within West Virginia and operating business locations physically outside West Virginia when the distributor knows or should know that the manufactured home is to be resold in West Virginia.
- 3.11. "Division" means the State of West Virginia Division of Labor.
- 3.12. "Failure to Conform" means an imminent safety hazard related to the federal standards, a serious defect, defect, or noncompliance and is used as a substitute for all of those terms.
- 3.13. "Federal Standards" means the federal manufactured home procedural and enforcement regulations promulgated under 42 U.S.C. §5401, et seq.
- 3.14. "Final grade and water control" means footing backfill, installation of a water vapor barrier and final grading of the lot.
- 3.15. "Home placement evaluation" means conducting a soil evaluation, designing the support system and physically inspecting the site for the ability to comply with code and installation requirements.
- 3.16. "HUD" means the United States Department of Housing and Urban Development and its Secretary.
- 3.17. "HUD data plate" means the permanently affixed data plate placed on each manufactured home pursuant to the federal standards (24 CFR 3280.5).
- 3.18. "HUD label" means the permanently affixed certification label placed on each manufactured home pursuant to the federal standards (24 CFR 3280.11).
- 3.19. "Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of

death or severe personal injury that may or may not be related to a failure to comply with an applicable federal standard.

- 3.20. "Informal presentation of views" means the opportunity for a manufacturer, dealer, distributor or contractor to meet with the Division's staff following the issuance of preliminary determination of a possible imminent safety hazard or serious defect or the issuance of a notice of violation.
- 3.21. "Installation" means and includes: home placement evaluation; site preparation; installing the support system; leveling and trimming the manufactured home; utility connections; installation of optional accessory items; and final grade and water control.
- 3.22. "Installation of optional accessory items" means installing fascia and ventilation.
- 3.23. "Installing footings" means digging footings and pouring concrete.
- 3.24. "IPIA" means the Production Inspection Primary Inspection Agency specified in the federal regulations.
- 3.25. "Level and trim the manufactured home" means positioning and leveling the manufactured home on its support system, anchoring the home, close-in, trim and adjustments, and cross over connects (non-electrical).
- 3.26. "Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes into the State for resale.
- 3.27. "Manufactured home" means a structure, transportable in one (1) or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure; except that the term includes any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards (24 CFR 3282.13). Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. Unless specifically indicated to the contrary in this rule, all references to a "manufactured home" means a new or used manufactured home.
- 3.28. "Noncompliance" means a failure of a manufactured home to comply with a federal standard that does not constitute a defect, serious defect, or imminent safety hazard.
- 3.29. "Person" means any individual, trust, estate, partnership, corporation, association or any other legal entity recognized by the State, including any State or political subdivision.
- 3.30. "Purchaser" or "consumer" means a person, other than a manufacturer, dealer, distributor, contractor or transporter, purchasing a manufactured home in good faith for purposes other than resale or contracting for the installation of a manufactured home.
- 3.31. "Recovery Fund" means the State Manufactured Housing Recovery Fund as established pursuant to the provisions of W.Va. Code §21-9-10 and this rule.

- 3.32. "SAA" means the State Administrative Agency specified in the federal regulations.
- 3.33. "Serious defect" means any failure to comply with an applicable federal standard that renders the manufactured home or any part of the manufactured home not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home.
- 3.34. "Set-up" means "installation," as defined in this rule.
- 3.35. "Site" means that area encompassing the exterior perimeter of the manufactured home plus ten feet (10').
- 3.36. "Site preparation" means clearing, providing access to and rough grading the site.
- 3.37. "State" means the State of West Virginia.
- 3.38. "Support System" means the piers, foundation walls and other equivalent systems approved in accordance with §42-19-10A.2 and 10A.3 of this rule and their footings, anchorage to the manufactured home, shims and any combination thereof that, when properly installed, support the manufactured home.
- 3.39. "Transporter only contractor" means a person, firm or corporation who, for compensation, transports a manufactured home upon a public road in this state to an occupancy site and who performs no installation work.
- 3.40. "Utility connections" means the connection of utility services, including electric, gas, water and sewer systems.

§42-19-4. Licensure of Manufacturers.

- 4.1. No person may engage in the business of a manufacturer in this State without a license. Each manufacturer who desires to engage in business in this State shall apply to the Board for a license. A manufacturer shall maintain one (1) license for each business location in this State. A manufacturer who maintains all of its business locations out of this State, but who ships, imports, or delivers manufactured homes into this State, and is considered to be engaged in business in this State, shall maintain one (1) license for each out-of-State business location which will ship, import, or deliver manufactured homes into this State.
- 4.2. A manufacturer's license is valid for up to one (1) year, and expires on the thirtieth (30th) day of June in each year, unless sooner revoked or suspended by the Board.
- 4.3. Any manufacturer who desires to be licensed shall submit an initial application on forms supplied by the Board. Each initial application shall be accompanied by a fee of seven hundred fifty dollars (\$750.00) for each business location the manufacturer desires to license and all information required by the Board on its forms, including but not limited to:
- (a) the legal and trade name of the manufacturer;
 - (b) the address of the various business locations the manufacturer desires to license;
 - (c) the phone number of each business location the manufacturer desires to license;
 - (d) the names and addresses of the owners, officers, and directors of the manufacturer;

- (e) evidence of the manufacturer's legal authority to engage in business in this State;
 - (f) proof of payment to the recovery fund as required by this rule;
 - (g) a statement of compliance with all applicable state and federal standards which is signed by a responsible officer or person representing the applicant who has full legal authority to bind the applicant to its terms;
 - (h) the name of the DAPIA or DAPIAs who inspect the manufacturer;
 - (i) the name of the IPIA or IPIAs who inspect the manufacturer;
 - (j) a copy of all DAPIA-approved manufactured home designs currently in use;
 - (k) a copy of all DAPIA-approved quality assurance programs currently in use;
 - (l) a copy of all manufacturing plant certification reports issued by an IPIA in the past twelve (12) months; and
 - (m) a list of the names of all dealers and/or distributors in the State that are authorized to receive the manufacturer's product line.
- 4.4. Any manufacturer currently licensed in the State shall submit an application for licensure renewal on or before the thirtieth (30th) day of June in each year. Any renewal application is a valid license for a period of thirty (30) days, unless sooner rejected by the Board. The renewal application shall be accompanied by all information required by the Board on its forms as specified by subsection 4.3 of this rule, and shall include a renewal fee of seven hundred fifty dollars (\$750.00).
- 4.5. The Board shall grant or refuse any initial or renewal application for a manufacturer's license within thirty (30) days after a proper and complete application has been filed. If any initial or renewal application is found by the Board to not constitute a proper and complete application, the Board may request additional information.
- 4.6. The Board shall grant an initial or renewal manufacturer's license if it finds that the applicant is eligible to operate as a manufacturer by virtue of each of the following:
- (a) the manufacturer's adequate financial capacity;
 - (b) the manufacturer's record of compliance with any lawful orders of the Board or any other equivalent agency for any other jurisdiction, including the lack of any revocation, suspension, or limitation on the manufacturer's license in this state or any other jurisdiction; and
 - (c) the manufacturer's compliance with the applicable portions of this rule and with the applicable federal standards, including receipt of all DAPIA and IPIA approvals and certifications.
- 4.7. The Board may grant initial and renewal licenses for manufacturers for some business locations and deny them for others if the facts justify that action.
- 4.8. Each manufacturer shall conspicuously display its license at each of its licensed business locations and the license number shall be included in all advertisements.

- 4.9. A manufacturer's license is not transferable. Any change in the person holding the license, including a change in the ownership of a sole proprietorship, a change of a partner in a partnership, or the creation of a new corporate entity, requires a new license.

§42-19-5. Licensure of Dealers and Distributors.

- 5.1. No person may engage in the business of a dealer and/or distributor in this state without a license. Each dealer and/or distributor who desires to engage in business in the state shall apply to the Board for a license. A dealer and/or distributor shall maintain one (1) license for each business location in the state it operates.
- 5.2. A dealer's and/or distributor's license is valid for up to one (1) year, and expires on the thirtieth (30th) day of June each year, unless sooner revoked or suspended by the Board.
- 5.3. Any dealer and/or distributor who desires to be licensed, shall submit an initial application on forms supplied by the Board. Each initial application shall be accompanied by a fee of two hundred fifty dollars (\$250.00) for each business location desiring licensure and all information required by the Board on its forms, including but not limited to:
- (a) the legal and trade name of the dealer and/or distributor;
 - (b) the address of the various business locations the dealer and/or distributor desires to license;
 - (c) the phone number of each business location desiring licensure;
 - (d) the names and addresses of the owners, officers, and directors of the dealer and/or distributor;
 - (e) evidence of the dealer's and/or distributor's legal authority to engage in business in this state;
 - (f) proof of payment to the recovery fund as required by this rule;
 - (g) a statement of compliance with all applicable state and federal standards which is signed by a responsible officer or person representing the applicant who has full legal authority to bind the applicant to its terms;
 - (h) a list of the names of all manufacturers in or out of the State whose product line the dealer and/or distributor is authorized to receive; and
 - (i) a list of the names of all salespersons employed by the dealer and/or distributor.
- 5.4. Any dealer and/or distributor currently licensed in the state shall submit an application for licensure renewal on or before the thirtieth (30th) day of June in each year. Any renewal application is a valid license for a period of thirty (30) days, unless sooner rejected by the Board. The renewal application shall be accompanied by all information required by the Board on its forms as specified by subsection 5.3 of this rule and shall include a renewal fee of two hundred fifty dollars (\$250.00).
- 5.5. The Board shall grant or refuse any initial or renewal application for a dealer's and/or distributor's license within thirty (30) days after a proper and complete application has been filed. If any initial or renewal application is found by the Board to not constitute a proper and complete application, the Board may request additional information.

- 5.6. The Board shall grant an initial or renewal dealer's and/or distributor's license if it finds that the applicant is eligible to operate as a dealer and/or distributor by virtue of each of the following:
- (a) the dealer's and/or distributor's adequate financial capacity;
 - (b) the dealer's and/or distributor's record of compliance with any lawful orders of the Board or any other equivalent agency of any other jurisdiction, including the lack of any revocation, suspension, or limitation of the dealer's and/or distributor's license in this state or any other jurisdiction; and
 - (c) the dealer's and/or distributor's compliance with the applicable portions of this rule and with the applicable federal standards.
- 5.7. The Board may grant initial and renewal licenses for dealers and/or distributors for some business locations and deny them for others if the facts justify that action. However, if one business location qualifies as both a dealer and distributor under this rule, only one (1) license is required for that business location.
- 5.8. Each dealer and/or distributor shall conspicuously display its license at each of its business locations and at any work-site where the dealer and/or distributor is performing services and the license number shall be included in all advertisements.
- 5.9. A dealer's and/or distributor's license is not transferable. Any change in the person holding the license, including a change in the ownership of a sole proprietorship, a change of a partner in a partnership or the creation of a new corporate entity requires a new license.

§42-19-5a. Continuing education for Dealers and Distributors; proof of completion.

- (a) Each Dealer or Distributor and his or her installer shall attend a continuing education class as required by 42 U.S.C. §5404, et seq. and obtain proof of attendance.
- (b) The continuing education training is a requirement for renewal every three (3) years, or less, if determined necessary by the Board.
- (c) The licensee shall submit proof of attendance to the Board prior to a license being renewed.
- (d) The licensee is responsible to pay a fee, as determined by the Board, for the continuing education class.

§42-19-6. Licensure of Contractors.

- 6.1. No person may engage in the business of a contractor in this state without a license. Each contractor who desires to engage in business in this state shall apply to the Board for a license. A contractor is required to maintain only one (1) license. A contractor whose principal office or place of business is out of this state, but who desires to perform contractor services in this state, shall maintain a license.
- 6.2. A contractor's license is valid for up to one (1) year, and expires on the thirtieth (30th) day of June in each year, unless sooner revoked or suspended by the Board.
- 6.3. Any contractor who desires to be licensed, shall submit an initial application on forms supplied by the Board. Each initial application shall be accompanied by a fee of one hundred twenty-five dollars (\$125.00) and all information required by the Board on its

forms, including but not limited to:

- (a) the legal and trade name of the contractor;
 - (b) the address of the contractor;
 - (c) the phone number of the contractor;
 - (d) the names and addresses of the owners, officers, and directors of the contractor;
 - (e) evidence of the contractor's legal authority to engage in business in this state, including compliance with W. Va. Code 21-11, et seq.;
 - (f) proof of payment to the recovery fund as required by this rule; and
 - (g) a statement of compliance with all applicable state and federal standards. This statement of compliance shall be signed by a responsible officer or person representing the applicant who has full legal authority to bind the applicant to its terms.
- 6.4. Any contractor currently licensed in the State shall submit an application for licensure renewal on or before the thirtieth (30th) day of June in each year. Any renewal application is a valid license for a period of thirty (30) days, unless sooner rejected by the Board. The renewal application shall be accompanied by all information required by the Board on its forms as specified by subsection 6.3 of this rule and shall include a renewal fee of one hundred twenty-five dollars (\$125.00).
- 6.5. The Board shall grant or refuse any initial or renewal application for a contractor's license within thirty (30) days after a proper and complete application has been filed. If any initial or renewal application is found by the Board not to constitute a proper and complete application, the Board may request additional information.
- 6.6. The Board shall grant an initial or renewal contractor's license if it finds that the applicant is eligible to operate as a contractor by virtue of each of the following:
- (a) the contractor's adequate financial capacity;
 - (b) the contractor's record of compliance with any lawful orders of the Board or any other equivalent agency for any other jurisdiction, including the lack of any revocation, suspension, or limitation on the contractor's license in the state or any other jurisdiction; and
 - (c) the contractor's compliance with the applicable portions of this rule and with the applicable federal standards.
- 6.7. Each contractor shall conspicuously display its license at its business location and at any work-site where the contractor is performing services and the license number shall be included in all advertisements.
- 6.8. A contractor's license is not transferable. Any change in the person holding the license, including a change in the ownership of a sole proprietorship, a change of a partner in a partnership, or the creation of a new corporate entity, requires a new license.
- 6.9. A contractor involved solely in the transportation of manufactured homes to the occupancy site and who is not regulated by the West Virginia Public Service commission, may apply for

a "transporter only" contractor license. A transporter shall meet the general requirements of a contractor but is not required to participate in the Recovery Fund identified by section 15 of this rule. In lieu of Recovery Fund participation, the transporter shall maintain a policy of insurance approved by the board and obtained from an insurer authorized to conduct business in this state in the amount of not less than fifty thousand dollars for each manufactured home transported and five hundred thousand dollars in the aggregate. The policy shall insure the transporter against liability for damages to a manufactured home in the transit process. The insurer shall provide the board with at least thirty days notice of any intent of cancellation, suspension or non-renewal of the policy.

§42-19-6a. Continuing education for Contractors and Installers; proof of completion.

- (a) Each Contractor or Installer shall attend a continuing education class as required by 42 U.S.C. §5404, et seq. and obtain proof of attendance.
- (b) The continuing education training is a requirement for renewal every three (3) years, or less, if determined necessary by the Board.
- (c) The licensee shall submit proof of attendance to the Board prior to a license being renewed.
- (d) The licensee is responsible to pay a fee, as determined by the Board, for the continuing education class.

§42-19-7. Adoption of Federal Standards and Regulations; Designation by HUD as an SAA.

- 7.1. No person may manufacture, ship, import, deliver, distribute, sell, lease, or install a manufactured home in this State that violates any applicable state or federal standard.
- 7.2. The following federal standards are incorporated in this rule in their entirety by reference: a) "Manufactured Home Construction and Safety Standards," 24 C.F.R. Part 3280; b) "Manufactured Home Procedural and Enforcement Regulations," 24 C.F.R. Part 3282; ~~and~~ c) "Model Manufactured Home Installation Standards," 24 C.F.R. Part 3285; d) "Manufactured Home Installation Program" 24 C.F.R. Part 3286; and e) "Manufactured Home Dispute Resolution Program" 24 C.F.R. Part 3288.
- 7.3. The Board shall maintain its qualifications to continue approval by HUD as a State Administrative Agency (SAA).

§42-19-8. Inspections; DAPIAs; IPIAs.

- 8.1. (a) The Board and its authorized agents, employees, and representatives may enter into any business location maintained by a manufacturer, distributor, dealer, or contractor engaged in business in this State for the purpose of inspecting and otherwise ascertaining whether state and federal standards are being met. Any manufacturer, dealer, distributor, or contractor engaged in business in the state is considered to have given its irrevocable consent to such an inspection by the Board. During the course of an inspection, the Board may inspect and copy any and all records maintained by the manufacturer, dealer, distributor, or contractor pursuant to this rule and the federal standards. An inspection may occur, announced or unannounced, at any time between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, or at other reasonable times considered necessary by the Board in the exercise of its duties.
- (b) The board may provide inspections to private home sites to aid in the resolution of consumers complaints filed with the board by the home owner. The board may provide,

free of charge, one initial inspection and one follow-up inspection relative to each consumer complaint. *Provided that*, the board may charge the licensee an inspection fee for any subsequent follow-up inspection which is necessitated by the licensee's failure to comply with an order of the Board.

- 8.2. The Board may charge an inspection fee of \$29.00 per hour, not to exceed \$290.00 per day, plus an amount representing reimbursement of any mileage, per diem and other reasonable expenses incurred in connection with any inspection authorized by subsection 8.1 of this rule. This inspection fee is payable to the Board within thirty (30) days of completion of the inspection.
- 8.3. The federal regulations contemplate the establishment of primary inspection agencies known as DAPIAs and IPIAs. These primary inspection agencies are responsible for the enforcement of the federal regulations and standards. The primary inspection agencies perform four (4) basic enforcement functions. They are:
- (a) approval by a DAPIA of a manufacturer's manufactured home design to assure that it is in compliance with federal standards;
 - (b) approval by a DAPIA of a manufacturer's quality control program to assure that it is compatible with the design;
 - (c) approval by an IPIA of a manufacturer's plant facility and manufacturing process to assure that the manufacturer can perform its approved quality control program and can produce manufactured homes in conformance with its approved design; and
 - (d) performance of on-going inspections of the manufacturing process to assure that the manufacturer is continuing to perform its approved quality control program and, with respect to those aspects of manufactured homes inspected, is continuing to produce manufactured homes in conformance with its approved designs and in conformance with federal standards.
- 8.4. The Board may develop a DAPIA and/or an IPIA to carry out the federal enforcement functions. If the Board determines that it will seek to develop a DAPIA and/or an IPIA, it may file any and all required applications and plans with HUD needed in order to obtain approval as a DAPIA and/or IPIA, including a State-exclusive IPIA. The Board may employ any personnel required by federal standards for approved DAPIAs and IPIAs (24 C.F.R. 3282.352).
- 8.5. If the Board does not seek or obtain the approval of HUD to act as a DAPIA and/or IPIA, it may participate in joint team monitoring of DAPIAs and IPIAs in conjunction with HUD. The Board may also independently monitor the performance of DAPIAs and IPIAs acting within the State in coordination with HUD monitoring.
- 8.6. The Board may charge the following inspection fees when performing any of its duly authorized functions as an approved DAPIA and/or IPIA:
- (a) a fee of \$30.00 per hour, not to exceed \$300.00 per day, for conducting manufactured home initial design or design change evaluations;
 - (b) a fee of \$30.00 per hour, not to exceed \$300.00 per day, for conducting manufacturer quality control program evaluations;
 - (c) a fee of \$30.00 per hour, not to exceed \$300.00 per day, for conducting initial and ongoing

manufacturing plant inspections; and

(d) an amount representing reimbursement of any mileage, per diem and other reasonable expenses incurred in connection with any of the inspections or evaluations contained in this subsection.

- 8.7. The DAPIA and IPIA inspection fees are payable to the Board within thirty (30) days of completion of the inspection.
- 8.8. Each manufacturer shall pay a monitoring inspection fee in an amount established from time to time by HUD for each transportable section of each manufactured housing unit produced by a manufacturer in the State. This monitoring inspection fee is payable directly to HUD.

§42-19-9. Labeling, Recordkeeping, and Reporting.

- 9.1. The HUD label affixed to each transportable section of each manufactured home for sale or lease in the United States is the only label required by the Board. No manufactured home shall be shipped, imported, delivered, distributed, sold, leased or installed into or in the state without a HUD label.
- 9.2. The HUD data plate affixed to each manufactured home for sale or lease in the United States is the only data plate required by the Board. No manufactured home shall be shipped, imported, delivered, distributed, sold, leased, or installed into or in the state without a HUD data plate.
- 9.3. No person may remove a HUD label or data plate from a manufactured home.
- 9.4. Each licensed manufacturer shall maintain records of the following for each manufactured home manufactured in this state, or shipped, imported, or delivered to a dealer, distributor, purchaser or other person in this state:
- (a) the information contained on the HUD data plate;
 - (b) the date the HUD label was affixed to the manufactured home; and
 - (c) the name and address of the dealer, distributor, purchaser, or other person to whom the manufactured home was first shipped, imported or delivered by the manufacturer.
- 9.5. Each licensed manufacturer shall report the information outlined in subsection 9.4 of this rule to the Board on a quarterly basis, covering the periods July 1 to September 30, October 1 to December 31, January 1 to March 31, and April 1 to June 30. These reports are due no later than October 31, January 31, April 30, and July 31, respectively.
- 9.6. Each licensed dealer and/or distributor shall maintain records of the following for each manufactured home shipped, imported, or delivered to it by a manufacturer, distributor, dealer, or other person:
- (a) the information contained on the HUD data plate;
 - (b) whether the manufactured home contains a HUD label;
 - (c) that the manufactured home has been inspected upon delivery to determine if it has been damaged, and if all furniture, appliances, fixtures, and other devices are in place and operable;

- (d) the extent of any damage found upon inspection;
 - (e) whether any alterations to the manufactured home were made by the dealer and/or distributor, including any repairs; and
 - (f) The name and address of the purchaser or other person to whom the manufactured home was shipped, imported, delivered, sold, or leased by the dealer and/or distributor.
- 9.7. Each licensed dealer and/or distributor shall report the information outlined in subsection 9.6 of this rule to the Board on a quarterly basis, covering the periods July 1 to September 30, October 1 to December 31, January 1 to March 31, and April 1 to June 30. These reports are due no later than October 31, January 31, April 30, and July 31, respectively.
- 9.8. Each licensed contractor shall maintain records of the following for each manufactured home which it transports and/or installs in the state:
- (a) the information contained on the HUD data plate;
 - (b) whether the manufactured home contains a HUD label;
 - (c) the manner of transport and/or installation of the manufactured home;
 - (d) whether the manufactured home was damaged in any way during transport and/or installation, and the extent of the damage;
 - (e) whether any alterations to the manufactured home were made by the contractor, including any repairs; and
 - (f) the name and address of the purchaser or other person to whom the manufactured home was transported and/or installed.
- 9.9. Each licensed contractor shall report the information outlined in subsection 9.8 of this rule to the Board on a quarterly basis, covering the periods July 1 to September 30, October 1 to December 31, January 1 to March 31, and April 1 to June 30. These reports are due no later than October 31, January 31, April 30, and July 31, respectively.
- 9.10. Nothing in this rule shall be construed to excuse or exempt any manufacturer, dealer, distributor, or contractor from complying with any recordkeeping or reporting requirements mandated by the federal regulations.

§42-19-10A. Consumer Manuals; Installation.

- 10A.1. The seller shall provide each purchaser of a new manufactured home in the state with a HUD-approved consumer manual applicable to the manufactured home purchased. No manufacturer, dealer, distributor, or contractor may interfere with the distribution of a HUD-approved consumer manual.
- 10A.2. (a) All new or used manufactured homes installed in the state shall be installed:
- (i) in accordance with the home manufacturer's recommendations contained in or accompanying the consumer manual required by this section and 24 CFR Part 3282, these recommendations must equal or exceed the protections provided by 24 C.F.R. Part 3285, the Manufactured Home Installation Standards; or

- (ii) in accordance with a competent design certified in writing by a registered professional engineer and/or architect prior to installation; or
 - (iii) consistent with the recommendations published by the National Fire Protection Association 225 Model Manufactured Home Installation Standard; or
 - (iv) for used homes only, any generally accepted commercial method submitted to, reviewed and approved by the Board.
- (b) If the dealer contracted with the purchaser to install the manufactured home, the dealer shall maintain in his or her files a written record of which method of installation was followed. If the dealer did not contract with the purchaser to install the home, the dealer shall maintain in his or her files a written record signed by the dealer and purchaser specifying that the purchaser shall make separate arrangements with a licensed installer for installation of the home unless the consumer contracts to install the manufactured home as provided at section 10B of this rule. This written record is not required to be maintained longer than a period of five (5) years.
- (c) Installation of a manufactured home as defined at subsection 3.21 of this rule shall only be performed by a licensed dealer or installer or by the consumer as provided in Section 10B of this rule.

10A.3. Frostline considerations are mandatory for all manufactured home installations in this state. For the purposes of subsection 10A.2 of this rule, a frostline shall be determined by local ordinance of a municipality or county. If the installation of the manufactured home in this state is in a municipality or county that has not provided a specific numerical standard, the frostline may be the designated numerical standard set forth in the consumer manual required by 24 CFR Part 3282, or as determined by a registered professional engineer and/or architect and approved by the Board for the individual site of the manufactured home installation. In the absence of any of these specific designated numerical standards, for all applications, frostline is as follows:

- (a) Thirty (30) inches from grade level for all perimeter footings; and
- (b) Thirty (30) inches from grade level for footings under the I-beams, center piers and inset blocking piers if a perimeter fascia enclosure is not to be installed: Provided, That the footings may be twelve (12) inches from grade level for footings under the I-beams, center piers and inset blocking piers if a perimeter fascia enclosure and vapor barrier are installed:
 - (i) within twenty-one (21) days of the home installation if the home is installed between November 1 and March 30; or
 - (ii) before November 1 for homes installed after March 30.

§42-19-10B. Consumer Installation of a Manufactured Home.

10B.1. For proper performance in accordance with federal design standards, manufactured homes should be installed by a licensed dealer or installer. However, each consumer has the right to and may personally install, or independently hire a licensed dealer or installer for the installation of his or her manufactured home and, if the consumer chooses to exercise that right, the consumer is legally responsible for the choices he or she makes. However, due to safety concerns and the technical expertise required, only a licensed dealer or installer shall

conduct the manufactured home placement evaluation and level and trim the manufactured home. This section applies only to those transactions in which the consumer agrees to install all or part of his or her manufactured home. Each dealer shall notify the consumer that the installation of his or her manufactured home must comply with the installation standards enumerated at subsections 10A.2 and 10A.3 of this rule.

- 10B.2. Each dealer shall inform each consumer of the following, through one or more of the following means including, but not limited to, video tapes, manuals, brochures, drawings, personal conversations or other appropriate means, at, or prior to, the date of the final agreement for the purchase or installation of a manufactured home:
- (a) the risks of improper installation of the manufactured home including, but not limited to, the impact upon the manufacturer's warranty, decreased performance of the manufactured home and other relevant concerns known to the dealer, and matters which make time of the essence in completing the consumer's assumed obligations;
 - (b) the legally mandated standards for installation of a manufactured home as enumerated in subsections 10A.2 and 10A.3 of this rule;
 - (c) the requirement that all parties, other than the consumer, who engage in the installation of manufactured homes must be licensed under W. Va. Code §21-9-1; and
 - (d) the dealer or a licensed installer will conduct an on-site review, in accordance with subsection 10B.4 of this rule, to review all aspects of the installation for which the consumer assumed responsibility.
- 10B.3. If the consumer agrees to assume all or part of the responsibility of installation of his or her manufactured home, as defined at subsection 3.21 of this rule, then the agreement between the consumer and the dealer shall be rendered in writing, specifying each party's installation obligations.
- 10B.4. The licensed dealer or installer shall conduct an initial home placement evaluation to determine accessibility to the site, proper soil compaction and whether the site can be improved to assure proper drainage. The dealer or installer shall use an evaluation form as prescribed in subdivision 10B.6(b) of this rule, provide the consumer with a copy and maintain the form as a record of the conclusions and findings of the evaluation.
- 10B.5. Where the consumer has assumed the responsibility for site preparation that cannot be performed after the home is leveled as described in the initial home placement evaluation form in subsection 10B.4 of this rule or installing the support system, the licensed dealer or installer shall review these aspects of installation to determine if they have been completed in accordance with the installation standards in subsections 10A.2 and 10A.3 of this rule and document the findings and conclusions. The dealer or installer shall use a form as prescribed in subdivision 10B.6(b) of this rule, provide the consumer with a copy and maintain the form as a record of the conclusions and findings of the review.
- 10B.6. A licensed dealer or installer shall conduct an on-site review in all instances where the consumer has assumed all or part of the responsibilities of the installation of his or her manufactured home, as defined at subsection 3.21 of this rule.
- (a) The on-site review shall be conducted not less than sixty (60) days nor more than one hundred eighty (180) days after the delivery date to the consumer or the date of the final agreement for purchase or installation of the manufactured home.

- (b) The licensed dealer or installer shall conduct the on-site review in accordance with a form prescribed or approved by the Division which identifies all elements of installation as set forth in subsection 3.21 of this rule.
- (c) The form described in subdivision 10B.6(b) of this section shall be signed and dated by the dealer or installer conducting the on-site review and the consumer at the time of the review.
- (d) The dealer or installer shall evaluate all aspects of the installation which were assumed by the consumer and note any deficiencies in the installation directly on the form.

10B.7. Reporting Requirement

- (a) A copy of the completed on-site review form shall be maintained by the installer or dealer for a period of not less than five (5) years;
- (b) If the on-site review conducted pursuant to subdivision 10B.6(a) of this section reveals a deficiency, the dealer or installer shall send a copy of the on-site review form to the consumer via certified United States mail, return receipt requested and attach the form prescribed by subsection 10B.7(c) of this section to notify the consumer of the hazards and risks resulting from his or her failure to comply with his or her assumed obligations.
- (c) The Division shall prescribe or approve a form for attachment to the on-site review form which identifies the potential risks associated with the consumer's failure to properly comply with his or her assumed obligations.

10B.8. All provisions of this rule, except those provisions that deal exclusively with the sale of a manufactured home, also apply to a licensed installer who contracts with a consumer to install part of the manufactured home.

§42-19-11. Alterations and Repairs.

- 11.1. No alteration or repair shall be made to any manufactured home by a dealer, distributor, or contractor which directly causes a failure of the manufactured home to conform with applicable state and federal standards.
- 11.2. Alterations or repairs made to a used manufactured home by a dealer, distributor, or contractor shall be designed to promote compliance with applicable state and federal standards. A dealer, distributor or contractor is not obligated to bring a used manufactured home into full compliance with applicable state and federal standards. It is the intent of this provision to allow and encourage dealers, distributors and contractors to make desirable alterations and repairs to used manufactured homes, including alterations and repairs which do not bring the used homes into full compliance with all applicable standards, so long as the alterations and repairs made do not directly create a condition of noncompliance which did not previously exist.

§42-19-12. Transportation.

- 12.1. The transportation of any manufactured home shall be accomplished in a manner that allows the manufactured home to withstand the adverse effects of transportation shock and vibration without its degradation or the degradation of its component parts. In no event shall any transportation method be utilized which causes a failure of any manufactured home to conform with applicable state and federal standards.

12.2. Manufactured homes shall not be transported at speeds in excess of fifty (50) miles per hour.

§42-19-13. Complaint Handling.

- 13.1. In addition to any requirements of the federal standards, the Board shall handle complaints regarding manufactured housing construction and safety standards or the Board's licensees, including but not limited to warranty claims, matters concerning the installation of the home and all matters covered by this rule.
- 13.2. All complaints to the Board shall be in writing and shall specify the name, address and phone number of the person lodging the complaint. The Board, on its own initiative, may file complaints. Any licensee may file a complaint with the Board.
- 13.3. Upon receipt of any complaint or other information indicating the possible existence of a noncompliance, defect, serious defect or imminent safety hazard under the federal standards, the Board shall forward the complaint or information to the manufacturer of the manufactured home and to the SAA of the state where the home was manufactured.
- 13.4. The Division shall review each written complaint received. If it appears that the matters raised in the complaint are outside the jurisdiction of the Board, the Division shall so inform the complainant in writing. If it appears that the matters raised in the complaint are within the jurisdiction of the Board, the Division shall conduct an investigation and inspection of the manufactured home and the relevant records of the manufacturer, dealer, distributor, contractor or installer.
- 13.5. If, upon investigation, the Division determines that no violation of any federal or state manufactured housing standard has occurred, the Division shall inform the complainant in writing.
- 13.6. If, upon investigation, the Division determines that a violation of any matter within the Board's jurisdiction as defined by this rule has occurred, the Division shall issue a Notice of Violation to any and all responsible licensees, specifying the condition found and the legal standard violated. If no standard has been violated it shall be so noted in writing to all parties involved. The Board shall afford the licensee receiving a Notice of Violation no longer than thirty (30) calendar days from receipt of notice to correct the violations.
- 13.7. Any person issued a Notice of Violation may, within ten (10) days of receipt, request in writing an informal presentation of views to contest either the Notice of Violation or the reasonableness of the amount of time afforded to correct the condition violating the legal standard. If any person fails to timely request an informal presentation of views the Notice of Violation becomes a final order of the Board. The informal presentation of views shall be scheduled by the Division within thirty (30) days of receipt of the request. Except when imminent safety hazards or serious defects are involved, the time specified in the Notice of Violation to correct the violations is stayed pending the informal presentation of views.
- 13.8. The informal presentation of views is not an adversary proceeding, and may be written or oral. Testimony is not required to be taken under oath, nor is cross examination permitted. The rules of evidence do not apply. Following the informal presentation of views, the division shall notify the licensee by certified mail of its findings within five (5) days of the conclusion of the informal presentation of views. The licensee may request in writing, within five (5) days from receipt of the notice, the case be referred to the Board as a contested case.

- 13.9. The Board may refer the matter within five (5) days to a hearing examiner as a contested case hearing. The hearing examiner shall schedule the hearing to commence within forty-five (45) days of receipt of the referral. The hearing examiner shall send to the parties a written notice specifying the date, time and place of the hearing at least ten (10) days prior to the hearing. Any additional stay of time to correct the violations must be requested, in writing, from the hearing examiner, who shall grant the stay upon good cause shown.
- 13.10. Following the hearing, the parties may be directed by the hearing examiner to submit their proposed findings of fact and conclusions of law within twenty (20) days of the hearing, except that if a transcript of the hearing is requested at the hearing, the proposed findings of fact and conclusions of law shall be submitted within twenty (20) days of receipt of the transcript. The hearing examiner shall submit a recommended decision to the Board within thirty (30) days of receipt of the proposals. In the recommended decision the hearing examiner may recommend the imposition of any appropriate disciplinary sanction allowed by this rule. The Board shall accept, reject or modify the recommended decision and issue a final order within thirty (30) days of the receipt of the decision.

§42-19-14. Disciplinary Sanctions.

14.1. The Board may impose sanctions upon any licensee for any of the following reasons:

- (a) the manufacture, sale, lease, offer for sale or lease, or the introduction, delivery, or importation into this State of any manufactured home on or after the effective date of any applicable state or federal standard, which does not comply with that standard: provided however, that this subsection shall not apply to:
 - (i) any person who establishes that he or she did not have reason to know in the exercise of due care that the manufactured home is not in conformity with applicable state or federal standards; or
 - (ii) any person who, prior to the first purchase, holds a certificate by the manufacturer or importer of the manufactured home to the effect that the manufactured home conforms to all applicable federal standards, unless the person knows that the manufactured home does not conform;
- (b) the failure to furnish notification and correction of any defect as required by 42 U.S.C. §5414 and 24 C.F.R. §3282.401 through §3282.416;
- (c) the failure to issue a certification required by 42 U.S.C. §5415, or to issue a certification to the effect that a manufactured home conforms to all applicable federal standards if that person knows or in the exercise of due care has reason to know that the certification is false or misleading in a material respect;
- (d) the failure to establish and maintain records, make reports, and provide information as the Board required under this rule, or the failure to permit, upon request of a person duly authorized by the Board, the inspection or copying of appropriate books, papers, records, or documents, or the failure to permit entry or inspection relative to determining whether a manufacturer, dealer, distributor, or contractor has acted or is acting in compliance with this rule or the federal standards;
- (e) the issuance of a certification pursuant to 42 U.S.C. §5403(h) if that person knows or in the exercise of due care has reason to know that the certification is false or misleading in a material respect;

- (f) the submission of any information or statements to the Board, HUD, a DAPIA, or an IPIA which are known by the person submitting the information to be false or misleading in a material respect;
- (g) the criminal conviction of any person by any competent state or federal court, which directly relates to the business of a manufacturer, dealer, distributor or contractor;
- (h) the application to any person by any competent state or federal authority of any disciplinary action which directly relates to the business of a manufacturer, dealer, distributor or contractor, including but not limited to, a fine, license suspension, license revocation or license denial;
- (i) the operation of any business location engaged in business in the state as a manufacturer, dealer, distributor, or contractor without a license;
- (j) the failure to maintain adequate financial assurance as required by this rule;
- (k) the refusal to allow the Board to conduct inspections as permitted by this rule;
- (l) the failure to pay any fee required by law, this rule, or the federal standards;
- (m) the removal of any HUD label or HUD data plate from a new or used manufactured home;
- (n) the destruction or permanent removal by a manufacturer, dealer, distributor or contractor of a HUD-approved consumer manual from a manufactured home, thereby depriving a consumer of the use of a manual;
- (o) the violation of the state or federal transportation or installation standard applicable to a new or used manufactured home;
- (p) engaging in any deception or false or fraudulent representations or deceitful practices in selling, obtaining financing to consummate a sale or representing a product whereby injury is or may be sustained by any consumer of a new or used manufactured home or the manufactured home industry. If the violation pertains to prohibited actions in obtaining financing, then the knowledge or complicity of the consumer shall not be considered as a defense to this violation;
- (q) the shipment of a manufactured home by a manufacturer to a dealer and/or distributor in this state that is not properly licensed by this state;
- (r) the acceptance of a manufactured home by a dealer and/or distributor from a manufacturer not properly licensed by this State;
- (s) the use of contract installation or repair services by a manufacturer, dealer or contractor/installer that is not properly licensed by this state;
- (t) the misappropriation of funds of a consumer or prospective consumer of a new or used manufactured home;
- (u) the failure to fulfill any written or implied warranty obligation applicable to any new or used manufactured home;
- (v) the failure to comply with any order issued by the Board, or any settlement agreement with the Board or Division; or

(w) the violation of any other rule promulgated by the Board.

14.2. Upon a determination by the Board that a person has committed any of the violations outlined in subsection 14.1 of this rule, the Board may apply any one or more of the following sanctions:

- (a) a public reprimand;
- (b) an administrative penalty not to exceed one thousand dollars (\$1000) per violation;
- (c) suspension of the license of a manufacturer, dealer, distributor or contractor;
- (d) revocation of the license of a manufacturer, dealer, distributor or contractor; or
- (e) denial of an application for licensure filed by any manufacturer, dealer, distributor or contractor.

14.3. The Board may impose an administrative penalty for each separate violation with respect to each manufactured home, except that the maximum penalty shall not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one (1) year from the date of the first violation.

14.4. A suspension may be issued by the Board for any period of time up to and including the remaining term of the current license of the manufacturer, dealer, distributor or contractor in question. At the end of the designated suspension period, the manufacturer, dealer, distributor or contractor may apply for reinstatement of a license pursuant to the provisions of subsections 4.3, 5.3, or 6.3 of this rule, as applicable.

14.5. A revocation may be issued by the Board for any period of not less than one (1) nor more than five (5) years. At the end of the designated revocation period, the manufacturer, dealer, distributor or contractor may re-apply for a license pursuant to the provisions of subsections 4.3, 5.3, or 6.3 of this rule, as applicable.

14.6. A determination by the Board to deny an application for licensure disqualifies the applicant from re-applying at any time during the subsequent twelve (12) month period, unless the Board agrees to consider a re-application within a lesser time period by designating its willingness to consider a re-application within its order of denial.

14.7. Sanctions may be imposed by the Board only after the person to be disciplined has been afforded an opportunity for hearing.

14.8. Nothing in this rule shall be construed to limit or restrict in any manner other civil or criminal remedies available under the law to any person.

§42-19-15. State Manufactured Housing Recovery Fund.

15.1. The Board shall collect the following annual assessment fee in satisfaction of each licensed manufacturer's, dealer's, distributor's, or contractor's required assurance of financial responsibility:

- (a) \$2,500.00 for each manufacturer's licensed business location;
- (b) \$1,000.00 for each dealer's and/or distributor's licensed business location; and

(c) \$500.00 for each licensed contractor.

These assessments shall be collected annually at the time of the filing of all initial and renewal license applications: provided, that if the balance of the Recovery Fund on the thirtieth (30th) day of June of any year equals or exceeds three hundred thousand dollars (\$300,000), then no assessments shall be collected from any previously licensed manufacturer, dealer, distributor or contractor for the next licensure period. New applicants for licensure shall pay the applicable assessment fee regardless of the balance of the Recovery Fund.

15.2. The Board is authorized at any time to make special assessments upon all licensed manufacturers, dealers, distributors, and contractors if the Board determines that the assessments are necessary to maintain the fiscal integrity of the Recovery Fund. In no event may a special assessment be issued by the Board until or unless the balance of the Recovery Fund falls below two hundred fifty thousand dollars (\$250,000).

15.3. (a) The Board may make payment from the Recovery Fund for any of the reasons authorized by W. Va. Code §21-9-10(d), after the responsible licensee has been afforded an opportunity to be heard on a Notice of Violation issued, and has failed to correct the violations as directed by the Board.

(b) When a licensee fails to make repairs to a manufactured home as directed by the Board, or as agreed between the licensee and the Board or Division, the Board may determine the fair market value of the cost of obtaining those repairs and contract with a third party licensee to effect those repairs.

(c) Payments from the Recovery Fund shall be made if:

(i) the Recovery Fund balance is sufficient to pay the amount directed;

(ii) the aggrieved consumer has assigned to the Board all rights and claims relating to the repairs that he or she has against the licensee; and

(iii) the aggrieved consumer has agreed to subrogate the Board to all of his or her rights to the extent of the payment amount directed.

15.4. Payments from the Recovery Fund are limited to a per manufactured home maximum of:

(a) ten thousand dollars (\$10,000) for any one (1) violation by any one (1) licensed manufacturer, dealer, distributor or contractor;

(b) twelve thousand five hundred dollars (\$12,500) for any series of violations by any one (1) licensed contractor;

(c) twenty-five thousand dollars (\$25,000) for any series of violations by any one (1) licensed dealer and/or distributor; and

(d) seventy-five thousand dollars (\$75,000) for any series of violations by any one (1) licensed manufacturer.

15.5. Payments from the Recovery Fund are limited to actual expenses incurred, as determined by the Board. The Recovery Fund may not be used to pay for any incidental expenses of the consumer, including claims for personal injuries, claims for property damage other than to

the home itself, inconvenience, alternate housing, attorney's fees, punitive or exemplary damages, or other legal or court costs.

- 15.6. The decisions to determine expenses incurred, repairs to be made, the fair market value of the cost of repairs, whether to contract for repairs and whether to make any payment from the Recovery Fund lie within the sole discretion of the Board.
- 15.7. (a) When the Board determines to make payment from the Recovery Fund, the responsible licensee is civilly liable to the Board for any amount paid from the Recovery Fund, plus interest calculated at the rate of ten percent (10%) per annum from the date payment was made. The Board may immediately suspend or revoke the license of the manufacturer, dealer, distributor or contractor without further proceedings until full reimbursement to the Recovery Fund is made.
 - (b) Any person that maintains a substantial ownership interest (five percent [5%] or more) in any licensed manufacturer, dealer, distributor or contractor that has failed to provide for full reimbursement to the Recovery Fund is disqualified from maintaining any substantial ownership interest in any other licensed manufacturer, dealer, distributor or contractor. The Board may deny any application for licensure, or renewal, where it appears that person owns five percent [5%] or more of the applicant until full reimbursement is made to the Recovery Fund.
- 15.8. Nothing in this rule shall be construed to limit or restrict in any manner other civil or criminal remedies available under the law to any person.
- 15.9. The Board may not waive the Recovery Fund requirements of this rule.



Federal Register

Monday,
May 14, 2007

Part III

**Department of
Housing and Urban
Development**

**24 CFR Parts 3280, 3282, and 3288
Manufactured Home Dispute Resolution
Program; Final Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 3280, 3282, and 3288

[Docket No. FR-4813-F-03]

RIN 2502-AH98

**Manufactured Home Dispute
Resolution Program**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes a federal manufactured home dispute resolution program and guidelines for the creation of state-administered dispute resolution programs. Under the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, HUD is required to establish a program for the timely resolution of disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility, and the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation.

DATES: *Effective Date:* February 8, 2008.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410, telephone (202) 708-6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8389.

SUPPLEMENTARY INFORMATION:

I. Background

Requirement for a Dispute Resolution Program

The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) (42 U.S.C. 5401-5426) is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes. The Act was amended on December 27, 2000, by the Manufactured Housing Improvement Act of 2000, Public Law 106-569, to require HUD, among other things, to establish and implement a new manufactured home dispute resolution program for states that choose not to operate their own dispute

resolution programs and to establish guidelines for the creation of state-administered dispute resolution programs.

Specifically, section 623(c)(12) of the Act (42 U.S.C. 5422(c)(12)) calls for the implementation of "a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility, and for the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation." A state is not required to be a State Administrative Agency under HUD's manufactured home program to administer its own dispute resolution program. However, any state submitting a state plan to change its status from a nonparticipating state to a conditionally or fully approved State Administrative Agency after the effective date must provide for a dispute resolution program as part of its plan. Any state that was conditionally or fully approved before the effective date will not be required to include a dispute resolution program in its state plan, as long as the state maintains conditionally or fully approved status. Section 623(g)(2) of the Act requires HUD to implement a HUD Manufactured Home Dispute Resolution Program that will meet the above requirements in any state that has not established a program that complies with the Act. The state where the home is sited determines whether the HUD Manufactured Home Dispute Resolution Program or the state program applies.

Proposed Rule

On October 20, 2005, HUD published the Manufactured Home Dispute Resolution Program Proposed Rule (70 FR 61178) with a comment due date of December 19, 2005. HUD received responses from 20 commenters during the comment period. The commenters included two state agencies, several statewide and national manufactured housing associations, individuals, the Manufactured Housing Consensus Committee (MHCC), and one low-income housing organization.

II. Particular Areas of Interest to Commenters

This section of the preamble discusses particular areas of interest to commenters in addition to the discussions of public comments that appear throughout the preamble in conjunction with the description of the dispute resolution program adopted in this final rule.

General

As previously discussed, HUD was charged with implementing a system to resolve disputes among manufacturers, retailers, and installers. As several commenters noted, the proposed rule did not include a definition of "installer." In response to this comment, this rule defines the term "installer." Additional information regarding installers may be found in the Manufactured Home Installation Program Proposed Rule published June 14, 2006 (71 FR 34476).

Even though the Act does not require their participation in the HUD Dispute Resolution Program, HUD views the participation of homeowners as a crucial element to a viable program. Under Section 625 of the Act, HUD has the broad authority to involve homeowners in the dispute resolution program. Consistent with the proposed rule, this final rule gives homeowners the right to participate in the HUD Dispute Resolution Program by initiating the Mediation and Arbitration Process and by acting as observers of the process. This final rule does not recognize homeowners as parties.

HUD and the MHCC, in its meetings, recognized that it may have been possible under the proposed rule for the parties to argue that there is no dispute between them when in fact there is a defect that needs correction. In this final rule, HUD has ensured that the HUD Manufactured Home Dispute Resolution Program results in a proper determination of defect and culpability.

Funding

The MHCC and commenters have continued to recommend that parties that use and receive the benefits of the dispute resolution process pay at least a portion of the direct costs associated with the program. HUD agrees with this "fees for service" approach and is currently seeking statutory authority to assess users of the program a fee for costs associated with the program. Absent such authority, the Department will absorb the cost of running the program in HUD-administered states as general program expenses. It is anticipated that such fees for service would not be used to cover the purely administrative costs to HUD of implementing the program, but would include a filing fee to initiate a dispute resolution process, a fee to initiate arbitration, and the assessment of arbitration costs to a losing party. Other administrative costs of the program in HUD-administered states would be funded as general program expenses.

Several commenters stated it is unfair to consumers in states with their own dispute resolution programs both to pay for their state's program and subsidize the administration of HUD's program in states that are not offering programs. The Department is sensitive to this issue. However, because fees for service are not currently authorized, the financing of the HUD Manufactured Home Dispute Program will be absorbed as a general Office of Manufactured Housing program expense as described above.

As discussed in the proposed rule, HUD will use mediation and arbitration, two widely accepted methods of dispute resolution, as well as an alternative process that will allow manufacturers, retailers, and installers an opportunity to resolve disputes outside of the HUD Mediation and Arbitration Process established by this rule. The addition of an alternate process to the HUD Manufactured Home Dispute Resolution Program is based on comments received from the MHCC. In its comments to the proposed rule, the MHCC recommended that a term other than "Commercial Opt-Out Option" be used for the alternate process. In its place, HUD has substituted the term "Alternative Process."

The HUD Manufactured Home Dispute Resolution Program reflects the Executive Branch's emphasis on utilizing dispute resolution processes to resolve conflicts in a cost-effective and expeditious manner, and on fostering good government by giving parties the opportunity to resolve disputes amicably and creatively through alternative dispute resolution. It also dovetails with Congress' active promotion of alternative dispute resolution as set forth in the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*).

There were several comments to the proposed rule about the relationship between the HUD Dispute Resolution Program and subpart I of 24 CFR part 3282 (Subpart I). This final dispute resolution rule is not inconsistent with other requirements of the Act. Specifically, nothing in this final rule absolves the manufacturer of its notification and correction responsibilities or other obligations under Subpart I. The dispute resolution program provides an additional homeowner protection mechanism and does not toll or replace the manufacturer's responsibilities under Subpart I. Furthermore, the HUD Dispute Resolution Program does not replace any manufacturer's warranty program.

III. Program Administration for the HUD-Administered Program

HUD interprets the language set forth in section 623(g)(3) of the Act (42 U.S.C. 5422(g)(3)) as permitting the use of contractors in the implementation of the dispute resolution program in HUD-administered states. HUD will likely use contractors as screening neutrals, mediators, and arbitrators, and they will be required to become familiar with HUD's manufactured home program. HUD acknowledges, however, that dispute resolution experts emphasize that a primary consideration for selecting neutrals, mediators, and arbitrators should be their background and experience in dispute resolution.

The HUD Manufactured Home Dispute Resolution Program is governed by the Administrative Dispute Resolution Act, 5 U.S.C. 571 *et seq.* The HUD Manufactured Home Dispute Resolution Program consists of a Mediation and Arbitration Process comprised of six parts, in addition to the Alternative Process. The six parts of the Mediation and Arbitration Process are: Initial Reporting of an Alleged Defect, Initiating Dispute Resolution, Intake and Screening, Mediation, Nonbinding Arbitration, and HUD Review. When the manufacturer, retailer, and installer agree that the homeowner is not responsible for causing the defect, they may elect to use the Alternative Process instead of the HUD Mediation and Arbitration Process. The parties would then engage in a neutral evaluation process of their own design. However, if the defect is not corrected or repaired, the homeowner has the right to invoke the HUD Mediation and Arbitration Process after 30 days have elapsed from the initiation of the Alternative Process.

IV. HUD Manufactured Home Dispute Resolution Program in HUD-Administered States

As noted previously, HUD will administer its dispute resolution program only in states that choose not to operate their own dispute resolution programs. The following discussion of the HUD-administered program will not apply in any state that provides satisfactory assurances that it has implemented its own qualifying dispute resolution program, and that certifies its program to HUD, as described in Section VI of this preamble.

A. Initial Reporting of an Alleged Defect

Under the Act, alleged defects that can be referred to the dispute resolution program must be reported within the first year after the date of home

installation. It is only alleged defects reported in the first year after the first installation that are covered under the HUD Manufactured Home Dispute Resolution Program. As used in HUD's Manufactured Home Dispute Resolution Program and this new part 3282, the term "defect" is defined to parallel its definition in the Act. Accordingly, the rule also makes clear that for the HUD Manufactured Home Dispute Resolution Program, the term "defect" includes each defect in the installation, construction, or safety of the home. Persons familiar with HUD's long-established program for manufactured home construction and safety standards are likely to be accustomed to using the term "defect" in a narrower way. In regulations implementing the historical aspects of HUD's manufactured home program, the term has been defined to encompass only construction and safety standards, and to exclude matters that involve significant health and safety issues. See the definition in § 3282.7(j). For purposes of the HUD Manufactured Home Dispute Resolution Program, however, a defect is any problem in the performance, construction, components, or material of the home that renders the home or any part of it not fit for the ordinary use for which it was intended, including, but not limited to, a defect in the construction, safety, or installation of the home. The broader use of the term as it applies to rights and responsibilities established under this new part 3282, is distinguished from the term's historical use in part 3282.

As previously discussed, alleged defects must be reported within 1 year of the date of home installation to be eligible for the HUD Manufactured Home Dispute Resolution Program. The Department strongly encourages the parties and homeowners to seek to resolve disputes directly with the party or parties that they believe to be responsible for causing the alleged defect before invoking the HUD Manufactured Home Dispute Resolution Program. Nevertheless, any of the parties, and the homeowners, must report the existence of possible defects within the 1-year period in order to preserve the option of initiating the HUD Manufactured Home Dispute Resolution Program. The report may be made to the Department, any of the parties, or a State Administrative Agency. To be more flexible, the Department is permitting reports to be made to State Administrative Agencies in addition to the Department and the parties. The Department recommends that reports of alleged defects be made in writing, including, but not limited to,

e-mail, written letter, certified mail, or fax. Reports are also permitted by telephone. A report of an alleged defect must, at a minimum, include a description of the alleged defect, the name of the homeowner, and the address of the home. Parties alleging defects are encouraged to send any written correspondence via certified mail, fax, e-mail or other method, so that there will be proof of date of delivery. After reporting an alleged defect, the reporting party or homeowner is encouraged to allow time for a satisfactory response before initiating the HUD Manufactured Home Dispute Resolution Program.

B. Initiating the Process

Any party or a homeowner may initiate the HUD Mediation and Arbitration Process in a HUD-administered state by submitting a request for dispute resolution to the dispute resolution provider or by calling a toll-free number.

C. Intake and Screening

When the request for dispute resolution has been received by the dispute resolution provider, the screening neutral will review the sufficiency of the information provided with the request. Although there is no specified time period established for the screening neutral to review the request for dispute resolution, as recommended by the MHCC and other commenters, it is HUD's intention to perform this task in a timely manner. If a defect is properly alleged and timely reported, notice of the request will be forwarded to the manufacturer, retailer, and installer by the screening neutral to the extent the appropriate parties can be identified based on the information in the request. If the screening neutral determines there is sufficient documentation of an alleged defect presenting an unreasonable risk of injury or death, a copy of the request will be sent to HUD. If a request is lacking any of the required information, the screening neutral will contact the requester or the parties to supplement the initial request. If information necessary to qualify the matter for the HUD Manufactured Home Dispute Resolution Program is not received within a reasonable time established by the screening neutral, the request for dispute resolution will be considered withdrawn. The Department anticipates establishing additional specific time periods for intake and screening as part of the contracting process with the third-party dispute resolution provider and publicizing these time periods on HUD's Web site <http://www.hud.gov>.

D. Mandatory Mediation

The second stage in the process is mandatory mediation. The dispute resolution provider will select a mediator, who will be a different individual from the screening neutral used during the intake and screening process. The mediator will mediate the dispute and attempt to facilitate a settlement. The parties will be given 30 days from the commencement of the mediation to reach a settlement. For cases involving defects presenting an unreasonable risk of injury, death, or significant loss or damage to valuable personal property, the parties will have a maximum of 10 days from the commencement of the mediation to reach an agreement. The dispute resolution provider will notify the parties and the homeowner in writing of the date of the commencement of the mediation. Sample agreements will be made available to the parties as drafting guidance. Upon the parties reaching and signing an agreement, the mediator will forward copies of any settlements reached to the parties, the homeowner, and HUD. Except for the report of an alleged defect, any request for dispute resolution, and any written settlement agreement, all other documents and communications provided in confidence and used in the mediation will be confidential, in accordance with the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*). Once the settlement agreement is signed, the corrective repairs must be completed within 30 days, unless a longer period is agreed to by the homeowner and the parties.

E. Nonbinding Arbitration

The third stage that may be invoked is nonbinding arbitration. If the parties fail to reach a settlement during mediation, a party or the homeowner may, within 15 days of the expiration of the time allowed for reaching a settlement, request nonbinding arbitration. The party or the homeowner requesting nonbinding arbitration will be required to submit a written request for arbitration to the dispute resolution provider. The dispute resolution provider will determine how an arbitrator will be selected for each case. The parties may request an in-person hearing, to be held at the discretion of the arbitrator, after considering factors such as cost. If such a request is not made by all parties within 5 days of the dispute resolution provider's receipt of the request for arbitration, the arbitrator may conduct either a record review or a telephonic hearing. The dispute resolution provider will issue a notice to

the parties and the homeowner setting forth the date, place, and time the arbitration is to be held. If a party chooses not to participate in the arbitration, the process will continue without input from that party. The arbitrator will have the authority to issue requests for documentation and information necessary to complete the record, conduct on-site inspections, dismiss frivolous allegations, and set hearing dates and deadlines. The arbitrator will be required to complete the arbitration within 21 days of receipt of the request for arbitration, unless good cause is found by HUD. After conducting a hearing, the arbitrator will provide the parties and HUD with a written nonbinding recommendation as to who the responsible party or parties are and what actions should be taken. Several commenters, including the MHCC, proposed that the contents of the recommendation be made available to HUD and the parties simultaneously. The Department agrees and has restructured the Mediation and Arbitration Process accordingly. Several commenters, including the MHCC, stated that the parties should have the ability to enter into binding agreements of their choosing at any point in the process. Taking this into consideration, HUD has modified the procedures set out in the proposed rule. Under the final rule, at any time before HUD issues a final order, the parties may submit an offer of settlement to HUD that HUD may, at its discretion, incorporate into the order.

F. HUD Review

The final stage of the process is HUD Review. After the arbitrator makes a recommendation, he or she will forward it to HUD. HUD will review the arbitrator's recommendation, the record, and any settlement offers. HUD will accept, modify, or reject the recommendation. Several commenters, including the MHCC, were opposed to HUD having the option to accept, modify, or reject the arbitrator's recommendation. HUD considers it appropriate for HUD to issue final enforceable orders and that this inherent governmental function cannot be delegated to a private party. It is HUD's obligation to issue an order that under the Administrative Procedure Act can withstand the arbitrary and capricious standard. When a defect is determined to be present, HUD will issue an appropriate order that assigns responsibility for correction of the defect. In the order for correction, HUD will include a date by which the correction of all defects must be completed, taking into consideration the

seriousness of the defect. A party's failure to comply with an order of HUD will be considered a violation of section 610(a)(5) of the Act (42 U.S.C. 5409(a)(5)).

The responsible party or parties will be required to pay for or provide any repair of the home. HUD may apportion the costs for correction and repair if culpability rests with more than one party.

G. Alternative Process When Homeowners Are Not Responsible for the Defect

Manufacturers, retailers, and installers who have been unable to resolve a dispute involving a defect among themselves and who certify that the homeowner is not responsible for the defect will have the option of electing to use an Alternative Process under the HUD Manufactured Home Dispute Resolution Program. The Alternative Process permits the parties to seek neutral evaluation outside of the procedures established by the HUD Mediation and Arbitration Process. To participate in the Alternative Process, at least one of the parties must submit a written notification to the dispute resolution provider after it has reported an alleged defect or has been informed that an alleged defect has been reported to another party. Parties must elect to use the Alternative Process no more than 7 days after notification of a request for dispute resolution has been delivered by overnight delivery, or commercial carrier, or by fax, to the screening neutral. Parties who elect to use the Alternative Process must agree to engage a neutral of their own selection. The selected neutral will evaluate the dispute and make an assignment of responsibility for correction and repair. The actual process followed will be designed and agreed to by the parties; there are no particular procedural requirements, such as witnesses or formal evidence. The parties may elect to memorialize the assignment of responsibility in writing and should agree to act upon the neutral's assignment of responsibility for correction and repair. The participants must agree to allow the homeowner or the homeowner's representative to be present at any meetings and to be informed of the outcome. The parties may inform the Department of the outcome. At any time after 30 days of the Alternative Process notification, any party or the homeowner may invoke the HUD Mediation and Arbitration Process and proceed to mediation by following the established procedures.

V. Informing Homeowners About Manufactured Home Dispute Resolution

One key component of the HUD Manufactured Home Dispute Resolution Program is notifying homeowners about the availability of dispute resolution in HUD-administered states through the HUD Manufactured Home Dispute Resolution Program, and in all other states through state dispute resolution programs. Homeowners will be advised of the availability of the HUD Manufactured Home Dispute Resolution Program from retailers when purchasing a manufactured home. The rule requires retailers to provide each homeowner with a standard notice at the time of signing of a contract for the sale or lease of a manufactured home. This is consistent with numerous comments received from the MHCC and others opposed to the posting of a notice in each home, but favoring a standard notice to be provided at or before the signing of the sales contract.

The Department will notify the public about the HUD Manufactured Home Dispute Resolution Program through the Consumer Manual that 42 U.S.C. 5416 and 24 CFR 3282.207 currently require be provided with each manufactured home. The manufacturer will be required to include in the Consumer Manual the specific language that is set out in the revised § 3282.207 in this rule. The language gives detailed information about the HUD program.

VI. State Dispute Resolution Programs in Non-HUD-Administered States

The HUD Manufactured Home Dispute Resolution Program will not be implemented in states that are certified by HUD and have dispute resolution programs that comply with the minimum requirements set out in these regulations. These states will administer their own dispute resolution programs. A state dispute resolution program will be required to meet criteria listed in a certification form. However, the final rule does not specify how the criteria are to be met. Comments from the MHCC and others strongly supported redefining HUD's proposed state requirements for certification. Those commenters were in favor of having the state requirements parallel the statutory requirements. Additionally, those commenters noted that some states have already implemented programs that closely model the statutory requirements. The proposed rule included six requirements for full certification and five for conditional approval. In response to the comments, HUD has reduced the minimum

requirements for full certification to four, and to three for conditional approval. The proposed rule also required that states allow homeowners to initiate complaints. Comments from the MHCC and others recommended that this requirement be removed. HUD has changed the certification form to allow states flexibility when operating their own programs and to give them the ability to design programs that closely model the statutory requirements. The minimum requirements for certification are set forth in Part II of the Dispute Resolution Certification attached as an appendix, and include provisions for: (1) The timely resolution of disputes regarding responsibility for correction and repair of defects in manufactured homes involving manufacturers, retailers, or installers; (2) provisions for issuance of appropriate orders for correction and repairs of defects in the homes; (3) a coverage period for disputes involving defects that are reported within a minimum of 1 year from the date beginning on the date of first installation; and (4) adequate funding and personnel. Any state that certifies that its program meets these four minimum requirements will be accepted and permitted to implement its own program. A state that meets three of the four minimum requirements under § 3282.205(a)(1) through (4) will be conditionally approved by HUD.

HUD recognizes that some states may have a different definition of "defect" or use a different threshold for its program than the one set forth in these regulations for the HUD program. For purposes of state certification, this rule provides for state approval if the threshold for the program is functionally equivalent to the federal definition of "defect."

VII. Role of the Manufactured Housing Consensus Committee in Future Revisions of This Regulation

Several commenters expressed a desire to have the Department work closely with the MHCC in future rulemaking for the dispute resolution program. Such involvement is not specifically provided for in the Act. However, HUD provides in this rule for the MHCC's input prior to publication of any new dispute resolution rulemaking initiated by HUD. This rule also provides that the MHCC may initiate its own recommendations for HUD regarding dispute resolution regulations, and that HUD will explain to the MHCC any modification or rejection by HUD of the MHCC recommendations.

VIII. Conforming Amendments

As stated in the October 20, 2005, proposed rule, since HUD is using the term "manufactured home" in this rule, it is taking this opportunity to correct the definition in 24 CFR 3280.2 by adding the reference to self-propelled vehicles found in section 603(6) of the Act (42 U.S.C. 5402(6)). HUD is also clarifying the methodology for the calculation of square footage that is included in the current regulatory definition. This action will result in consistent usage of the term for all parts of the manufactured home program. The definition in this final rule is unchanged from the definition that appeared in the proposed rule.

IX. Changes to the Proposed Rule in This Final Rule

The following changes to the October 20, 2005, proposed rule are made by this final rule, consistent with the discussion of public comments in this preamble and as further explained below:

1. To provide consistency in this rule with the terminology used in other HUD regulations, the term "manufactured home" rather than "manufactured housing" is used, and references to "HUD" have been substituted for references to "the Secretary."

2. While this final rule gives homeowners the right to participate in the HUD Dispute Resolution Program by initiating the Mediation and Arbitration Process and by acting as observers of the process, it does not recognize homeowners as parties.

3. A statement has been added to the dispute resolution language required in the consumer manual by § 3280.2(e) that the HUD Dispute Resolution Program does not replace any manufacturer's warranty program.

4. A definition of the term "installer" has been added to the list of definitions at § 3288.3.

5. The rule at § 3288.5 requires retailers to provide each homeowner with a standard notice at the time of signing of a contract for the sale or lease of a manufactured home, rather than the posting of a notice in each home.

6. The rule at § 3288.15(b) now permits reports of defects to be made to State Administrative Agencies in addition to the Department and the parties.

7. A provision is added at § 3288.30(c) that denial of a dispute by all of the parties that there is a dispute does not preclude the dispute resolution process from going forward to mediation. A provision is also added at § 3288.35(c) that, during mediation, denial of a

dispute by all parties without acceptance of responsibility will result in the mediator referring the matter to arbitration for determination of the defect and responsibility for the defect. A similar provision is added at § 3288.40(d), that if the parties deny a dispute exists and the arbitrator determines there is a defect, the arbitrator will make a determination of responsibility for the defect. These additions protect the homeowner's right to have the existence of, and responsibility for, any alleged defect determined through the HUD Manufactured Home Dispute Resolution Program in HUD-administered states in the event existence of a dispute is denied by all of the parties without determination of the defect and of responsibility for the defect.

8. A procedure cited in the preamble of the proposed rule (at 70 FR 61180), that if the screening neutral determines there is sufficient documentation of an alleged defect presenting an unreasonable risk of injury or death, a copy of the request will be sent to HUD, is explicitly added to this rule at § 3288.30(d). Similarly, a procedure cited in the preamble of the proposed rule (at 70 FR 61180), to make sample agreements available to the mediation parties as drafting guidance, is included in the final rule at § 3288.35(d)(2).

9. Section 3288.40(c) makes explicit the arbitrator's authority to make proposed findings of the presence of a defect and culpability.

10. An extension of the 21-day time period by which the arbitrator is required to complete the arbitration is now permitted for good cause under § 3288.40(h).

11. Under § 3288.40(h), the contents of the arbitrator's recommendation are to be made available to HUD and the parties simultaneously, rather than only to HUD as was stated in the proposed rule.

12. The final rule, at § 3288.40(i), allows the parties to submit an offer of settlement to HUD at any time before a final order is issued that HUD may, at HUD's discretion, incorporate into the order.

13. For the alternate dispute resolution procedure of subpart C, the term "Alternative Process" has been substituted for "Commercial Opt-Out Option."

14. In § 3288.205(a), the final rule has reduced the minimum requirements for full certification from six to four, and from five to three for conditional approval. The proposed requirements dealing with homeowner initiation of the process and conflict of interest have been removed.

15. A new subpart E has been added to address the role of the MHCC in Dispute Resolution Program rulemaking procedures.

X. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0562. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule, which implements a statutory mandate to establish a program for the resolution of a narrow category of disputes, will not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured

housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

HUD has conducted a labor and travel cost impact analysis for this rule. The cost analysis determines the cost difference between a typical dispute resolution process (the process) involving manufactured housing and the civil litigation costs between one or more parties involved in a manufactured housing dispute. A typical dispute resolution method is a two-step process: mediation and, for a small percent of unsuccessful mediation cases, arbitration.

The potential cost impact of the mediation step for manufacturers would be approximately \$1,550 per dispute, \$237 for retailers, and \$177 for installers. HUD anticipates that it may be administering the dispute resolution process in 26 states where approximately 37,800 homes are expected to be installed annually. Currently, 45 manufacturing corporate entities ship into those states, while 1,719 retailers sell homes and approximately 5,000 individuals or businesses install manufactured homes in those states.

Based on the preceding data, HUD anticipates taking action on 1,890 complaints under the federal manufactured home dispute resolution process during an average year. Presuming that the average cost of this action (\$1,964) will be incorporated into the home price or related service fees of every installed home in the 26 states (37,800), the cost impact to each installed home would be \$98.

If all 1,890 cases were settled through litigation rather than dispute resolution, the cost of litigating 1,890 cases would total \$18.9 million. Averaged across 37,800 homes, the average cost of litigation incorporated into each home price would be \$500 per home, compared to the average cost of dispute

resolution of \$98 per home. Dispute resolution would, therefore, provide an average savings of \$402 per home.

Several commenters claimed that the number of complaints was not properly substantiated and was unrealistically low. However, these numbers were developed by carefully sampling 12 current state dispute resolution programs. Furthermore, the Small Business Administration has accepted these estimates while none of the commenters supplied any numbers of their own. Some commenters also complained that the cost estimate provided by HUD runs only through the mediation phase. While this is true, HUD's research, which was again based on current state program experience, determined that the number of disputes requiring arbitration would be minimal.

The small increase in total cost associated with this final rule would not impose a significant burden for a small business. The rule would regulate establishments primarily engaged in the production of manufactured homes (NAICS 32991) and the sale of manufactured homes (NAICS 453930). In addition, manufactured home set-up and tie-down establishments (installers) would be included within the definition of all other special trade contractors (NAICS 23599). Of the 222 firms included under the NAICS 32991 definition, 198 are small manufacturers, which fall below the small business threshold of 500 employees. There are 10,691 retailers included under NAICS 453930; all of the firms fall below the \$11 million annual income rate. Of the 31,320 firms included under NAICS 23599 definitions, only 53 firms exceed the small business threshold of 500 employees and none of these is primarily a manufactured home set-up and tie-down establishment. The rule, therefore, would affect a substantial number of small entities. However, the home manufacturers, retailers, and installers would be subject only to an associated labor cost and travel expense necessary to attend the mediation process and labor costs to participate in the expected record review and possible telephonic or face-to-face meeting for arbitration. Moreover, because the great majority of manufacturers, retailers, and installers are considered small entities, there would not be any disproportionate impact on them. Therefore, although this rule would affect a substantial number of small entities, it would not have a significant economic impact on them. In addition, the speedier and more certain resolution of disputes should help the affected businesses.

Accordingly, the undersigned certifies that this final rule would not have a

significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order. State and local governments are not required to establish dispute resolution programs, but the rule provides a mechanism to recognize state programs that meet the statutory elements of a dispute resolution program to operate in lieu of the federal manufactured home dispute resolution program.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Housing is 14.171.

List of Subjects

24 CFR Part 3280

Housing standards, Incorporation by reference, Manufactured homes.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

24 CFR Part 3288

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends parts 3280 and 3282 and adds a new part 3288 in chapter XX of title 24 of the Code of Federal Regulations to read as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. In § 3280.2, the definition of "manufactured home" is revised to read as follows:

§ 3280.2 Definitions.

* * * * *

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. This term includes all structures that meet the above requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to § 3282.13 of this chapter and complies with the construction and safety standards set forth in this part 3280. The term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 3. The authority citation for part 3282 is revised to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 5424.

■ 4. In § 3282.207, redesignate paragraph (e) as paragraph (f), add a new paragraph (e), and revise the second sentence of paragraph (f) as redesignated, to read as follows:

§ 3282.207 Manufactured home consumer manual requirements.

* * * * *

(e) *Dispute resolution information.* (1) The manufacturer must include the following language under a heading of "Dispute Resolution Process" in the consumer manual:

Many states have a consumer assistance or dispute resolution program that homeowners may use to resolve problems with manufacturers, retailers, or installers concerning defects in their manufactured homes that render part of the home unfit for its intended use. Such state programs may include a process to resolve a dispute among a manufacturer, a retailer, and an installer about who will correct the defect. In states where there is not a dispute resolution program that meets the federal requirements, the HUD Manufactured Home Dispute Resolution Program will operate. These are "HUD-administered states." The HUD Manufactured Home Dispute Resolution Program is not for cosmetic or minor problems in the home. You may contact the HUD Manufactured Housing Program Office at (202) 708-6423 or (800) 927-2891, or visit the HUD website at www.hud.gov to determine whether your state has a state program or whether you should use the HUD Manufactured Home Dispute Resolution Program. Contact information for state programs is also available on the HUD website. If your state has a state program, please contact the state for information about the program, how it operates, and what steps to take to request dispute resolution. When there is no state dispute resolution program, a homeowner may use the HUD Manufactured Home Dispute Resolution Program to resolve disputes among the manufacturer, retailer, and installer about responsibility for the correction or repair of defects in the manufactured home that were reported during the 1-year period starting on the date of installation. Even after the 1-year period, manufacturers have continuing responsibility to review certain problems that affect the intended use of the manufactured home or its parts, but for which correction may no longer be required under federal law.

(2) The manufacturer must include the following language under a heading of "Additional Information " HUD Manufactured Home Dispute Resolution Program" in the consumer manual:

The steps and information outlined below apply only to the HUD Manufactured Home Dispute Resolution Program that operates in HUD-administered states, as described under the heading "Dispute Resolution Information" in this manual. Under the HUD Manufactured Home Dispute Resolution Program, homeowners must report defects to the manufacturer, retailer, installer, a State Administrative Agency, or HUD within 1 year after the date of the first installation. Homeowners are encouraged to report defects in writing, including, but not limited to, email, written letter, certified mail, or fax, but they may also make a report by telephone. To demonstrate that the report was made within 1 year after the date of installation, homeowners should report defects in a manner that will create a dated record of the report: for example, by certified

mail, by fax, or by email. When making a report by telephone, homeowners are encouraged to make a note of the phone call, including names of conversants, date, and time. No particular format is required to submit a report of an alleged defect, but any such report should at a minimum include a description of the alleged defect, the name of the homeowner, and the address of the home.

Homeowners are encouraged to send reports of an alleged defect first to the manufacturer, retailer, or installer of the manufactured home, or a State Administrative Agency. Reports of alleged defects may also be sent to HUD at: HUD, Office of Regulatory Affairs and Manufactured Housing, Attn: Dispute Resolution, 451 Seventh Street, SW., Washington, DC 20410-8000; faxed to (202) 708-4213; e-mailed to mhs@hud.gov, or reported telephonically at (202) 708-6423 or (800) 927-2891.

If, after taking the steps outlined above, the homeowner does not receive a satisfactory response from the manufacturer, retailer, or installer, the homeowner may file a dispute resolution request with the dispute resolution provider in writing, or by making a request by phone. No particular format is required to make a request for dispute resolution, but the request should generally include the following information:

- (1) The name, address, and contact information of the homeowner;
 - (2) The name and contact information of the manufacturer, retailer, and installer of the manufactured home;
 - (3) The date or dates the report of the alleged defect was made;
 - (4) Identification of the entities or persons to whom each report of the alleged defect was made and the method that was used to make the report;
 - (5) The date of installation of the manufactured home affected by the alleged defect; and
 - (6) A description of the alleged defect.
- Information about the dispute resolution provider and how to make a request for dispute resolution is available at <http://www.hud.gov> or by contacting the Office of Manufactured Housing Programs at (202) 708-6423 or (800) 927-2891.

A screening agent will review the request and, as appropriate, forward the request to the manufacturer, retailer, installer, and mediator. The mediator will mediate the dispute and attempt to facilitate a settlement. The parties to a settlement include, as applicable, the manufacturer, retailer, and installer. If the parties are unable to reach a settlement that results in correction or repair of the alleged defect, any party or the homeowner may request nonbinding arbitration. Should any party refuse to participate, the arbitration shall proceed without that party's input. Once the arbitrator makes a non-binding recommendation, the arbitrator will forward it to the parties and HUD. HUD will have the option of adopting, modifying, or rejecting the recommendation when issuing an order requiring the responsible party or parties to make any corrections or repairs in the home. At any time before HUD issues a final order, the parties may submit an offer of settlement

to HUD that may, at HUD's discretion, be incorporated into the order.

In circumstances where the parties agree that one or more of them, and not the homeowner, is responsible for the alleged defect, the parties will have the opportunity to resolve the dispute outside of the HUD Mediation and Arbitration process by using the Alternative Process. Homeowners will maintain the right to be informed in writing of the outcome when the Alternative Process is used, within 5 days of the outcome. At any time after 30 days of the Alternative Process notification, any participant or the homeowner may invoke the HUD Manufactured Home Dispute Resolution Program and proceed to mediation.

The HUD Manufactured Home Dispute Resolution Program is not a warranty program and does not replace the manufacturer's or any other warranty program.

(f) * * * A manual substantially complies with the guidelines if it includes the language in paragraph (e) of this section and presents current material on each of the subjects covered in the guidelines in sufficient detail to inform consumers about the operation, maintenance, and repair of manufactured homes. * * *

■ 5. In chapter XX, add a new part 3288, to read as follows:

PART 3288—MANUFACTURED HOME DISPUTE RESOLUTION PROGRAM

Subpart A—General

Sec.

3288.1 Purpose and scope.

3288.3 Definitions.

3288.5 Retailer notification at sale.

Subpart B—HUD Manufactured Home Dispute Resolution Program in HUD-Administered States

3288.10 Applicability.

3288.15 Eligibility for dispute resolution.

3288.20 Reporting a defect.

3288.25 Initiation of dispute resolution.

3288.30 Screening of dispute resolution request.

3288.33 Notice of dispute resolution.

3288.35 Mediation.

3288.40 Nonbinding arbitration.

3288.45 HUD review and order.

Subpart C—Alternative Process in HUD-Administered States

3288.100 Scope and applicability.

3288.105 Time when Alternative Process is available.

3288.110 Alternative Process agreements.

Subpart D—State Dispute Resolution Programs in Non-HUD-Administered States

3288.200 Applicability.

3288.205 Minimum requirements.

3288.210 Acceptance and recertification process.

3288.215 Effect on other manufactured home program requirements.

Subpart E—Dispute Resolution Program Rulemaking Procedures

3288.300 Applicability.

3288.305 Consultation with the Manufactured Housing Consensus Committee.

Authority: 42 U.S.C. 3535(d), 5422 and 5424.

Subpart A—General

§ 3288.1 Purpose and scope.

(a) *Purpose.* The Act is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes. Section 623(c)(12) of the Act (42 U.S.C. 5422 (c)(12)) requires the implementation of "a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility, and for the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation." The purpose of this part is to provide a dispute resolution program for the timely resolution of disputes among manufacturers, retailers, and installers regarding the responsibility for correction or repair of defects reported by the homeowner or others and reported in the 1-year period after the first installation of the manufactured home.

(b) *Scope.* (1) *Applicability.* In carrying out this purpose, it is presumed that if a manufactured home contains an alleged defect that is reported in the first year after installation and was not caused by the homeowner, then the manufacturer, retailer, or installer is responsible for the alleged defect and the dispute resolution process recognized in this part is an appropriate means for resolving disputes about responsibility for correction and repair of the alleged defect. For purposes of the dispute resolution process recognized in this part, only alleged defects reported in the first year after the first installation are covered by the process. The state where the home is sited determines whether the HUD Manufactured Home Dispute Resolution Program or a state program applies. Subpart A of this part establishes general provisions applicable to HUD's implementation of a dispute resolution program as required by the Act. Subpart B of this part establishes the HUD Manufactured Home Dispute Resolution Program that HUD will administer in any state that does not establish a program that complies with the Act and been accepted by HUD as provided in subpart D of this part. Subpart C of this part

provides an Alternative Process for manufacturers, retailers, and installers who agree that a homeowner is not responsible for the alleged defect to resolve their disputes about responsibility for correction or repair outside of the HUD Mediation and Arbitration Process under subpart B. Subpart D of this part establishes the minimum requirements that must be met by a state applying to implement its own dispute resolution program that complies with the Act, and the procedure for determining whether the requirements for complying have been met. Subpart E of this part establishes special rulemaking procedures that apply to the issuance of new regulations that implement the dispute resolution requirements set forth in section 623 of the Act (42 U.S.C. 5422).

(2) *Warranties not affected.* This part is not a warranty program and the requirements established in this part do not replace the manufacturer's or any other warranty program. Such warranty program may have its own requirements.

§ 3288.3 Definitions.

The following definitions apply in this part:

Act means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5426.

Appropriate order means an order issued by HUD or an order that is enforceable under state law.

Date of installation means the date all utilities are connected and the manufactured home is ready for occupancy as established, if applicable, by a certificate of occupancy, except as follows: if the manufactured home has not been sold to the first person purchasing the home in good faith for purposes other than resale by the date the home is ready for occupancy, the date of installation is the date of closing under the purchase agreement or sales contract for the manufactured home.

Day means a calendar day.

Defect means any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended, including, but not limited to, a defect in the construction, safety, or installation of the home. For purposes of state certification under § 3288.205, HUD will find it acceptable if the threshold for the state's program is functionally equivalent to this definition.

Dispute resolution provider means a person or entity providing dispute resolution services for HUD.

Homeowner means a person who purchased or leased the manufactured home in good faith for purposes other than resale.

HUD means the U.S. Department of Housing and Urban Development.

Installer means the person who is retained to engage in, or who engages in, the business of directing, supervising, controlling, or correcting the initial installation of a manufactured home.

Manufactured home has the same meaning as the term "manufactured home" as defined in 24 CFR 3280.2.

Manufactured Housing Consensus Committee or MHCC means the consensus committee established pursuant to section 604(a)(3) of the Act, 42 U.S.C. 5403(a)(3).

Party or parties means, individually or collectively, the manufacturer, retailer, or installer of a manufactured home in which a defect has been reported in accordance with § 3288.20.

State Administrative Agency means an agency of a state that has been approved or conditionally approved to carry out the state plan for enforcement of the standards pursuant to section 623 of the Act, 42 U.S.C. 5422.

Timely reporting means the reporting of an alleged defect within 1 year after the date of installation of a manufactured home in accordance with § 3288.20.

Timely resolution means the resolution of disputes among manufacturers, retailers, and installers within 120 days of the time a request for dispute resolution is made, except that if the defect presents an unreasonable risk of injury, death, or significant loss or damage to valuable personal property, the resolution must be within 60 days of the time a request for dispute resolution is made.

§ 3288.5 Retailer notification at sale.

Retailer notice at the time of signing. At the time of signing a contract for sale or lease for a manufactured home, the retailer must provide the purchaser with a retailer notice. This notice may be in a separate document from the sales contract or may be incorporated clearly in a separate section on consumer dispute resolution information at the top of the sales contract. The notice must include the following language:

The U.S. Department of Housing and Urban Development (HUD) Manufactured Home Dispute Resolution Program is available to resolve disputes among manufacturers, retailers, or installers concerning defects in manufactured homes. Many states also have a consumer assistance or dispute resolution program. For additional information about these programs, see sections titled "Dispute Resolution Process"

and "Additional Information—HUD Manufactured Home Dispute Resolution Program" in the Consumer Manual required to be provided to the purchaser. These programs are not warranty programs and do not replace the manufacturer's, or any other person's, warranty program.

Subpart B—HUD Manufactured Home Dispute Resolution Program in HUD-Administered States

§ 3288.10 Applicability.

The requirements of the HUD Manufactured Home Dispute Resolution Program established in this subpart B apply in each state that does not establish a state dispute resolution program that complies with the Act and has been accepted by HUD as provided in subpart D of this part.

§ 3288.15 Eligibility for dispute resolution.

(a) Initiation of actions.

Manufacturers, retailers, and installers of manufactured homes are eligible to initiate and participate in the HUD Manufactured Home Dispute Resolution Program. Homeowners may initiate action under, and be observers to, the HUD Manufactured Home Dispute Resolution Program.

(b) **Eligible disputes.** Only disputes concerning alleged defects that have been reported to the manufacturer, retailer, installer, HUD, or a State Administrative Agency within 1 year after the date of the first installation of the manufactured home are eligible for resolution through the HUD Manufactured Home Dispute Resolution Program. The eligible dispute includes the defect alleged in a timely report and any related issues.

§ 3288.20 Reporting a defect.

(a) **Making a report.** To preserve the right to request dispute resolution through HUD, alleged defects must be reported to the manufacturer, retailer, installer, HUD, or a State Administrative Agency. An alleged defect may be reported by a homeowner, manufacturer, retailer, or installer.

(b) **Form of report.** It is recommended that alleged defects be reported in writing, including, but not limited to, e-mail, written letter, certified mail, or fax. The existence of an alleged defect may also be reported by telephone.

(c) **Content of report.** No particular form or format is required to report an alleged defect, but any such report must, at a minimum, include a description of the alleged defect, the name of the homeowner, and the address of the home.

(d) **Record of report—(1) To evidence timeliness.** To establish timely reporting, the report of an alleged defect

that is made to the manufacturer, retailer, installer, or a State Administrative Agency of the manufactured home should be done in a manner that will create a dated record of the report that demonstrates that the report was made within 1 year after the date of installation; for example, by certified mail, fax, or email. Persons who report an alleged defect by telephone should make a contemporaneous note of the telephone call, including date, time, the name of the person who received the report, the name of the business contacted, and the telephone number called. If the matter goes to arbitration, the arbitrator and HUD will review whether there is sufficient evidence to believe the report was made on a timely basis.

(2) **Obligation to retain.** Each report of a defect, including logs of telephonic complaints, received by a manufacturer, retailer, a State Administrative Agency or installer, must be maintained for 3 years from the date of receipt.

(e) **Reports made to a State Administrative Agency.** Reports of defects in the manufactured home that are made in the first year after its installation can be sent to the appropriate State Administrative Agency. Contact information about a State Administrative Agency is available at <http://www.hud.gov>. Contact the appropriate State Administrative Agency to determine the method for making the report.

(f) **Reports made to HUD.** Reports of alleged defects in the manufactured home that are made in the first year after its installation can be sent to HUD. The report to HUD may be made using any of the following methods:

(1) In writing at: HUD, Office of Regulatory Affairs and Manufactured Housing, Attn: Dispute Resolution, 451 Seventh Street, SW., Washington, DC 20410-8000;

(2) By telephone at: (202) 708-6423 or (800) 927-2891;

(3) By fax at: (202) 708-4213; or

(4) By e-mail at mhs@hud.gov.

(g) **Effect of report.** The reporting of an alleged defect does not initiate the HUD Manufactured Home Dispute Resolution Program, but only establishes whether the requirement of timely reporting in accordance with § 3288.15(b) has been met. The HUD Manufactured Home Dispute Resolution Process is initiated when a request for dispute resolution is submitted to HUD in accordance with § 3288.25.

§ 3288.25 Initiation of dispute resolution.

(a) **Preliminary effort.** HUD strongly encourages the homeowner or party reporting an alleged defect to seek to

resolve the dispute directly with any manufacturer, retailer, or installer that the person reporting the defect believes to be responsible before initiating the HUD dispute resolution process.

(b) *Request for dispute resolution.* Any of the parties or the homeowner may initiate the HUD Manufactured Home Dispute Resolution Program at any time after an alleged defect has been reported, by requesting dispute resolution, as follows:

(1) By mailing, e-mailing, or otherwise delivering a written request for dispute resolution to the dispute resolution provider at the address or e-mail address provided either at <http://www.hud.gov>, or by contacting HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708-6423 or (800) 927-2891;

(2) By faxing a request for dispute resolution to the fax number provided either at <http://www.hud.gov>, or by contacting HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708-6423 or (800) 927-2891; or

(3) By telephoning a request for dispute resolution to the number provided either at <http://www.hud.gov>, or by contacting HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708-6423 or (800) 927-2891.

(c) *Requested information.* The dispute resolution provider will request at least the following information when a person seeks to initiate dispute resolution under the HUD Manufactured Home Dispute Resolution Program:

(1) The name, address, and contact information of the homeowner;

(2) The name and contact information of the manufacturer, retailer, and installer of the manufactured home, to the extent available;

(3) The date the report of the alleged defect was made;

(4) The name and contact information of the recipient or recipients of the report of the alleged defect;

(5) The date of installation of the manufactured home affected by the alleged defect; and

(6) A description of the alleged defect.

§ 3288.30 Screening of dispute resolution request.

(a) *Review for sufficiency.* When the request for dispute resolution has been received by the dispute resolution provider, a screening neutral will review the sufficiency of the information provided in the request for dispute resolution and determine if the dispute resolution process should proceed. If the screening neutral determines that a defect is properly alleged and timely reported, notice of

the request will be forwarded, as provided in § 3288.33, to the manufacturer, retailer, and installer, as appropriate and to the extent the appropriate parties can be identified based on the information in the request.

(b) *Insufficient information.* If a request for dispute resolution is lacking any information necessary to determine if the dispute resolution process should proceed, the screening neutral will contact the requester or the parties about supplementing the initial request. If information necessary to qualify the matter for the HUD Manufactured Home Dispute Resolution Program is not received within a reasonable time established by the screening neutral, the request for dispute resolution will be considered withdrawn.

(c) *Denial of a dispute.* Denial by all of the parties that there is a dispute does not preclude the dispute resolution process from going forward to mediation. A screening neutral's determination that a defect is properly alleged is prima facie evidence of a dispute. If the defect has not been corrected or repaired, the matter will be referred to mediation.

(d) *Determination of unreasonable risk.* If the screening neutral determines there is sufficient documentation of an alleged defect presenting an unreasonable risk of injury or death, he or she will send a copy of the request to HUD.

§ 3288.33 Notice of dispute resolution.

(a) Once the screening neutral determines that a defect is properly alleged and timely reported, notice about the request will be forwarded to the parties by overnight delivery, commercial carrier, or fax.

(b) If the parties have not initiated the Alternative Process in accordance with § 3288.105 of this part within 7 days of the screening neutral's notification, the screening neutral will refer the matter to mediation.

§ 3288.35 Mediation.

(a) *Mediator.* The dispute resolution provider will provide for the selection of a mediator. The selected mediator will not be the person who screened the dispute resolution request. The selected mediator will mediate the dispute and attempt to facilitate a settlement. If a party identifies any other party that should be included in the mediation, the mediator will contact the other party and provide information about the scheduled mediation meetings.

(b) *Time—(1) For reaching settlement.* Except as provided in paragraph (b)(2) of this section, the parties are allowed 30 days from the commencement of the

mediation to reach a mediated settlement. In every case, the dispute resolution provider will notify the parties and the homeowner, in writing, of the date of the commencement of the mediation.

(2) *Alleged defects presenting an unreasonable risk of injury, death, or significant loss or damage to valuable personal property.* For mediations involving alleged defects that appear to present an unreasonable risk of injury, death, or significant loss or damage to valuable personal property as determined by the screening neutral, the parties have a maximum 10 days from the commencement of the mediation to reach a settlement.

(3) *For corrective repairs.* Unless a longer period is agreed to in writing by the parties to the mediated settlement and the homeowner, corrective repairs must be completed no later than 30 days after the date the settlement agreement is signed by the applicable parties.

(c) *Denial of dispute.* During mediation, denial of a dispute by all parties without acceptance of responsibility will result in the mediator referring the matter to arbitration for determination of the defect and responsibility for the defect.

(d) *Written settlement agreement.*

(1) Upon reaching an agreement, the parties will sign a written settlement agreement. The dispute resolution provider will forward copies of the agreements with the original signatures of the parties to the parties, the homeowner, and to HUD.

(2) Sample agreements will be made available to the parties as drafting guidance by the dispute resolution provider.

(e) *Failure of mediation.* If mediation is not successful, parties or the homeowner may proceed to nonbinding arbitration, as provided in § 3288.40 of this part.

(f) *Confidentiality.* Except for the report of an alleged defect, any request for dispute resolution, and any written settlement agreement, all other documents and communications provided in confidence and used in the mediation will be confidential, in accordance with the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*).

§ 3288.40 Nonbinding arbitration.

(a) *When initiated.* (1) If, following mediation under § 3288.35, the parties fail to reach a settlement, any party or the homeowner may, within 15 days of the expiration of the deadline applicable under § 3288.35(b), initiate nonbinding arbitration.

(2) In addition, arbitration may be initiated upon referral by the mediator pursuant to § 3288.35(c).

(b) *Written request*—(1) *Submission to HUD*. A written request for arbitration must be submitted to the dispute resolution provider. Information about the dispute resolution provider and how to make a request for dispute resolution will be available at <http://www.hud.gov> or by contacting HUD's Office of Manufactured Housing Programs at (202) 708-6423 or (800) 927-2891.

(2) *Contents of request*. The written request for arbitration must include:

(i) The name and address of the party making the request;

(ii) A brief description of the alleged defect or a copy of the report of the alleged defect; and

(iii) A copy of the request for dispute resolution.

(c) *Appointment and authority of arbitrator*. Upon receipt of the request, the dispute resolution provider will select an arbitrator. The arbitrator will have the authority to:

(1) Set hearing dates and deadlines;

(2) Conduct on-site inspections;

(3) Issue requests for documentation and information necessary to complete the record;

(4) Dismiss frivolous allegations;

(5) Make proposed findings, including findings of defect and culpability and a disposition recommendation to HUD; and

(6) Recommend apportionment of the responsibility of paying for or providing any correction or repair of the home when recommending that culpability be assessed to more than one party.

(d) *Denial of dispute*. If the parties deny a dispute exists and the arbitrator determines there is a defect, the arbitrator will make a determination of responsibility for the defect.

(e) *Notice to parties*. The dispute resolution provider will provide the parties and the homeowner with a notice setting forth the date, place, and time an arbitration is to be held.

(f) *Proceedings*. (1) If all parties do not request an in-person hearing under paragraph (f)(2) of this section within 5 days of the dispute resolution provider's receipt of the request for arbitration, or if the arbitrator rejects the request for an in-person hearing, the arbitrator may conduct either a record review or a telephonic hearing.

(2) If any party wants to request an in-person hearing, in which the parties or their representatives may personally appear before the arbitrator, the arbitrator will consider such a request if it is made by all of the parties that are participating in the arbitration. Such an in-person hearing will be held at the

discretion of the arbitrator, after considering appropriate factors, such as cost.

(g) *Effect on nonparticipating parties*. If a party chooses not to participate in the arbitration, the process will continue without further input from that party. In such a case, the arbitrator may rely on the record developed through the arbitration to find a nonparticipating party responsible for correction or repair of a defect.

(h) *Completion of arbitration*. (1) Unless an extension is granted for good cause by HUD, the arbitrator, within 21 days of the dispute resolution provider's receipt of the request for arbitration, the arbitrator will complete the arbitration process and provide HUD with all background information used during the arbitration and with a written, nonbinding recommendation as to which party or parties are responsible for the defect, and what corrective actions should be taken.

(2) Unless an extension is granted for good cause by HUD, the arbitrator, within 21 days of the dispute resolution provider's receipt of the request for arbitration, will provide the parties with a copy of the nonbinding recommendation that was delivered to HUD, in accordance with § 3288.40(h)(1).

(i) *Settlement offers*. At any time before HUD issues a final order, the parties may submit to HUD a proposal to resolve the dispute.

§ 3288.45 HUD review and order.

(a) *Appropriate order*. HUD will review the arbitrator's recommendation provided in accordance with § 3288.40(h), any settlement offers presented by the parties in accordance with § 3288.40(i), and the information gathered during the arbitration, and will issue an appropriate order in which HUD may accept, modify, or reject the recommendations. HUD will forward a copy of the order to the arbitrator and to each of the parties and the homeowner, whether or not a party chose to participate in the arbitration.

(b) *Contents of order*. If HUD finds that a defect exists, the order will include the following:

(1) Assignment of responsibility for the correction and repair of all defects and associated costs; and

(2) If the manufacturer, retailer, or installer is responsible for corrective action, a date by which the correction and repair of each defect must be completed, taking into consideration the seriousness of the defect.

(c) *Failure to comply*. Failure to comply with an order issued by HUD is

a violation of section 610(a)(5) of the Act (42 U.S.C. 5409(a)(5)).

Subpart C—Alternative Process in HUD-Administered States

§ 3288.100 Scope and applicability.

The requirements of this subpart C may be followed in lieu of the requirements of subpart B of this part to resolve disputes among manufacturers, retailers, and installers of manufactured homes in any state where subpart B of this part would otherwise apply. In limited circumstances, this subpart C permits manufacturers, retailers, and installers of manufactured homes to use neutrals of their choosing to resolve disputes concerning alleged defects in manufactured homes.

§ 3288.105 Time when Alternative Process is available.

(a) The Alternative Process may be invoked after an alleged defect has been reported, pursuant to § 3288.15(b). However, the Alternative Process may not be invoked more than 7 days after notification of a request for dispute resolution has been received by all of the parties. The notification must be delivered by overnight delivery, commercial carrier, or fax by the screening neutral, in accordance with § 3288.30. If within 7 days of the receipt of notification, the Alternative Process is not initiated, the screening neutral will refer the matter to the mediator. Once the Alternative Process is invoked, neither the parties nor the homeowner may invoke the Mediation and Arbitration Process in the HUD Manufactured Home Dispute Resolution Program for 30 days.

(b) No particular form or format is required to provide notification for the Alternative Process, but the party or parties submitting the notification must include a statement from the parties participating in the Alternative Process stating that the homeowner is not responsible for the alleged defect and that one or more of the parties will correct or repair the defect. All required agreements are set forth in § 3288.110 of this part. The parties must also make reasonable efforts to include the following information in the notification:

(1) Identification of the case; and
(2) Identification of the parties participating in the Alternative Process.

(c) The screening neutral will notify the parties if the case is referred to the Alternative Process for resolution.

§ 3288.110 Alternative Process agreements.

(a) *Required agreement*. To use the Alternative Process, the manufacturer,

retailer, and installer of the manufactured home at issue, as appropriate, must agree:

- (1) That there is a defect in the manufactured home;
- (2) That the manufacturer, retailer, or installer is responsible for the defect;
- (3) That the homeowner is not responsible for the defect;
- (4) To engage a neutral to evaluate the dispute and make an assignment of responsibility for correction and repair; and
- (5) To notify the homeowner of, and allow the homeowner to be present at, any meetings and to inform the homeowner of the outcome.

(b) *Additional element of agreement.* In addition, the parties should agree to act upon the neutral's assignment of responsibility for correction and repair.

Subpart D—State Dispute Resolution Programs in Non-HUD Administered States

§ 3288.200 Applicability.

This subpart D establishes the minimum requirements that must be met by a state to implement its own dispute resolution program and therefore not be covered by the HUD Manufactured Home Dispute Resolution Program established in accordance with subpart B. The subpart also establishes the procedure for determining whether the state dispute resolution program meets the requirements of the Act for operating in lieu of the HUD Manufactured Home Dispute Resolution Program.

§ 3288.205 Minimum requirements.

(a) *List of requirements.* The HUD Manufactured Home Dispute Resolution Program will not be implemented in any state that complies with the procedures of this subpart D and that has a dispute resolution program that provides for the following minimum requirements:

- (1) The timely resolution of disputes among manufacturers, retailers, or installers regarding responsibility for correction and repair of defects in manufactured homes;
- (2) The issuance of appropriate orders for correction and repair of defects in such homes;
- (3) A coverage period for disputes that includes at least defects that are reported within 1 year after the date of first installation; and
- (4) Adequate funding and personnel.

(b) *Applicability to programs in state plans.* (1) In order to include a dispute resolution program in a state plan that on February 8, 2008 is fully or conditionally approved under § 3282.302 of this chapter, a state must

amend its state plan to provide for the requirements of paragraphs (a)(1) through (3) of this section.

(2) After February 8, 2008, a state that submits a state plan for approval in accordance with § 3282.302 of this chapter must provide for the requirements of paragraphs (a)(1) through (3) of this section in its state plan.

§ 3288.210 Acceptance and recertification process.

(a) *Submission of certification.* A state seeking HUD acceptance of its state dispute resolution program under this subpart must submit to HUD a completed Dispute Resolution Certification Form, which is available by contacting HUD by telephone at (202) 708-6423 or by e-mail at mhs@hud.gov. The certification may be submitted as a part of, or independent of, a state plan under § 3282.302 of this chapter. If included as part of a state plan, the state does not have to separately certify that it meets the requirements of § 3288.205(a)(4).

(b) *HUD review and action.* (1) HUD will review the Dispute Resolution Certification Form submitted by a state and may contact the state to request additional clarification or information as necessary. Upon completing its review, HUD will provide the state with notice of acceptance, conditional acceptance, or rejection of its dispute resolution program.

(2) A notice of acceptance will include the date of acceptance.

(3) If HUD rejects a state's dispute resolution program, HUD will provide an explanation of what is necessary to obtain full acceptance. A revised Dispute Resolution Certification Form may be submitted within 30 days of receipt of such notification. If the revised Dispute Resolution Certification Form is inadequate or if the state fails to resubmit within the 30-day period or otherwise indicates that it does not intend to change its Dispute Resolution Certification Form, HUD will notify the state that its dispute resolution program is not accepted and that it has a right to a hearing on the rejection using the procedures set forth under subpart D of part 3282 of this chapter.

(c) *Conditional acceptance.* A state meeting three of the four minimum requirements set forth under § 3288.205(a)(1) through (4) will be conditionally accepted by HUD. If HUD conditionally accepts a state's dispute resolution program, HUD will provide an explanation of what is necessary to obtain full acceptance. A revised Dispute Resolution Certification Form may be submitted within 30 days of

receipt of such notification. Any state conditionally accepted will be permitted to implement its own dispute resolution program for a period of not more than 3 years, absent extension of this period by HUD.

(d) *Revocation.* If HUD becomes aware at any time that a state no longer meets the minimum requirements set forth under § 3288.205, HUD may revoke acceptance of the state's certification after an opportunity for a hearing, using the procedures set forth under subpart D of part 3282.

(e) *Recertification of a program not included in state plan.* Except as provided in paragraph (f), to maintain its accepted status, a state whose program is not included in an approved or conditionally approved state plan must submit a current Dispute Resolution Certification Form to HUD for review and acceptance as follows:

(1) Every 3 years within 90 days of the day and month of the most recent date of HUD's acceptance of the state's program or

(2) Whenever there is a significant change to the program.

(f) *Inclusion in state plan.* If a state dispute resolution program is part of a state plan, it will be reviewed annually as part of the state plan and separate recertification of the state's dispute resolution program is not required.

§ 3288.215 Effect on other manufactured home program requirements.

A state with an accepted dispute resolution program will operate in lieu of HUD's Manufactured Home Dispute Resolution Program established under subpart B of this part 3288. A state dispute resolution program, even if it is an accepted dispute resolution program under this part, does not supersede the requirements applicable to any other aspect of HUD's manufactured home program. Any responsibilities, rights, and remedies applicable under the Manufactured Home Construction and Safety Standards in part 3280 of this chapter and the Manufactured Home Procedural and Enforcement Regulations in part 3282 of this chapter continue to apply as provided in those parts in all states.

Subpart E—Dispute Resolution Program Rulemaking Procedures

§ 3288.300 Applicability.

This subpart establishes special regulatory procedures for issuing or revising dispute resolution program regulations as codified in this part.

**§ 3288.305 Consultation with the
Manufactured Housing Consensus
Committee.**

HUD will seek input from the MHCC when revising the HUD Manufactured Home Dispute Resolution Program regulations in this part 3288. Before publication of a proposed rule to revise these regulations, HUD will provide the MHCC with an opportunity to comment on such revision. The MHCC may send to HUD any of the MHCC's own recommendations to adopt new dispute

resolution program regulations or to modify or repeal any of the regulations in this part. Along with each recommendation, the MHCC must set forth pertinent data and arguments in support of the action sought. HUD will either: accept or modify the recommendation and publish it for public comment in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553), along with an explanation of the reasons for any such modification; or reject the

recommendation entirely, and provide to the MHCC a written explanation of the reasons for the rejection. This section does not supersede section 605 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5404).

Dated: May 7, 2007.

Brian D. Montgomery,
*Assistant Secretary for Housing—Federal
Housing Commissioner.*

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Federal Register

Friday,
June 20, 2008

Part III

**Department of
Housing and Urban
Development**

24 CFR Part 3286

**Manufactured Home Installation Program;
Final Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 3286

[Docket No. FR-4812-F-03]

RIN 2502-AH97

**Manufactured Home Installation
Program**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes a federal manufactured home installation program, as required by section 605(c)(2)(A) of the National Manufactured Housing Construction and Safety Standards Act of 1974. States that have their own installation programs that include the elements required by statute are permitted to administer, under their state installation programs, the new requirements established through this final rulemaking. The new elements required by statute to be integrated into an acceptable state manufactured home installation program are: The establishment of qualified installation standards; the licensing and training of installers; and the inspection of the installation of manufactured homes.

DATES: *Effective Date:* October 20, 2008.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410; telephone number 202-708-6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

Requirement for an Installation Program

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) ("the Act") is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes, and was amended on December 27, 2000 (Manufactured Housing Improvement Act of 2000, Title VI, Pub. L. 106-659, 114 Stat. 2997). In order to accomplish those objectives, the Act requires HUD to, among other things,

establish and implement a new manufactured home installation program for states that choose not to operate their own installation programs. Specifically, section 605 of the Act (42 U.S.C. 5404) calls for the establishment of an installation program that includes installation standards, the training and licensing of manufactured home installers, and inspection of the installation of manufactured homes. The model manufactured home installation standards ("the installation standards") themselves can be found in a separate final rule, which was published on October 19, 2007 (72 FR 59338). Any state that wishes to operate its own installation program must contain state installation standards that afford residents of manufactured homes at least the same protection provided by the federal installation standards.

Although a state that wants to operate its own installation program is not required to be a State Administrative Agency ("SAA") established pursuant to HUD's Manufactured Home Procedural and Enforcement Regulations (see 24 CFR part 3282), any state that submits a new state plan to become an SAA after the implementation of the Manufactured Home Installation Program must include a complying installation program as part of its plan. As a result, any state that becomes an SAA for the first time, or any state that becomes an SAA again after a lapse in its SAA status, will be required to administer its own compliant installation program.

Proposed Rule

On June 14, 2006, at 71 FR 34476, HUD published the Manufactured Home Installation Program proposed rule with a comment due date of August 14, 2006. There were a total of 35 commenters on the June 14, 2006, proposed rule. Twenty-seven of the commenters were from the manufactured home industry, including manufacturers, component suppliers, retailers, installers, trade associations, and community operators. Five commenters were from SAAs. The remaining commenters were a consumer group, the Manufactured Housing Consensus Committee (MHCC), and one member of the insurance industry.

HUD worked closely and participated in several meetings with the MHCC in order to obtain their input and suggestions. In response to comments from the public and input from the MHCC, HUD has made a few significant changes to the proposed rule.

II. General Areas of Interest to Commenters

This section of the preamble discusses general areas of interest to commenters.

One of the general recommendations most often made by the commenters was to codify the Manufactured Home Installation Program in the existing 24 CFR part 3282, rather than in the new part § 3286, in the belief that the installation program would thereby become "preemptive" of state and local installation requirements in states where HUD administers the installation program.

Preemption

Commenters requested that the installation program and installation standards be made preemptive of state and local requirements in states where HUD administers the installation program. However, HUD has concluded that a plain reading of sections 604(d) and 605 of the Act indicates that Congress did not intend for the installation program or the installation standards to be preemptive of more stringent state or local government requirements. This conclusion is strengthened by the legislative history of the Act. During his section-by-section comments on the floor of the House when the Act was being debated, then House Financial Services Committee Chairman Jim Leach stated that "the bill would reinforce the proposition that installation standards and regulations remain under the exclusive authority of each state." (See Dec. 5, 2000, 146 Cong. Rec. H11960-01.) In "Additional Views" that were included in the House Report on the bill, then Ranking Committee Member John LaFalce noted that "for the first time, we will be setting a national minimum installation standard * * *" (H. Rpt. 106-553, pg. 182). In earlier floor remarks, Rep. LaFalce said, "[s]tates that wish to have their own installation standards may continue to do so, as long as they provide protections comparable to the model standards." (Oct. 24, 2000, 146 Cong. Rec. H10685). HUD, therefore, concludes that Congress has permitted state governments to implement installation standards that are more stringent than the federal installation standards, provided that those state standards otherwise offer protection that equals or exceeds the minimum protection established by the installation standards.

Codification in Part 3286 of 24 CFR

Commenters, including the MHCC, continued to state that the Manufactured Home Installation Program should be codified under 24 CFR part 3282, Manufactured Home Procedural and Enforcement Regulations. Contrary to the views expressed by these commenters,

preemption authority can come only from Congress, and no decision that HUD makes regarding the codification of the Manufactured Home Installation Program could increase or diminish that authority. As indicated above, HUD has concluded that Congress did not intend to extend preemption authority to the installation of manufactured homes.

In any event, HUD has chosen, as a matter of administrative necessity, to codify the Manufactured Home Installation Program in a new 24 CFR part 3286 in order to maintain the clear distinctions that the Act makes between installation and construction. The regulatory structure that Congress has given HUD for enforcement of the Manufactured Home Installation Program is entirely different from the enforcement authority it previously gave HUD for the Federal Manufactured Home Procedural and Enforcement Regulations. As HUD reads sections 613 (42 U.S.C. 5412) and 615 (42 U.S.C. 5414) of the Act, the principal sections requiring notification and correction of defects, these sections do not apply to the installation of manufactured homes. As HUD reads the Act, the primary enforcement authority for the installation of manufactured homes, implemented through sections 610 and 611 (42 U.S.C. 5409 and 5410, respectively), is section 605 (42 U.S.C. 5404) itself, which not only provides more limited authority for the installation of manufactured homes, but adds new requirements regarding the licensing and training of installers.

Given these fundamental differences between the installation and construction and safety programs, publication of the Manufactured Home Installation Program in a new 24 CFR part 3286 will best allow HUD to maintain the regulatory separation necessary to administer two such different programs.

Commenters stated that the purpose of the Manufactured Home Installation Program should be to establish HUD's default installation program for those states that do not meet the required elements of the Act through state law. The rule should not be used to create a prescriptive base-line standard for each state-based installation program. In order to avoid confusion on this issue, the final rule sets out, in discrete subparts: (1) Manufactured home installation requirements that are applicable in all states (subpart A) and to all manufacturers; (2) requirements that are applicable in only those states in which HUD is administering the installation program (subparts B through H); and (3) requirements for states that wish to apply to administer their own

installation programs in lieu of the HUD program (subpart I). Further, to make the applicable requirements more readily identifiable, the final rule separately organizes the requirements that apply to the retailers, distributors, installers, installation trainers, and installation inspectors in states where HUD administers the installation program.

Installation in Accordance With the Installation Standards

The MHCC was particularly concerned that the Manufactured Home Installation Program proposed rule required compliance with the installation standards, and not with the installation design and instructions provided by the manufacturer. HUD agreed with the MHCC that it would be better for the consumer to require compliance with the manufacturer's installation design and instructions, since such designs and instructions may differ from the installation standards by providing requirements that not only exceed the installation standards, but are also specific to the installation requirements of the particular home being installed.

The final rule of the installation program requires that the manufactured home be installed in accordance with:

(1) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the Design Approval Primary Inspection Agency (DAPIA); or

(2) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect and have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

III. Particular Areas of Interest to Commenters

This section of the preamble discusses specific, section-by-section areas of interest to commenters. In response to the comments and the MHCC's input, HUD has made a few significant changes to the proposed rule.

Section 3286.2(d)(3) Applicability. Many commenters suggested expanding the Manufactured Home Installation Program to cover secondary installations of manufactured homes in addition to initial installations. It is HUD's position that Congress intended the installation program to be applicable only to the initial installation of new manufactured homes, as indicated by references in

section 623(g) of the Act to the date of installation and by the definition of "purchaser" as the first purchaser in section 603 of the Act. A very small percentage of manufactured homes are ever relocated after initial siting and placement of the homes. The Manufactured Home Procedural and Enforcement Regulations encourage States to establish procedures for the inspection of used manufactured homes and for monitoring of the installation of manufactured homes within each State (§ 3282.303), indicating the intent of Congress to place the supervision of reinstallments in the hands of the States.

The final rule clarifies that the installation program does not prevent State and local governments from regulating subsequent installations of manufactured homes. State standards for initial installation must meet or exceed HUD's minimum installation standards, while state standards for secondary installations do not have to adhere to the minimum HUD standards. HUD concludes that any subsequent installation of a manufactured home resides with State authority.

Section 3286.103 DAPIA-approved installation instructions. HUD agrees with the commenters who stated that the retailer must provide the purchaser with a copy of the DAPIA-approved installation instruction manual for each home in states where HUD administers the installation program. However, the retailer should not be required to provide an installation design and instructions if the retailer has not agreed to provide any set up in connection with the sale of the home and the installation requires a design that is different than that provided by the manufacturer's installation manual for the home. HUD agrees that the retailer or manufacturer should provide the installation design and instructions for installations that require designs that differ from those provided by the manufacturer's instruction manual when the retailer or manufacturer agrees to provide any set up in connection with the sale of the home. The proposed rule placed the entire burden of providing the installation instructions upon the retailer.

Accordingly, the final rule has been revised to require the retailer to provide the purchaser with a copy of the DAPIA-approved installation instructions for each manufactured home, and to require the retailer or manufacturer to provide to the installer the installation design and instructions for installations that require designs that differ from those provided by the manufacturer when the retailer or manufacturer agrees to

provide any set up in connection with the sale of the home. Although either the retailer or the manufacturer now has the responsibility to provide instructions to the installer, rather than only the retailer, the overall burden associated with the requirement to provide instructions has not changed.

The final rule does not require the retailer or manufacturer to provide installation instructions to the installer if the retailer or manufacturer has not agreed to provide any set up in connection with the sale of the home, since the installer performing the installation may not be known by the retailer or manufacturer.

Section 3286.109 Inspection requirements—generally. HUD agrees with commenters who stated that the requirements in the proposed rule may delay the completion of sale. The original wording extended the completion of sale date to the date that the home was installed. This may have had an adverse effect on retailers when they do not provide set up in connection with the sale of the home, since the retailer's duties would not end until an independent third party completed its work. HUD has made appropriate revisions to this section, in order to clarify when a sale is complete.

Section 3286.405 Site suitability. HUD agrees with the many commenters who stated that it should be the installer's responsibility to verify site suitability for the installation of a home. Subpart C of the Model Installation Standards includes many site preparation requirements that must be performed during the installation of the manufactured home. Accordingly, the licensed installer is responsible for determining the suitability of the site with regard to the requirements in the Model Installation Standards. The requirements are not the responsibility of the retailer or manufacturer.

Section 3286.803(b) Minimum elements. A majority of commenters stated that the provision for a state to prove it has adequate funding in order to be approved to run its own installation program should be removed and is not a requirement of the Act. HUD, however, believes that the requirement is appropriate. The final rule should also include an additional item that would allow HUD to approve state installation programs, provided the state demonstrates an alternative means for achieving the end goal of improved manufactured housing.

IV. Section-by-Section Revisions—Changes to Proposed Rule

In response to the public comments and subsequent reevaluation by HUD,

the following is a summary, by subpart, of the section-by-section revisions being made to the Manufactured Home Installation Program proposed rule.

Subpart A—Generally Applicable Provisions and Requirements

A new paragraph (b), "Implementation," is added to § 3286.1 to provide for **Federal Register** publication of an implementation schedule for the various components of the installation program. HUD will publish a separate notice setting forth a timetable for implementation of the elements of the program, for example, the program's installer training and licensing requirements, to provide an orderly transition to a fully operational installation program.

Paragraph (d)(2) of § 3286.2 makes clear that states that administer their own installation program may regulate subsequent installations of manufactured homes. Further, new paragraph (d)(4) was added to § 3286.2 recognizing that HUD does not have the authority to regulate the installation of manufactured homes on Indian reservations.

In response to comments, certain definitions, including definitions for *manufactured housing installation instructions and installation*, have either been added or modified in § 3286.3 of the final rule in order to provide clarity.

Section 3286.5 was modified to provide an overview of the HUD-administered installation program and the state-administered installation programs. The installer requirements are being moved to Subpart C, since these requirements are applicable only in states where HUD administers the installation program. The manufacturer must also include instructions for protecting the interior of the manufactured home or sections of homes from damage, pending the first siting of the home for occupancy. The instructions must be adequate to ensure that the temporary supports and weatherization used will be sufficient to prevent the home and its transportable sections from falling out of conformance with the Manufactured Housing Construction and Safety Standards (MHCSS) in part 3280 of this chapter, if the home or its sections is either:

- (i) Stored at any location for more than 30 days; or
- (ii) In the possession of any entity for more than 30 days.

Paragraph (b) of § 3286.7 was revised to require the retailer to provide the purchaser or lessee with a consumer disclosure prior to execution of the sales contract to purchase, or of the lease

agreement to lease, a manufactured home. This disclosure must be in a document separate from the sales or lease agreement.

Section 3286.9 was revised to ensure that the manufacturer's reporting requirements in the installation program are consistent with the reporting requirements in § 3282.552. Form HUD-302 will be used to collect the information from the manufacturer.

The final rule has been revised to require retailers to update the tracking and installation information only for homes installed in states where HUD administers the installation program; therefore, § 3286.13 is being moved to § 3286.113.

Subpart B—Certification of Installation in HUD-Administered States

A new § 3286.102, that details the information that the manufacturer must provide to retailers or distributors, was added. It also requires the manufacturer to include a notice in the installation instructions that the home must comply with installation designs and instructions that are approved by either the Secretary of HUD or by the manufacturer's DAPIA.

Section 3286.103(a) was revised to require the retailer to provide a copy of the manufacturer's DAPIA-approved installation instructions for each home. The retailer or manufacturer must also provide an installation design and instructions if: (1) the installation requires a design that is different from that provided by the manufacturer, and (2) the retailer or manufacturer agrees to provide any set up in connection with the sale of the home.

A new paragraph (b) has been added to § 3286.105 that requires the retailer or manufacturer to ensure that the installer is licensed if the retailer or manufacturer agrees to provide any set up in connection with the sale or lease of the home.

Section 3286.107 has been revised to require installers to comply with the manufacturer's installation design, or with alternative designs and instructions that were prepared by a professional engineer or registered architect, as long as the alternative designs and instructions have been reviewed and approved by the manufacturer and its DAPIA.

A new paragraph (a)(4) has been added to § 3286.107 that clearly sets out that any installation defect caused by the installer's work is the joint responsibility of the installer and of the retailer or manufacturer that retained the installer. A new § 3286.107(a)(5) also makes them jointly and severally liable for the correction of any failures

to comply with the installation standards.

Section 3286.109 was revised to require the installer to certify, and the inspector to verify, that the home has been installed in accordance with the requirements of § 3286.107(a) before the home can be occupied.

Section 3286.113 was revised to delete references to the sale of the home and instead require retailers to provide tracking information and installation information only for homes installed in states where HUD administers the installation program. The proposed rule required the tracking information to be provided to HUD for all homes. The option of the Internet-based tracking system established by HUD was deleted. Retailer record retention requirements were shortened from 5 to 3 years.

Section 3286.115 of the proposed rule was revised to include the date that the installer certified that all required inspections were completed as part of the date of installation.

Section 3286.117 was modified to redefine the completion of sale date.

Subpart C—Installer Licensing in HUD-Administered States

Section 3286.205(d) was revised to require an applicant for an installation license to obtain, when available in the state of installation, a surety bond or insurance that will cover the cost of repairing all damage to the home and its supports caused by the installer during the installation. The value of such bond or insurance must cover the costs of repair of any incidents that render the home defective, up to and including replacement of the home. The proposed rule required the installer to maintain general liability insurance in the amount of at least \$1 million. This change will link the installer's costs more closely to the number of homes installed, rather than imposing a level cost regardless of the number of homes installed. Smaller installation operations that have a lesser volume of installations will benefit from this requirement.

Subpart D—Training of Installers in HUD-Administered States

Section 3286.303(d) was revised to shorten the period during which trainers and continuing education providers must retain records from 5 to 3 years.

Subpart E—Installer Responsibilities of Installation in HUD-Administered States

Section 3286.405(b) was revised to require the installer to identify the reasons why a site is unsuitable for

installation when the installer has found that a site is unsuitable. The installer is also required to notify HUD of the site's unsuitability, in addition to notifying the retailer when it has made such a finding.

Two new paragraphs, (c) and (d), were added to § 3286.405. These paragraphs make clear that if the installer notices and recognizes any failures to comply with the construction and safety standards in part 3280 of this chapter prior to beginning any installation work, during the course of the installation work, or after the installation work is complete, the installer must notify the manufacturer and the retailer of each failure to comply. Additionally, the retailer must provide a copy of the notification received in paragraphs (b) (site suitability) and (c) (construction and safety failures) of this section to any subsequent installer.

Section 3286.409(d) was removed.

Section 3286.411(c) was modified and moved to § 3286.113.

Section 3286.413(b) was revised to shorten the period during which installers must retain records from the 5 years set out in the Manufactured Home Installation Program proposed rule to 3 years.

Subpart F—Inspection of Installation in HUD-Administered States

A new paragraph (c) was added to § 3286.503 requiring the installer to provide installation instructions to the inspector.

Section 3286.507(a) was revised to clarify that the installation verification provided by the inspector must be in writing.

International Code Council-certified inspectors were added to the list of qualified inspectors in § 3286.511(a).

Subpart G—Retailer Responsibilities in HUD-Administered States

A new paragraph (c) was added to § 3286.603 that requires the retailer or manufacturer to verify that the installer is licensed when the retailer or manufacturer agrees to provide any set up in connection with the sale or lease of the home.

Subpart H—Oversight and Enforcement in HUD-Administered States

The sections in subpart H are the same as in the proposed rule. They are not revised by this final rule.

Subpart I—State Programs

Sections 3286.801 and 3286.803(a) were revised to clarify that states that administer their own installation programs may do so either as part of their approved state plan or under

Subpart I of the Manufactured Home Installation Program rule.

The time frames in § 3286.805(c) were revised to 90 days based on a comment from the MHCC that the time frames be consistent and that 90 days is a reasonable time frame for both actions.

Section 3286.807 was revised to require states to submit a new State Installation Program Certification form to the Secretary for review every 5 years after the state's most recent certification as a qualified installation program.

V. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). The docket file is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

Paperwork Reduction

The information collection requirements contained in this final rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2502-0253. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government or the private sector

within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and remains applicable to this final rule. The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

HUD is required by statute to establish an installation program through the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) (42 U.S.C. 5401-5426). However, in accordance with the Act and as set forth in this proposed rule, this Manufactured Home Installation Program is not preemptive. Therefore, HUD has determined that the Model Installation Standards, if adopted, have no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to

consider the impact of their rules on small entities. Agencies must evaluate the impact of a rule on small entities and describe their efforts to minimize the adverse impacts.

As part of the proposed rule, HUD prepared an Initial Regulatory Flexibility Analysis (IRFA) that evaluated the potential economic impact on the small entities the regulations would affect, including: manufacturers, retailers, installers, and trainers. Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 603), HUD prepared a Final Regulatory Flexibility Analysis (FRFA), which follows in its entirety.

Manufactured Home Installation Program Final Regulatory Flexibility Analysis: Reason That the Action Is Being Considered

On December 27, 2000, the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) was amended by the Manufactured Housing Improvement Act of 2000, which, among other things, requires the Secretary to establish an installation program for the enforcement of the Model Manufactured Home Installation Standards in each state that does not have an installation program established by state law and approved by the Department.

Objective of the Final Rule

The objective of the final rule is to establish the Manufactured Home Installation Program in each state that does not have an installation program established by state law and establish the requirements that must be met by a state to implement and administer its own installation program. The Manufactured Home Installation Program includes:

- Systems for tracking and certifying manufactured home installations;
- Licensing requirements for individuals and entities to qualify to install a manufactured home, which include required experience, training, testing, and proof of liability insurance;
- Requirements for individuals or entities for providing the required training;
- Responsibilities of the installer who is accountable for the installation of the manufactured home;
- Inspection requirements that must be performed by a qualified inspector;
- Responsibilities for retailers of manufactured homes in states that do not have qualifying installation programs;
- Enforcement mechanisms to ensure the proper installation of manufactured homes; and

- Requirements that must be met by a state to implement and administer its own installation program in such a way that the state would not be covered by the HUD-administered installation program.

Summary of Significant Issues Raised by Public Comment

There were a total of 35 commenters on the June 14, 2006, proposed rule. Twenty-seven of the commenters were from the manufactured home industry, including manufacturers, component suppliers, retailers, installers, trade associations, and community operators. Five commenters were from State Administrative Agencies (SAAs). The remaining commenters included one member of the insurance industry, a consumer group, and the Manufactured Housing Consensus Committee (MHCC).

None of the comments received addressed the IRFA. However, the Department did receive two general comments regarding the Regulatory Flexibility Analysis summary in the preamble of the proposed rule. The comments were:

- "While HUD's proposed rule does include a cost-impact estimate under the Regulatory Flexibility Act—showing a projected cost increase of \$974 for a single-section home and \$1,023 for a double-section home in HUD-administered states—there is no evidence that HUD has considered the affordability of the proposed installation program as a function of the affordable housing mandates."

- "Overall cost impact for installation is a large concern for the industry. It is stated that a single-wide will increase approximately \$974 and multi-section will increase approximately \$1,023 in states where HUD would administer the installation program. In some parts of the U.S. this can make the purchase of a manufactured home unaffordable."

In developing the proposed rule, the Department developed an installation program that implemented the statutory requirements outlined in the Act, while balancing protection for the consumer with the economic impact on small entities. Appendix A of the IRFA indicates that the five regulatory requirements in the proposed rule with the largest individual economic impact account for approximately 86 percent of total estimated cost increase of a manufactured home. The information in Table 1 summarizes these findings and a discussion follows for each summary:

TABLE 1

Summary of regulatory requirement	Cost impact per single	Cost impact per multi
Regulation establishing liability insurance for installers in states without a qualifying installation program	\$302.52	\$302.52
Regulation requiring the inspection of every manufactured home installation in states without a qualifying installation program	300.00	350.00
Regulation establishing initial training for installers in states without a qualifying installation program	102.86	102.86
Regulation establishing continuing education for installers in states without a qualifying installation program	71.09	71.09
Regulation establishing recordkeeping requirements for installers in states without a qualifying installation program. Requires that all information must be kept for 5 years	62.02	62.02

1. Liability Insurance—Section 3286.205(d) of the proposed rule required an applicant for an installation license to provide evidence of general liability insurance in the amount of at least \$1 million. The Department received comments suggesting eliminating or reducing the limits on the provision. Additional commenters suggested including a surety or insurance bond to protect the consumers from faulty installation designs or incomplete work.

The Department agrees with the commenters that surety or insurance bonds would provide better protection to the consumer than the liability insurance requirement. Therefore, the Department replaced the liability insurance requirement in the proposed rule with a surety bond/insurance requirement that is sufficient to cover the cost of repairing all damage to the home and its supports caused by the installer during the installation of the home. (See § 3286.205(d) in the final rule). This change also reduced the burden on small entities.

2. Inspections—Section 3286.505 of the proposed rule required each manufactured home installed in states where HUD administers the installation program to be inspected. Section 605 of the Act (42 U.S.C. 5404) calls for the establishment of an installation program that includes inspection of the installation of manufactured homes. Many commenters suggested inspecting

less than 100 percent of all installations. The Department does not have any evidence that suggests such an inspection program would provide sufficient consumer protection; therefore, the final rule remains unchanged.

3. Installer Training—Section 3286.205(b)(1) of the proposed rule required an applicant for an installation license to complete 12 hours of training in states where HUD administers the installation program. Section 605 of the Act (42 U.S.C. 5404) calls for the establishment of an installation program that includes installer training. The Department did not receive any comments regarding the initial training of installers; therefore, the final rule remains unchanged.

4. Installer Continuing Education—Section 3286.205(b)(2) of the proposed rule required the licensed installer in states where HUD administers the installation program to complete 8 hours of continuing education during the 3-year license period to qualify for renewal of an installation license. The Department did not receive any comments regarding the continuing education requirement for installers; therefore, the final rule remains unchanged.

5. Installer Records—Section 3286.413 of the proposed rule required that installers maintain the required records for 5 years after the installer certifies completion of the home in

states where HUD administers the installation program. Fifteen commenters suggested reducing the record retention requirement to 3 years. The Department agreed and changed the record retention requirement to 3 years in the final rule.

Description and Estimated Number of Small Entities Regulated

The final rule will apply to any business that manufactures, sells or leases, or installs manufactured homes. The rule also contains requirements for persons to qualify to provide the training required for installers. This rule also establishes requirements that must be met by a state to implement and administer its own installation program in such a way that the state would not be covered by the HUD-administered installation program.

The rule has differing requirements for the regulated entities depending on whether the home is being installed in a state with a qualified installation program or a state covered by the HUD-administered program.

The information presented in Table 2 was gathered from data collected by the Office of Manufactured Housing Programs based on the available data for 2006. The number of states expected to administer an installation program is estimated based on close correspondence with state representatives regarding the state's intentions.

TABLE 2.—REGULATED ENTITIES AND SMALL ENTITIES

North American Industrial Classification Schedule	Description of primary entity	Number of regulated entities	Small Business Administration size standard	Number of small entities	Percentage of regulated entities
All States—The requirements in Subpart A are applicable in all states					
321991	Manufacturers	222	500 employees	198	89
453930	Retailers	5151	500 employees	5151	100
States Without Installation Programs—The requirements in Subparts B through H are applicable in these states					
453930	Retailers	340	500 employees	340	100
238990	Installers	1021	\$12 million	1021	100
611519	Trainers	50	\$6 million	50	100

TABLE 2.—REGULATED ENTITIES AND SMALL ENTITIES—Continued

North American Industrial Classification Schedule	Description of primary entity	Number of regulated entities	Small Business Administration size standard	Number of small entities	Percentage of regulated entities
States With Installation Programs—The requirements in Subpart I are applicable in these states					
	States	35	50,000 population	0	0

Description of the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The final rule contains information collection requirements, installer licensing requirements, installer surety bond/insurance requirements, installation inspection requirements, installer trainer registration, and certification of states administering an installation program. Appendix A provides a detailed cost analysis of each section of the final rule.

Identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the final rule.

The Department is unaware of any conflicting federal rules. The final rule requires similar information to that required in 24 CFR 3282.552, which requires manufacturers to submit monthly label reports to their Production Inspection Primary Inspection Agency (IPIA). Section 3282.553 (24 CFR 3282.553) requires each IPIA to provide the information in the monthly label reports to the Department. This information is currently provided on OMB-approved form HUD-302. Section 3286.9 in the final rule requires the manufacturer to provide similar information to the Department for the purposes of installation.

To eliminate the possible duplication of reporting requirements, the Department revised form HUD-302 such that the information required in 24 CFR 3282.552 and 3286.9 may be provided in a single form completed by the manufacturer. This revised form is part of the Department's Paperwork Reduction Act submission.

Description of any significant alternatives that accomplish the stated objectives of applicable statutes that minimize any significant economic impact of the proposed rule on small entities, including alternatives considered.

The section *Summary of Significant Issues Raised by Public Comment*

discusses the five regulatory requirements in the proposed and final rules that have the greatest economic impact on small entities. Additional alternatives were also considered during the development of the final rule as a result of the public comment.

Alternative 1. Section 3286.5(b)(2) requires the manufacturer to include instructions for supporting the manufactured home temporarily, pending the first siting of the home for occupancy.

*Alternative Considered—*The Department considered eliminating this requirement as the result of public comment; however, the importance of assuring that the temporary supports will be sufficient to prevent the home and its transportable sections from being brought out of conformance with the Construction and Safety Standards in 24 CFR part 3280 prior to sale is a necessary consumer protection considering the small costs associated with this section. Furthermore, the Department received additional comments stating the provisions are beneficial and should remain in the final rule.

Alternative 2. Section 3286.7(b) requires the retailer to provide the purchaser or lessee with a consumer disclosure prior to the purchase or lease of a manufactured home.

*Alternative Considered—*The Department considered eliminating this requirement as a result of public comment; however, the majority of public comment was in favor of the disclosure because of the importance of consumer protection during the purchase or lease of a manufactured home. This consumer protection justifies the small costs associated with this section.

Alternative 3. Section 3286.9(d) of the proposed rule required the manufacturer to include installation instructions in each home regardless of state.

*Alternative Considered—*A single commenter suggested requiring the manufacturer to provide installation instructions only in homes installed in states where HUD administers the installation program. Section 605 of the Act (42 U.S.C. 5404) requires the

manufacturer to provide the design and instructions for the installation of each manufactured home, that have been approved by a design approval inspection agency; therefore, the requirement is consistent with the statutory requirement. (See § 3286.9(b) of the final rule.)

Alternative 4. Section 3286.13(a) of the proposed rule required the retailer or distributor to maintain for 5 years a copy of the sales or lease record for all homes sold or leased regardless of state.

*Alternative Considered—*The Department revised the final rule requiring the retailer or distributor to maintain a copy of the sales or lease record for homes sold or leased in states where HUD administers the installation program for 3 years (See section 3286.113(e) of the final rule). This reduces the recordkeeping burden on retailers and distributors.

Alternative 5. Section 3286.103(a) of the proposed rule required retailers and distributors to provide the purchaser with a copy of either:

- “(1) The manufacturer's DAPIA-approved installation instructions for the home; or
- (2) If the installation requires a design that is different from that provided by the manufacturer, an installation design and instructions that do not take the home out of compliance with the construction and safety standards in part 3280 of this chapter. * * *”

Many commenters agreed that the retailer should provide the purchaser with a copy of the DAPIA-approved installation instructions for every home in states where HUD administers the installation program. However, many commenters said the retailer should not be required to provide an installation design and instructions that differ from the DAPIA-approved installation instruction if the retailer has not agreed to provide any setup in connection with the sale of the home and the installation requires a design that is different from that provided by the manufacturer for the home. HUD agrees that the retailer or manufacturer should provide the installation design and instructions only for installations that require designs that differ from those provided by the manufacturer when the retailer or

manufacturer agrees to provide any setup in connection with the sale of the home. The proposed rule placed the entire burden of providing the installation instructions on the retailer.

Accordingly, the final rule has been revised to require: (1) The retailer to provide the purchaser with a copy of the DAPIA-approved installation instructions for each manufactured home, and (2) the retailer or manufacturer to provide to the installer the installation design and instructions for installations that require designs that differ from those provided by the manufacturer, when the retailer or manufacturer agrees to provide any

setup in connection with the sale of the home (See § 3286.103(b) of the final rule).

Alternative 6. Section 3286.211(a) of the proposed rule set an expiration date of 3 years for installation licenses issued in states where HUD administers the installation program.

A single commenter suggested extending the term of the license to 5 years to reduce the burden on installers. Another commenter suggested reducing the licensing term to one year to ensure installers are knowledgeable of new installation requirements. The term of the license remains 3 years in the final rule to balance the burden on installers and HUD, while ensuring installers are

kept up to date on updates to the Model Installation Standards.

Alternative 7. Record Retention Requirements—The proposed rule requires that installers, retailers, and trainers maintain the required records for 5 years in states where HUD administers the installation program.

Alternative Considered—The Department agreed with the 15 commenters that suggested reducing the record retention requirement to 3 years. The Department agreed and changed the record retention requirement to 3 years in the final rule, thereby reducing record retention burden on small entities.

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX

Section	Regulated party	Number of parties affected	Number of homes	Cost impact per single-section home	Cost impact per multi-section home	Annual cost impact per regulated party	Total annual cost impact	Cost impact notes
§ 3286.1								<p>This section sets forth the purpose of Subpart A. The requirements in Subpart A apply to all manufactured homes regardless of the state of installation. There is no cost associated with this section.</p> <p>This section sets forth the applicability of all subparts. There is no cost associated with this section.</p> <p>This section sets forth terms and definitions in this part. There is no cost associated with this section.</p> <p>This section provides for an overview of the installation program including the HUD installation program, state installation programs, and manufacturer and retailer requirements. There is no associated cost with this section other than in § 3286.5(c)(2). Section 3286.5(c)(2) requires the manufacturer to include instructions for supporting the manufactured home temporarily and protecting the interior from damage, pending the first installation of the home for occupancy. The instructions must be sufficient to prevent the home and its transportable sections from being brought out of conformance with the construction and safety standards or its sections if stored on such supports for more than 30 days. This would include costs for third-party design review and approval (4 hours of DAPIA review and approval labor). The installation instructions themselves are already required under 24 CFR 3280. However, this review cost is a one-time annualized total cost averaged on a per-home basis. The Department estimates 20 hours to review and revise the instructions at \$75 per hour for 78 manuals. This cost is averaged for 135,000 homes and the 78 manuals. (20*75*78)/135,000=\$0.867/home.</p> <p>Requires the manufacturer to put a notice in the consumer manual for reinstalled homes. There will be a cost to the manufacturer for this notice. This notice must be provided for ALL homes. The cost to the manufacturer would include the one time cost of developing the disclosure (one hour at \$75 per hour per manual), the initial placement in the consumer manual (one hour at \$15 per hour per manual), and the continued placement of the disclosure in the consumer manual (10 minutes at \$15 per hour). This cost is averaged for 135,000 homes. {(1*75*78)+(1*15*78)+(0.1667*15*135,000)}/135,000=\$2.55/home.</p> <p>Requires the retailer to provide the purchaser or lessee with a consumer disclosure. The requirements of this disclosure are also provided for in this section. This notice must be provided for all homes. There will be a cost to the retailer associated with this disclosure. The cost to the retailer would include the one-time cost of developing the disclosure (one hour at \$75 per hour) and providing the disclosure to the consumer before the sale of each home (10 minutes at \$15 per hour). This cost is averaged for 135,000 homes. {(1*75*5151)+(0.1667*15*135,000)}/135,000=\$5.36/home.</p>
§ 3286.2								
§ 3286.3								
§ 3286.5	Manufacturer	222	135,000	\$0.87	\$0.87	\$527.03	\$117,000	
§ 3286.7(a)	Manufacturer	222	135,000	2.55	2.55	1,551.89	344,520	
§ 3286.7(b)	Retailer	5151	135,000	5.36	5.36	140.52	723,825	

§ 3286.9(a)	Manufacturer	222	135,000	2.50	2.50	1,520.27	337,500	<p>This section requires manufacturers to provide the initial tracking information about each home to HUD. This must be done for all homes regardless of state. Much of this information is currently being provided by manufacturers via form HUD-302. The form HUD-302 will be revised to include the anticipated ship date. There is a cost associated to the manufacturer for providing this information. The cost to the manufacturer will be the time required to provide this additional information to HUD, estimated at 10 minutes per home at \$15 per hour. This cost is averaged for 135,000 homes. (0.1667x15*135,000)/135,000=\$2.50/home.</p>
§ 3286.9(b)								<p>This section requires manufacturers to provide a copy of the DAPIA-approved installation instructions with the home. The costs related to the revisions to the manufacturer's installation instructions have been accounted for in the Model Manufactured Home Installation Standards rule; therefore, the cost is not considered here.</p>
§ 3286.11	Manufacturer, Retailer, Installer	20,827	135,000	40.00	40.00	259.28	5,400,000	<p>This section deals with the temporary storage of units. There is a cost associated with the provision requiring the temporary installation instructions. This cost was accounted for in § 3286.5(c) above. There is a cost to the manufacturer, retailer, or installer associated with the temporary support of the home and protecting the interior of the home from damage. The cost is estimated at one additional hour for the support and protection of the home (one hour at \$40 per hour). The estimate includes the extra time for supporting each home (135,000). (one hour*40*135,000)=\$5,400,000 or \$40/home.</p>
§ 3286.13								<p>This section provides that any provision of a contract or agreement entered into by a manufacturer home purchaser that seeks to waive any recourse to either the HUD installation program or a state-qualifying installation program is void. This section does not have an associated cost impact.</p>
§ 3286.15								<p>This section states that the Secretary will seek input from the MHCC when revising the installation program regulations in this part 3286, by providing the MHCC an opportunity to comment on any revision. This section does not have any associated cost impact.</p>
§ 3286.101								<p>This section provides for the purpose of Subpart B to establish the systems for tracking and certifying a manufactured home installation that is to be completed in accordance with the HUD-administered installation program. There is no cost associated with this provision.</p>
§ 3286.102(a)	Manufacturer	222	6,750	2.50	76.01	16,875		<p>This section requires manufacturers to provide notice to the retailer that the tracking information is provided to HUD and that the retailer must update the information as required. This must be done for all homes where HUD administers the installation program. There is a cost associated with this requirement to the manufacturer. The cost to the manufacturer will be the time required to provide a copy of the required form HUD-302 to the retailer. This is estimated at 10 minutes per home at \$15 per hour. This cost is averaged for 6,750 homes. (0.1667x15*6,750)/6,750=\$2.50/home.</p>

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

Section	Regulated party	Number of parties affected	Number of homes	Cost impact per single-section home	Cost impact per multi-section home	Annual cost impact per regulated party	Total annual cost impact	Cost impact notes
§ 3286.102(b)	Manufacturer	222	6,750	3.54	3.54	107.64	23,895	This section requires manufacturers to include in its installation instructions for the home a notice that the home is required to be installed in accordance with the two acceptable methods. This must be done for all homes where HUD administers the installation program. There is a cost associated with this requirement to the manufacturer. The cost to the manufacturer entity would include the one-time cost of developing the notice (one hour at \$75 per hour), the initial placement in the installation manual (one hour at \$15 per hour), and the continued placement of the notice in the installation manual (10 minutes at \$15 per hour). This cost is averaged for 6,750 homes. $((1 \times 75 \times 78) + (1 \times 15 \times 78) + (0.1667 \times 15 \times 6,750)) / 6,750 = \3.54 home.
§ 3286.103(a)(1)	Retailer	340	6,750	\$2.50	2.50	49.63	16,875	For each manufactured home sold to a purchaser in a state in which HUD administers an installation program, the retailer must ensure that the purchaser is provided with a copy of the installation instructions. This will have an associated cost to the retailer in HUD states. Since the installation instructions are required to be provided by the manufacturer, with the home, the cost to the retailer will be the cost of providing the instructions to the consumer, estimated at 10 minutes per home at \$15 per hour. This cost is averaged for 6,750 homes. $6,750(0.1667 \times 15) = \$16,875$.
§ 3286.103(a)(2)	Manufacturer	222	6,750	37.50	37.50	1,140.20	253,125	Requires that the manufacturer/DAPIA approve installation designs and instructions if the installation requires a design that is different from the installation instructions required and accounted for in the Model Manufactured Home Installation Standards. There is a cost associated with this requirement to the manufacturer. The cost to the manufacturer entity would include the cost of approving the site-specific designs estimated to occur in 20% of installations. The time is estimated at 2.5 hours at \$75/hr. This cost is averaged for 6,750 homes. $0.2 \times 6,750 \times 2.5 \times 75 = \$253,125$.
§ 3286.103(b)	Retailer	340	6,750	2.13	2.13	42.19	14,345	When the retailer agrees to provide any set up in connection with the sale of the home, the retailer must provide a copy of the same DAPIA-approved installation instructions or, as applicable, installation design and instructions to each company, or, in the case of a sole proprietor, the individual who performs set up or installation work on the home. This will have an associated cost to the retailer in HUD states. Since the installation instructions are required to be provided by the manufacturer with the home, the cost to the retailer will be the cost of providing the installation instructions, estimated at 10 minutes per home. Assume the retailer will provide set up in connection with the sale of the home in 85% of all sales as a conservative estimate. This cost is averaged for 6,750 homes. $0.85 \times 0.1667 \times 15 \times 6,750 = \$14,345$.
§ 3286.105 .....	.....	.....	.....	.....	.....	.....	.....	This section requires that the installer that installs a manufactured home in a state that does not have a qualifying installation program be certified or licensed in accordance with Subpart C. The cost associated with this is evaluated in Subpart C.

§ 3286.107								<p>These sections set forth requirements that, at a minimum, the installation must comply with the manufacturer's installation instructions or the alternative design by a professional engineer or registered architect approved by the manufacturer and DAPIA. The cost associated with these requirements was evaluated as part of the final rule for the Model Manufactured Home Installation Standards and § 3286.103; therefore, is not included here.</p>
§ 3286.109								<p>The installer or the retailer must arrange for the inspection of the installation work on any manufactured home. Before the sale of the home is considered complete, the installer must certify, and the inspector must verify, the home as having been installed in conformance with the requirements of § 3286.109(a). The requirements for installer certification are set and accounted for in § 3286.111.</p>
§ 3286.111(a)(1)	Installer	1,021	6,750	20.00	20.00	132.22	135,000	<p>When the installation work is complete, an installer must certify that the manufacturer's installation instructions or with an installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the installation standards in part 3285 of this chapter and the installation of the home has been inspected as required by part 3286 and an inspector has verified the installation as meeting the requirements of this part 3286. There will be costs associated with the provisions in this section to the installer for homes that are sited in states without a qualifying installation program. The cost to the installer would include the time to complete specific information required for each individual certification (30 minutes at \$40 per hour). This cost is averaged for 6,750 homes. (0.5*40*6,750)=\$135,000.</p>
§ 3286.111(a)(2)	Installer	1,021	6,750	300.00	350.00	2,214.74	2,261,250	<p>This section provides that the installation of every manufactured home that is subject to the HUD-administered installation program is required to be inspected for each of the installation elements to ensure it complies with the requirements of part 3285 of this chapter. This provision will have an associated cost for the installations in that they are subject to the HUD-administered installation program. The cost associated with this provision will be borne by the installer. Many of the homes inspected by local jurisdictions may not incur an additional cost for the inspection beyond the existing permitting and inspection fees already borne by the installer. However, in areas without local jurisdictions, the installer will have to pay a qualified third party to inspect the installation. Estimating that each inspection for a single-wide unit and double-wide unit will take 3 hours and 3.5 hours, respectively, at a rate of \$100 per hour for each installation in a HUD-administered installation state provides a conservative estimate of the cost.</p>
§ 3286.111(b)	Installer	1,021	6,750	2.50	2.50	16.53	16,875	<p>The installer must provide a signed copy of its certification to the retailer that contracted with the purchaser for the sale of the home, and to the purchaser or other person with whom the installer contracted for the installation work. There will be costs associated with the provisions in this section to the installer for homes that are sited in states without a qualifying installation program. The cost to the retailer will be the cost of providing the information to HUD, estimated at 10 minutes per home at \$15 per hour. This cost is averaged for 6,750 homes. 6,750*(0.16667*15)=\$16,875.</p>

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

Section	Regulated party	Number of parties affected	Number of homes	Cost impact per single-section home	Cost impact per multi-section home	Annual cost impact per regulated party	Total annual cost impact	Cost impact notes
§ 3286.113(a)	Retailer	340	6,750	3.75	3.75	74.45	25,312	The retailer or distributor of the home must provide HUD with tracking information about the home within 30 days from the time that a purchaser or lessee enters into a contract to purchase or lease a manufactured home. This must be done for all homes in states in which HUD administers the installation program. There is a cost associated with this requirement to the retailer. The cost to the retailer will be the time required to provide this information to HUD estimated at 15 minutes per home at \$15 per hour. This cost is averaged for 6,750 homes. $(0.25 \times 15 \times 6,750) / 6,750 = \$3.75/\text{home}$. In addition to the information required to be provided by the retailer pursuant to § 3286.113(a), within 30 days from the date of installation, the retailer must provide HUD with additional information regarding the installation. There will be costs associated with the provisions in this section to the retailer for homes that are sited in states without a qualifying installation program. The cost to the retailer would include the time to complete specific information required for each individual concurrence (15 minutes at \$15 per hour). This cost is averaged for 6,750 homes. $(0.25 \times 15 \times 6,750) / 6,750 = 3.75$.
§ 3286.113(b)	Retailer	340	6,750	3.75	3.75	74.45	25,312	This section provides for the method in which the information in §§ 3286.113(a) and (b) can be provided. There is no cost associated with this provision.
§ 3286.113(c)	Retailer	340	675	0.38	0.38	7.44	2,531	This section provides for the correction of information in §§ 3286.113(a) and (b). There is a cost associated with this provision to the retailers in states where HUD administers the installation program. The cost to the retailer would include the time to correct the specific information. It is estimated that 10% of the information will have to be corrected taking 15 minutes for each response at \$15 per hour. This cost is averaged for 6,750 homes in HUD states. $0.1 \times (0.25 \times 15 \times 6,750) = \$2,531.25$. The cost per home = $\$2,531.25 / 6,750 = \0.38 .
§ 3286.113(d)	Retailer	340	6,750	41.30	41.30	820.00	278,800	This section requires that retailers must maintain sales records for 3 years. There is a cost associated with this provision to the retailers in states where HUD administers the installation program. The cost is estimated as the required time (filing and organization of files at 4 hours/month at \$15 per hour) and materials to keep such storage (file cabinets and computer disk space \$100). $340 \times (\$100 + 4 \times 12 \times \$15) = \$278,800$.
§ 3286.115	Retailer	340	6,750	41.30	41.30	820.00	278,800	This section defines the date of installation. There is no cost associated with this provision.
§ 3286.117	Retailer	340	6,750	41.30	41.30	820.00	278,800	This section defines the completion of sale. There is no cost associated with this provision.
§ 3286.201	Retailer	340	6,750	41.30	41.30	820.00	278,800	This section outlines the purpose of Subpart C, which is to establish the requirements for a person to qualify to install a manufactured home in accordance with the HUD-administered installation program. No costs are associated with this section.
§ 3286.203	Retailer	340	6,750	41.30	41.30	820.00	278,800	This section provides when a license is needed and when a license is not needed. No costs are associated with this provision. The cost of the license is addressed in § 3286.205 and § 3286.207.

§ 3286.205(a)	Installer	1,021	6,750	102.86	102.86	680.00	694,280	This section provides for the required experience for installers in states without a qualifying installation program. There is no cost associated with this provision.
§ 3286.205(b)(1)	Installer	1,021	6,750	71.09	71.09	470.00	479,870	This section provides for the required initial training for installers in states without a qualifying installation program. There is a cost associated with this provision for installers. The cost associated with this requirement is estimated as the cost for the 12-hour training class (approximately \$200) and the missed wages (12*\$40 per hour) while attending the class. This cost is averaged for 6,750 homes. $(200+(12*40))*1,021=\$694,280$.
§ 3286.205(b)(2)	Installer	1,021	6,750	9.66	9.66	130.00	132,730	This section provides for the continuing education for installers in states without a qualifying installation program. There is a cost associated with this provision for installers. The cost associated with this requirement is estimated as the cost for the 8-hour continuing education classes (approximately \$150) and the missed wages while attending the class (8*40 per hour). These provisions will not be applicable until 3 years after the implementation of the program, i.e., when the initial licenses begin to expire. This cost is averaged for 6,750 homes. $(150+(8*40))*1,021=\$479,870$.
§ 3286.205(c)	Installer	1,021	6,750	226.89	226.89	1,500.00	1,531,500	This section provides for the testing requirement for installers in states without a qualifying installation program. There is a cost associated with this provision for installers. The cost associated with this requirement is estimated as the cost for the testing fee (approximately \$50) and the missed wages while attending the exam (2)*\$40 per hour. This cost is averaged for 6,750 homes. $(50+(2*40))*1,021=\$132,730$.
§ 3286.205(d)	Installer	1,021	6,750	6.05	6.05	40.00	40,840	This section provides for the surety bond and insurance requirements for installers in states without a qualifying installation program. There is a cost associated with this provision for installers. The cost associated with the premium estimated from insurance company and surety bond companies will be approximately \$1,500 per year. This cost is averaged for 6,750 homes.
§ 3286.207(a)	Installer	1,021	6,750	6.05	6.05	40.00	40,840	This section requires the installer to complete an application for the license in states without a qualifying installation program. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to read the instructions and complete the form. The cost is estimated at one hour at \$40 per hour.
§ 3286.207(b)	Installer	1,021	6,750	6.05	6.05	40.00	40,840	This section requires the installer to provide proof of experience in states without a qualifying installation program. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to provide written verification of the experience. The cost is estimated at one hour at \$40 per hour.
§ 3286.207(c)	Installer	1,021	6,750	1.51	1.51	10.00	10,210	This section requires the installer to provide proof of training in states without a qualifying installation program. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to copy the training certificate of completion. The cost is estimated at 0.25 hour at \$40 per hour.

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

Section	Regulated party	Number of parties affected	Number of homes	Cost impact per single-section home	Cost impact per multi-section home	Annual cost impact per regulated party	Total annual cost impact	Cost impact notes
§ 3286.207(d)	Installer	1,021	6,750	1.51	1.51	10.00	10,210	This section requires the installer to provide proof of the surety bond or insurance in states without a qualifying installation program. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to copy the appropriate documents and provide proof of payment. The cost is estimated at 0.25 hour at \$40 per hour.
§ 3286.207(e)	Installer	1,021	6,750	0.50	0.50	3.33	3,403	This section requires the installer to provide a list of states in which they hold or have held installer licenses. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to provide the list of states. It is expected that this will only apply to approximately half of the applicants. The cost is estimated at 5 minutes at \$40 per hour.
§ 3286.207(f)(1) .....	.....	.....	.....	.....	.....	.....	.....	This section provides for the issuance or denial of an installation license. No cost is associated with this provision.
§ 3286.207(f)(2)	Installer	1,021	6,750	0.09	0.09	0.59	600	This section allows the applicant who is denied an installation license an opportunity for a presentation of views for the purpose of establishing the applicant's qualifications to obtain an installation license. There will be costs associated with this provision to installers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to request the presentation of views. It is estimated that 2% of the applicants applying for an installation license will request such a presentation (approximately 20 installers). The cost is estimated at 45 minutes at \$40 per hour for 20 applicants. (45/60*\$40*20)/6,750=\$0.09 per home.
§ 3286.207(g) .....	.....	.....	.....	.....	.....	.....	.....	This section does not allow transfer of licenses to other entities. No cost is associated with this provision.
§ 3286.209	Installer	1,021	6,750	0.09	0.09	0.59	600	This section provides for the oversight of licensed installers; the processes for denial, suspension, or revocation of an installation license; and the reinstatement of an installation license in states without a qualifying installation program. There are no costs associated with the provisions in this section other than paragraph (d) in this section. The cost associated with this requirement is estimated as the cost for the installer to apply for a new license. It is estimated that less than 1% of the applicants (10) will have their licenses denied, suspended, or revoked. The cost is estimated at 90 minutes at \$40 per hour for 10 applicants. (90/60*\$40*10)/6,750=\$0.09 per home.
§ 3286.211	Installer	1,021	6,750	6.05	6.05	40.00	40,840	This section provides for expiration and the process for renewal of an installation license in states without a qualifying installation program. There are costs associated with the provisions in paragraph (b) in this section to installers. The cost associated with this requirement is estimated as the cost for the installer to read the instructions and complete the form. The cost is estimated at one hour at \$40 per hour.

§ 3286.301	.....	.....	.....	.....	.....	.....	This section discusses the purpose of Subpart D. The purpose is to establish the requirements for a person to qualify to provide the training required under Subpart C of this part. This training is required for manufactured home installers who want to be licensed in accordance with the HUD-administered installation program. No costs are associated with this provision.
§ 3286.303(a)	.....	.....	.....	.....	.....	.....	This section requires that qualified trainers must adequately address the curriculum and instruction-time requirements established in Subparts C and D of this part. There is no cost associated with this provision.
§ 3286.303(b)	Trainer	50	6,750	12.30	1,660.00	63,000	This section requires qualified trainers to maintain records of the times, locations, names of attendees at each session, and content of all courses offered. There is a cost associated with this provision to trainers in states without a qualifying installation program. The cost is estimated as the required time (filing and organization of files at 2 hours a week at \$15 per hour) and materials to keep such storage (file cabinets and computer disk space \$100). This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer.
§ 3286.303(c)	Trainer	50	6,750	1.51	204.20	10,210	This section requires qualified trainers to provide completion certificates to course attendees. There is a cost associated with this provision to trainers in states without a qualifying installation program. The cost is estimated at 10 minutes per certificate at \$60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer.
§ 3286.303(d)	.....	.....	.....	.....	.....	.....	This section requires qualified trainers to retain all records for 3 years. There is a cost associated with this provision to trainers in states without a qualifying installation program. The cost is estimated in § 3286.303(b) above.
§ 3286.303(e)	.....	.....	.....	.....	.....	.....	This section may allow qualified trainers to administer exams. Since this is not a requirement, there is no cost associated with this provision.
§ 3286.305	.....	.....	.....	.....	.....	.....	This section provides for the installation trainer criteria, including experience and curriculum. There are no costs associated with the provisions in this section other than paragraph (c) of this section. Paragraph (c) requires registration to be considered a qualified trainer. An individual or other training entity must submit to HUD certification that training provided will meet the requirements in §§ 3286.308 and 3286.309. The cost associated with this requirement is considered in § 3286.307(c)(2).
§ 3286.307(a)	Trainer	50	6,750	0.44	60.00	3,000	This section requires the trainer to submit an application. There is a cost associated with this provision. The cost associated with this requirement is estimated as the cost for the trainer to read the instructions and complete the form. The cost is estimated at one hour at \$60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer.
§ 3286.307(b)	Trainer	50	6,750	0.44	60.00	3,000	This section requires the trainer to submit proof of experience. There is a cost associated with this provision. The cost associated with this requirement is estimated as the cost for the installer to provide written verification of the experience. The cost is estimated at one hour at \$60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer.

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

Section	Regulated party	Number of parties affected	Number of homes	Cost impact per single-section home	Cost impact per multi-section home	Annual cost impact per regulated party	Total annual cost impact	Cost impact notes
§ 3286.307(c)(1)	Trainer	50	6,750	0.11	0.11	15.00	750	This section requires the trainer to submit a list of all states where the applicant has had a similar training qualification revoked, suspended, or denied. There is a cost associated with this provision to the trainer. The cost associated with this requirement is the cost for the trainer to provide the list of states. The cost is estimated at 0.25 hour at \$60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer.
§ 3286.307(c)(2)	Trainer	50	6,750	0.22	0.22	30.00	1,500	This section requires the trainer to submit a certification that training provided is in accordance with Subpart D and will meet the curriculum requirements established in §§ 3286.308 or 3286.309, as applicable. There is a cost associated with this provision to the trainer. The cost associated with this requirement is estimated as the cost for the trainer to provide the certification. The cost is estimated at 0.50 hour at \$60 per hour. This cost will be passed on to installers through the cost of the training class, and it is conceivable that the installer will pass this cost to the consumer.
§ 3286.307(d)	Trainer	50	6,750	0.01	0.01	0.90	45	This section provides for the confirmation or denial of trainer qualification. There will be costs associated with this paragraph in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the trainer to request the presentation of views. It is estimated that 2% of the applicants applying to be qualified trainers will request such a presentation. The cost is estimated at 45 minutes at \$60 per hour for 2% of the applicants. (45/60*\$60*0.02)/50/6,750=\$0.01 per home.
§ 3286.307(e)	.....	.....	.....	.....	.....	.....	.....	This section prohibits the assignment of trainer qualification to other entities. There is no cost associated with this section.
§ 3286.308	.....	.....	.....	.....	.....	.....	.....	This section provides for the training curriculum requirements. There is no cost associated with the provisions in this section.
§ 3286.309	.....	.....	.....	.....	.....	.....	.....	This section provides for the continuing education trainer and curriculum requirements. There is no cost associated with the provisions in this section.
§ 3286.311	Trainer	50	6,750	0.01	0.01	0.90	45	This section provides for the suspension or revocation of the trainer's qualification. There are no costs associated with the provisions in this section other than paragraphs (b) and (d) of this section. Paragraphs (b) and (d) provide for the presentation of views for the qualified trainer prior to suspension or revocation of qualification status. There will be costs associated with this provision to trainers in states without a qualifying installation program. The cost associated with this requirement is estimated as the cost for the installer to request the presentation of views. It is estimated that 2% of the qualified trainers will request such a presentation. The cost is estimated at 45 minutes at \$60 per hour for 2% of the qualified trainers. (45/60*\$60*0.02)/50/6,750=\$0.01 per home.

§ 3286.313	Trainer	50	6,750	0.44	0.44	60.00	3,000	This section provides for the process for renewal of a trainer's qualification in states without a qualifying installation program. There are costs associated with the provisions in paragraph (b) in this section to trainers. The cost associated with this requirement is estimated as the cost for the trainer to read the instructions and complete the form for renewal. The cost is estimated at one hour at \$60 per hour. This cost will be passed on to installers through the cost of the class and is a potential increase to the price of the home.
§ 3286.401								This section discusses the purpose of Subpart E. The purpose of Subpart E is to set out the responsibilities of the installer who is accountable for the installation of a manufactured home in compliance with the requirements of the HUD-administered installation program. There is no cost associated with this section.
§ 3286.403								This section provides that an installer of manufactured homes must comply with the licensing requirements set forth in Subpart C of this part. There is no cost associated with this section. The cost of licensing was done in the analysis of Subpart C.
§ 3286.405(a)	Installer	1,021	6,750	20.00	20.00	132.22	135,000	This section requires that the installer verify that the site is appropriate for the installation. There will be a cost associated with this requirement. The cost associated with this requirement will require the installer to conduct a site investigation. It is estimated that this investigation will take 0.5 hour at \$40 per hour. The cost will be averaged for 6,750 homes.
§ 3286.405(b)	Installer	1,021	6,750	0.20	0.20	1.33	1,360	This section requires that the installer notify the retailer, purchaser, and HUD if the site is not appropriate for the installation. There will be a cost associated with this requirement. The cost associated with this requirement is estimated as the cost for the installer to provide the written notification to the retailer. This notification is estimated to take 0.5 hour at \$40 per hour. It is estimated that this notification will only be required in 1% of installations. The cost will be averaged for 6,750 homes.
§ 3286.405(c)	Installer	1,021	6,750	0.20	0.20	1.33	1,360	This section requires that the installer notify the manufacturer and retailer if a failure to comply with the construction and safety standards is noticed during the installation. There will be a cost associated with this requirement. The cost associated with this requirement is estimated as the cost for the installer to provide the written notification to the manufacturer and retailer. This notification is estimated to take 0.5 hour at \$40 per hour. It is estimated that this notification will only be required in 1% of installations. The cost will be averaged for 6,750 homes.
§ 3286.405(d)	Retailer	340	6,750	0.10	0.10	2.00	680	This section requires that the retailer provide a copy of the notification in (b) and (c) above to any subsequent installers. There will be a cost associated with this requirement. The cost associated with this requirement is estimated as the cost for the retailer to provide a copy of the notification above to any subsequent installer. This notification is estimated to take 15 minutes at \$40 per hour. The cost will be averaged for 1% of homes installed in states where HUD administers the installation program.
§ 3286.407								This section requires that the installer be responsible for the work performed by each person engaged to perform installation tasks on a manufactured home in accordance with the HUD-administered installation program. There is no cost associated with the requirement.
§ 3286.409								This section provides information regarding the inspection requirements. There is a cost associated with the requirement. The cost regarding the inspection is evaluated in § 3286.111(a)(2).

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

Section	Regulated party	Number of parties affected	Number of homes	Cost impact per single-section home	Cost impact per multi-section home	Annual cost impact per regulated party	Total annual cost impact	Cost impact notes
§ 3286.411(a)	Installer							When the installation work is complete, an installer must certify that: The manufacturer has been installed in compliance with the manufacturer's installation instructions or with an installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the installation standards in part 3285 of this chapter, and the installation of the home has been inspected as required by this part § 3286 and an inspector has verified the installation as meeting the requirements of this part § 3286. There will be costs associated with the provisions in this section to the installer for homes that are sited in states without a qualifying installation program. This provision is the same as § 3286.111(a); therefore, the cost is not calculated here.
§ 3286.411(b)	Installer							The installer must provide a signed copy of its certification to the retailer that contracted with the purchaser for the sale of the home, and to the purchaser or other person with whom the installer contracted for the installation work. There will be costs associated with the provisions in this section to the installer for homes that are sited in states without a qualifying installation program. This provision is the same as § 3286.111(b); therefore, the cost is not calculated here.
§ 3286.413	Installer	1,021	6,750	124.03	124.03	820.00	837,220	This section provides for the record-keeping requirements for installers. It outlines all of the information that must be kept and mandates that it be kept for 3 years. This section will have an associated cost to the installer in states without qualifying installation programs. The cost is estimated as the required time (filling and organization of files at 4 hours a month at \$15 per hour) and materials to keep such storage (file cabinets and computer disk space \$100). The cost will be averaged for the 6,750 homes.
§ 3286.501								This section discusses the purpose of Subpart F. The purpose of Subpart F is to provide additional detail about the inspection that must be performed by a qualified third-party inspector before the installation of a manufactured home may be approved by the inspector and certified by the installer under the HUD-administered installation program. There is no cost associated with this section.
§ 3286.503(a)	Installer	1,021	6,750	20.00	20.00	132.22	135,000	This section requires the installer to arrange for an inspection and provides for the timing of the inspection. There is a cost associated with this requirement to the installer. It is estimated that the installer will take 0.5 hour at \$40 per hour per installation to arrange for the inspection of the installation. 0.5*40*6,750=\$135,000.
§ 3286.503(b)								This section provides for the retailer disclosure requirement. There are costs associated with the retailer disclosure requirements; however, this is accounted for in § 3286.7(b).
§ 3286.503(c)	Installer	1,021	6,750	20.00	20.00	132.22	135,000	This section requires the installer to provide a copy of the installation instructions to the inspector. There is a cost associated with this provision and it is estimated at \$20 per installation.

APPENDIX A.—24 CFR PART 3286: MANUFACTURED HOUSING INSTALLATION PROGRAM COST IMPACT ANALYSIS MATRIX—Continued

Section	Regulated party	Number of parties affected	Number of homes	Cost impact per single-section home	Cost impact per multi-section home	Annual cost impact per regulated party	Total annual cost impact	Cost impact notes
§ 3286.601								<p>This section discusses the purpose of Subpart G. The purpose of this subpart is to set out the requirements that apply to a retailer with respect to the federal installation requirements applicable to new manufactured homes that the retailer sells or leases and that will be installed in states that do not have qualifying installation programs. These requirements are in addition to other requirements that apply to retailers of manufactured homes pursuant to other parts of this chapter. There are no costs associated with these provisions.</p> <p>This section provides for retailer requirements at or before sale. Specifically, the retailer disclosure to the purchaser and temporary support. There are costs associated with this section; however, these costs have been calculated in § 3286.7(b).</p> <p>This section provides for retailer requirements after sale; specifically, the tracking of the installation, retailer concurrence on the certification, and other tracking and compliance requirements. There are costs associated with this section; however, these costs have been calculated for § 3286.113 and are not repeated here.</p> <p>Provides that the retailer is responsible for the reporting and record-keeping requirements under § 3286.113. There are costs associated with this section; however, they have been determined in § 3286.113(e).</p> <p>Provides the purpose of Subpart H. The purpose of Subpart H is to set out the mechanisms by which manufacturers, retailers, distributors, installers, and installation inspectors will be held accountable for assuring the appropriate installation of manufactured homes. There are no costs associated with this section.</p> <p>Provides for penalties and injunctive relief for failures to comply, the presentation-of-views, and the procedures for investigations. These provisions have an associated cost with the presentation-of-views requirement. It is estimated that less than 10 requests for presentation of views will be requested that have not been accounted for in the other specific section. The cost would not have an impact on the cost of manufactured homes. The cost to the inspector is estimated at 45 minutes at \$60 per hour for 10 instances. (45/60)*\$60(10)=\$450.</p> <p>Provides for the discussion of the dispute resolution program. These provisions do not have an associated cost.</p> <p>Provides the purpose of Subpart I. The purpose of Subpart I is to establish the requirements that must be met by a state to implement and administer its own installation program in such a way that the state would not be covered by the HUD-administered installation program. There are no costs associated with this section.</p> <p>Provides for the requirements for a qualified State Installation Program stating that a qualified State installation program supersedes the HUD-administered installation program, a state installation program must include the minimum elements to be approved, and the provisions for conditional acceptance. There are no costs associated with this section.</p>
§ 3286.603								
§ 3286.605								
§ 3286.607								
§ 3286.701								
§ 3286.703	All	24,927					450	
§ 3286.705								
§ 3286.801								
§ 3286.803								

§ 3286.805(a)	State	35			80.00	2,800	<p>This section requires states seeking identification as a qualified installation program to submit a completed State Installation Program Certification Form to the Secretary for review and acceptance. There will be a cost to the state to complete this certification. The estimated cost will include the time of one staff person for 2 hours at \$40 per hour. The cost would not have an impact on the cost of manufactured homes.</p>
§ 3286.805(b)							<p>HUD will review the state plan and contact the state regarding the application. There is no cost associated with this provision.</p>
§ 3286.805(c)	State	35			2.29	80	<p>Provides for the presentation of views by the states if rejecting the certification. It is estimated that less than 1% of states applying to administer their own installation program will request a presentation of views. The cost to the state is estimated at 120 minutes at \$40 per hour for 1 state application. $(120/60 * \\$40)(1) = \\80. The cost would not have an impact on the cost of manufactured homes.</p>
§ 3286.807	State	35			40.00	1,400	<p>This section requires that states submit a new State Installation Program Certification Form to the Secretary for review every 3 years to maintain its status as having a qualified installation program. There will be a cost to the state to complete this certification. The estimated cost will include the time of one staff person for one hour at \$40 per hour. The cost would not have an impact on the cost of manufactured homes.</p>
§ 3286.809	State	35			2.29	80	<p>This section states that whenever the Secretary finds that a state installation program fails to comply substantially with any provision of the installation program requirements or that the state program has become inadequate, the Secretary will notify the state of withdrawal of acceptance or conditional acceptance of the state installation program. There will be a cost to the state to complete this request. The estimated cost will include the time of one staff person for 1 hour at \$40 per hour for an estimated 2 states. $(1 * 40 * 2) = \\$80$. The cost would not have an impact on the cost of manufactured homes.</p>
§ 3286.811							<p>Provides that a state with a qualifying installation program will operate in lieu of HUD with respect to only the installation program established under Subparts B through H of this part § 3286. No state may permit its installation program, even if it is a qualified installation program under this part, to supersede the requirements applicable to any other aspect of HUD's manufactured housing program. There are no costs associated with this section.</p>
§ 3286.813							<p>If a state installation program is included in a state plan approved in accordance with § 3282.302 of this chapter, the state installation program is subject to all of the requirements for such a state plan, including annual review by HUD. There are no costs associated with this section.</p>

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Housing is 14.171.

List of Subjects in 24 CFR Part 3286

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, HUD adds a new part 3286 in chapter XX of Title 24 of the Code of Federal Regulations to read as follows:

PART 3286—MANUFACTURED HOME INSTALLATION PROGRAM**Subpart A—Generally Applicable Provisions and Requirements**

Sec.

- 3286.1 Purpose.
- 3286.2 Applicability.
- 3286.3 Definitions.
- 3286.5 Overview of installation program.
- 3286.7 Consumer information.
- 3286.9 Manufacturer shipment responsibilities.
- 3286.11 Temporary storage of units.
- 3286.13 Waiver of rights invalid.
- 3286.15 Consultation with the Manufactured Housing Consensus Committee (MHCC).

Subpart B—Certification of Installation in HUD-Administered States

- 3286.101 Purpose.
- 3286.102 Information provided by manufacturer.
- 3286.103 DAPIA-approved installation instructions.
- 3286.105 Requirement for installer licensing.
- 3286.107 Installation in accordance with standards.
- 3286.109 Inspection requirements—generally.
- 3286.111 Installer certification of installation.
- 3286.113 Information provided by retailer.
- 3286.115 Date of installation.
- 3286.117 Completion of sale date.

Subpart C—Installer Licensing in HUD-Administered States

- 3286.201 Purpose.
- 3286.203 Installation license required.
- 3286.205 Prerequisites for installation license.
- 3286.207 Process for obtaining installation license.
- 3286.209 Denial, suspension, or revocation of installation license.
- 3286.211 Expiration and renewal of installation licenses.

Subpart D—Training of Installers in HUD-Administered States

- 3286.301 Purpose.
- 3286.303 Responsibilities of qualified trainers.
- 3286.305 Installation trainer criteria.
- 3286.307 Process for obtaining trainer's qualification.

- 3286.308 Training curriculum.
- 3286.309 Continuing education—trainers and curriculum.
- 3286.311 Suspension or revocation of trainer's qualification.
- 3286.313 Expiration and renewal of trainer qualification.

Subpart E—Installer Responsibilities of Installation in HUD-Administered States

- 3286.401 Purpose.
- 3286.403 Licensing requirements.
- 3286.405 Installation suitability.
- 3286.407 Supervising work of crew.
- 3286.409 Obtaining inspection.
- 3286.411 Certifying installation.
- 3286.413 Recordkeeping.

Subpart F—Inspection of Installations in HUD-Administered States

- 3286.501 Purpose.
- 3286.503 Inspection required.
- 3286.505 Minimum elements to be inspected.
- 3286.507 Verifying installation.
- 3286.509 Reinspection upon failure to pass.
- 3286.511 Inspector qualifications.

Subpart G—Retailer Responsibilities in HUD-Administered States

- 3286.601 Purpose.
- 3286.603 At or before sale.
- 3286.605 After sale.
- 3286.607 Recordkeeping.

Subpart H—Oversight and Enforcement in HUD-Administered States

- 3286.701 Purpose.
- 3286.703 Failure to comply.
- 3286.705 Applicability of dispute resolution program.

Subpart I—State Programs

- 3286.801 Purpose.
- 3286.803 State qualifying installation programs.
- 3286.805 Procedures for identification as qualified installation program.
- 3286.807 Recertification required.
- 3286.809 Withdrawal of qualifying installation program status.
- 3286.811 Effect on other manufactured housing program requirements.
- 3286.813 Inclusion in state plan.

Authority: 42 U.S.C. 3535(d), 5404, and 5424.

Subpart A—Generally Applicable Provisions and Requirements**§ 3286.1 Purpose.**

(a) *Purpose.* The purpose of this part is to establish the regulations that are applicable to HUD's administration of an installation program that meets the requirements of sections 602 (42 U.S.C. 5401) and 605 (42 U.S.C. 5404) of the National Manufactured Housing Construction and Safety Standards Act of 1974. The purpose of this subpart A is to establish the regulations that are applicable with respect to all manufactured homes before they are sold to a purchaser. The requirements in subpart A apply regardless of whether

the actual installation of a manufactured home is regulated by HUD or a state with a qualifying installation program.

(b) *Implementation.* This part is effective on October 20, 2008. Implementation will be undertaken in accordance with the phased-in schedule provided by notice published in the *Federal Register*.

§ 3286.2 Applicability.

(a) *All states.* The requirements in subpart A are applicable in all states.

(b) *States without installation programs.* The requirements in subparts B through H of this part are applicable only in those states where HUD is administering an installation program in accordance with this part.

(c) *States with installation programs.* The requirements in subpart I of this part are applicable to only those states that want to administer their own installation programs in lieu of the installation program administered by HUD in accordance with this part.

(d) *Exclusion.* None of the requirements of this part apply to:

(1) Any structure that a manufacturer certifies as being excluded from the coverage of the Act in accordance with § 3282.12 of this chapter; or

(2) Temporary housing units provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) to victims of Presidentially declared disasters, when the manufactured home is installed by persons holding an emergency contractor license issued by the state in which the home is sited or installed by the Federal Emergency Management Agency; or

(3) Any manufactured home after the initial installation of the home following the first purchase of the home in good faith for purposes other than resale. State installation programs may regulate subsequent installations of manufactured homes.

(4) Any manufactured home installed on Indian reservations.

§ 3286.3 Definitions.

The following definitions apply in this part, except as otherwise noted in the regulations in this part:

Act means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5425.

Certification of installation means the certification, provided by an installer under the HUD-administered installation program in accordance with § 3286.111, that indicates that the manufactured home has been installed in compliance with the appropriate design and instructions and has been inspected as required by this part.

Defect means any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended.

Design Approval Primary Inspection Agency (DAPIA) means a state agency or private organization that has been accepted by the Secretary, in accordance with the requirement of subpart H of part 3282, to evaluate and either approve or disapprove manufactured home designs and quality control procedures.

Distributor means any person engaged in the sale and distribution of manufactured homes for resale.

HUD means the United States Department of Housing and Urban Development.

HUD-administered installation program means the installation program to be administered by HUD, in accordance with this part, in those states that do not have a qualifying installation program.

Installation means completion of work done specified in § 3286.505 to stabilize, support, anchor, and close up a manufactured home and to join sections of a multi-section manufactured home, when any such work is governed by the federal installation standards in part 3285 of this chapter or by state installation standards that are certified as part of a qualifying installation program.

Installation defect means any defect in the performance, installation, installation components, installation material, or close-up of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended or otherwise takes the home out of compliance with the Manufactured Home Construction and Safety Standards in 24 CFR part 3280.

Installation design means drawings, specifications, sketches, and the related engineering calculations, tests, and data in support of the installation configurations and systems to be incorporated in the installation of manufactured homes.

Installation instructions means DAPIA-approved instructions provided by the home manufacturer that accompany each new manufactured home and detail the home manufacturer requirements for support and anchoring systems and other work completed at the installation site to comply with the Model Manufactured Home Installation Standards in 24 CFR part 3285 and the Manufactured Home Construction and Safety Standards in 24 CFR part 3280.

Installation standards means the standards established by HUD in 24 CFR part 3285, or any set of state standards that the Secretary has determined provide protection to the residents of manufactured homes that equals or exceeds the protection provided by the standards in 24 CFR part 3285.

Installer means the person or entity who is retained to engage in, or who engages in, the business of directing, supervising, controlling, or correcting the initial installation of a manufactured home, as governed by part 3285 of this chapter.

Installer's license or installation license means the evidence that an installer has met the requirements for installing manufactured homes under the HUD-administered installation program. The term does not incorporate a state-issued installation license or certification, except to the extent provided in this part. The term does not imply that HUD approves or recommends an installer or warrants the work of an installer, and should not be used in any way that indicates HUD approval in violation of 18 U.S.C. 709.

Lessee means the first person who leases a manufactured home from a retailer after the initial installation.

Manufactured home means a structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on-site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term also includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to § 3282.13 of this chapter and complies with the installation standards established under part 3285 and the construction and safety standards in part 3280 of this chapter, but such term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on-site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this

definition should be interpreted to mean that a manufactured home necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

Manufactured Housing Consensus Committee, or MHCC, means the consensus committee established pursuant to section 604(a)(3) of the Act, 42 U.S.C. 5403(a)(3).

Manufacturer means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

Manufacturer's certification label means the permanent label that is required by § 3280.11 of this chapter to be affixed to each transportable section of each manufactured home.

Person includes, unless the context indicates otherwise, corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals, but does not include any agency of government or tribal government entity.

Professional engineer or registered architect means an individual or entity: licensed to practice engineering or architecture in a state; and subject to all laws and limitations imposed by the state agency that regulates the applicable profession, and who is engaged in the professional practice of rendering service or creative work requiring education, training, and experience in architecture or engineering sciences and the application of special knowledge of the mathematical, physical, and engineering sciences in such professional or creative work as consultation, investigation, evaluation, planning or design, and supervision of construction for the purpose of securing compliance with specifications and design for any such work.

Purchaser means the first person purchasing a manufactured home in good faith for purposes other than resale.

Qualified trainer means a person who has met the requirements established in subpart D of this part to be recognized as qualified to provide training to installers for purposes of the HUD-administered installation program.

Qualifying installation program means an installation program that a state certifies, in accordance with the requirements set out in subpart I of this part, as meeting the requirements of 42 U.S.C. 5404(c)(3).

Resident means any person residing in the manufactured home.

Retailer means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale, and, for purposes of this part, the term includes any manufacturer or distributor that sells a manufactured home directly to a purchaser.

Secretary means the Secretary of Housing and Urban Development.

Set up means any assembly or installation of a manufactured home on-site that includes aspects of work that are governed by parts 3280 or 3285 of this chapter.

State includes each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.

§ 3286.5 Overview of installation program.

(a) *HUD-administered installation program.* HUD will administer the installation program, as established and set out in subparts A through H of this part, in a state unless that state administers its own qualifying installation program. The states in which HUD administers an installation program can be identified under this part by referring to a list on a Web site maintained by HUD or by calling HUD. For convenience only, the current URL of the Web site is <http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm> and the current toll-free telephone number to contact the HUD Office of Manufactured Housing Programs is 1-800-927-2891, extension 57.

(b) *State-administered installation programs.* States that have qualifying installation programs, as established through the procedures set out in subpart I of this part, will administer their own programs, except for generally applicable requirements in this subpart A.

(c) *Manufacturer and retailer requirements.* (1) Manufacturers and retailers are responsible for compliance of the home with the construction and safety standards in part 3280 of this chapter, in accordance with the Act and applicable regulations. Manufacturers and retailers must also comply with applicable requirements in this part relating to the installation of the manufactured home.

(2) In the installation instructions required pursuant to part 3285 of this chapter, the manufacturer must include instructions for supporting the manufactured home or sections of homes temporarily and protecting the interior of the manufactured home or sections of homes from damage,

pending the first siting of the home for occupancy. The instructions must be adequate to assure that the temporary supports and weatherization used will be sufficient to prevent the home and its transportable sections from being brought out of conformance with the construction and safety standards in part 3280 of this chapter if the home or its sections is either:

(i) Stored at any location for more than 30 days; or

(ii) In the possession of any entity for more than 30 days.

(d) *HUD oversight.* The Secretary may take such actions as are authorized by the Act to oversee the system established by the regulations in this part, as the Secretary deems appropriate.

§ 3286.7 Consumer information.

(a) *Manufacturer's consumer manual.* In each consumer manual provided by a manufacturer as required in § 3282.207 of this chapter, the manufacturer must include a recommendation that any home that has been reinstalled after its original installation should be inspected after it is set up, in order to assure that it has not been damaged and is properly installed.

(b) *Retailer disclosures before sale or lease.* Prior to execution of the sales contract to purchase or agreement to lease a manufactured home, the retailer must provide the purchaser or lessee with a consumer disclosure. This disclosure must be in a document separate from the sales or lease agreement. The disclosure must include the following information, as applicable:

(1) When the installation of the home is in a state that administers its own qualifying installation program, the consumer disclosure must clearly state that the home will be required to comply with all state requirements for the installation of the home;

(2) When the installation of the home is in a state that does not administer its own qualifying installation program, the consumer disclosure must clearly state that the home will be required to comply with federal requirements, including installation in accordance with federal installation standards set forth in 24 CFR part 3285 and certification by a licensed installer of installation work, regardless of whether the work is performed by the homeowner or anyone else, and when certification includes inspection by an appropriate person;

(3) For all homes, the home may also be required to comply with additional state and local requirements for its installation;

(4) For all homes, additional information about the requirements disclosed under paragraphs (b)(1) through (b)(4) of this section is available from the retailer and, in the case of the federal requirements, is available in part 3286 of Title 24 of the Code of Federal Regulations and from the U.S. Department of Housing and Urban Development;

(5) For all homes, compliance with any additional federal, state, and local requirements, including a requirement for inspection of the installation of the home, may involve additional costs to the purchaser or lessee; and

(6) For all homes, a recommendation that any home that has been reinstalled after its original installation should be professionally inspected after it is set up, in order to assure that it has not been damaged in transit and is properly installed.

§ 3286.9 Manufacturer shipment responsibilities.

(a) *Providing information to HUD.* At or before the time that each manufactured home is shipped by a manufacturer, the manufacturer must provide HUD, through the Production Inspection Primary Inspection Agency (PIPA), in accordance with § 3282.552 of this chapter, with information, as applicable, about:

(1) The serial number and manufacturer's certification label number of the home;

(2) The manufacturer of the home; and

(3) The name and address of the retailer or distributor that has arranged for the home to be shipped.

(b) *Manufacturer's installation instructions.* The manufacturer is required to provide with each manufactured home, installation designs and instructions for the installation of the manufactured home that have been approved by a DAPIA. A DAPIA must give approval only if the installation designs and instructions provide equal or greater protection than the protection provided under the installation standards.

§ 3286.11 Temporary storage of units.

Pursuant to § 3286.5(c), the manufacturer is required to provide instructions for the temporary support and protection of the interior from damage of its manufactured homes or sections of homes. Every manufacturer, distributor, retailer, or installer that has possession of a home is required to support each transportable section of a manufactured home that is temporarily located on a site used by that manufacturer, distributor, retailer, or

installer in accordance with the manufacturer's instructions.

§ 3286.13 Waiver of rights invalid.

Any provision of a contract or agreement entered into by a manufactured home purchaser that seeks to waive any recourse to either the HUD installation program or a state-qualifying installation program is void.

§ 3286.15 Consultation with the Manufactured Housing Consensus Committee (MHCC).

The Secretary will seek input from the MHCC when revising the installation program regulations in this part 3286. Before publication of a proposed rule to revise these regulations, the Secretary will provide the MHCC with a 120-day opportunity to comment on such revision. The MHCC may send to the Secretary any of the MHCC's own recommendations to adopt new installation program regulations or to modify or repeal any of the regulations in this part. Along with each recommendation, the MHCC must set forth pertinent data and arguments in support of the action sought. The Secretary will either: Accept or modify the recommendation and publish it for public comment in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553), along with an explanation of the reasons for any such modification; or reject the recommendation entirely, and provide to the MHCC a written explanation of the reasons for the rejection. This section does not supersede section 605 of the National Manufactured Housing Construction and Safety Standards Act.

Subpart B—Certification of Installation in HUD-Administered States

§ 3286.101 Purpose.

The purpose of this subpart B is to establish the systems for tracking and certifying a manufactured home installation that is to be completed in accordance with the HUD-administered installation program.

§ 3286.102 Information provided by manufacturer.

(a) *Shipment of home to retailer or distributor.* At the time the manufactured home is shipped to a retailer or distributor, the manufacturer must provide notice to the retailer or distributor that tracking information for the home is being provided to HUD, and the information must be updated by the retailer or distributor in accordance with the requirements in § 3286.113. Such notice must include all of the information required in § 3286.9(a). The manufacturer is also encouraged to

provide notice to the retailer that reminds the retailer of its other responsibilities under this part.

(b) *Manufacturer's installation instructions.* The manufacturer is required to include in its installation instructions for the home a notice that the home is required to be installed in accordance with:

(1) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the DAPIA; or

(2) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

§ 3286.103 DAPIA-approved installation instructions.

(a) *Providing instructions to purchaser or lessee.* (1) For each manufactured home sold or leased to a purchaser or lessee, the retailer must provide the purchaser or lessee with a copy of the manufacturer's DAPIA-approved installation instructions for the home.

(2) If the installation requires a design that is different from that provided by the manufacturer in paragraph (a)(1) of this section, the installation design and instructions must be prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(b) *Providing instructions to installer.* When the retailer or manufacturer agrees to provide any set up in connection with the sale of the home, the retailer or manufacturer must provide a copy of the approved installation instructions required in paragraph (a)(1) of this section or, as applicable, installation design and instructions required in paragraph (a)(2) of this section to each company or, in the case of sole proprietor, to each individual who performs set up or installation work on the home.

§ 3286.105 Requirement for installer licensing.

(a) *Installer Licensing.* The installer that installs a manufactured home in a state that does not have a qualifying installation program must be certified or

licensed in accordance with the requirements in subpart C of this part.

(b) *Use of licensed installer.* When the retailer or manufacturer agrees to provide any set up in connection with the sale or lease of the home, the retailer or manufacturer must ensure that the installer is licensed in accordance with these regulations.

§ 3286.107 Installation in accordance with standards.

(a) *Compliance with installation requirements.* (1) For purposes of determining installer compliance, a manufactured home that is subject to the requirements of this subpart B must be installed in accordance with:

(i) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the DAPIA; or

(ii) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(2) If the installation instructions do not comply with the installation standards, the manufacturer is responsible for any aspect of installation that is completed in accordance with the installation instructions and that does not comply with the installation standards.

(3) All installation work must be in conformance with accepted practices to ensure durable, livable, and safe housing, and must demonstrate acceptable workmanship reflecting, at a minimum, journeyman quality of work of the various trades.

(4) Except as set out in paragraph (a)(2) of this section, all installation defects due to the work of the installer are the responsibility of the installer or retailer or manufacturer that retained the installer and must be corrected.

(5) If the manufacturer or retailer retains the installer, they are jointly and severally responsible with the installer for correcting installation defects.

(6) Installation defects must be corrected within 60 days after the date of discovery of the installation defect.

(b) *Secretarial approval of manufacturer's designs.* A manufacturer that seeks a Secretarial determination under paragraph (a) of this section that its installation designs and instructions provide protection to residents of manufactured homes that equals or exceeds the protection provided by the

HUD federal installation standards in part 3285 of this chapter must send the request for such determination and a copy of the applicable designs and instructions to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410-8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs at the toll-free telephone number 1-800-927-2891, extension 57.

(c) *Compliance with construction and safety standards.* The installer must not take the home out of compliance with the construction and safety standards applicable under part 3280 of this chapter.

(d) *Homeowner installations.* The purchaser of a home sited in a state in which HUD administers the installation program may perform installation work on the home that is in accordance with paragraph (a) of this section, provided that the work is certified in accordance with § 3286.111.

(e) *Compliance with construction and safety standards.* This rule does not alter or affect the requirements of the Act concerning compliance with the construction and safety standards, and the implementing regulations in parts 3280 and 3282 of this chapter, which apply regardless of where the work is completed.

§ 3286.109 Inspection requirements—generally.

The installer or the retailer must arrange for the inspection of the installation work on any manufactured home that is sited in a state without a qualifying installation program. Before the home can be occupied, the installer must certify, and the inspector must verify, the home as having been installed in conformance with the requirements of § 3286.107(a). The requirements for installer certification are set out in subpart E of this part.

§ 3286.111 Installer certification of installation.

(a) *Certification required.* When the installation work is complete, a licensed installer must visit the jobsite and certify that:

(1) The manufactured home has been installed in accordance with:

(i) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the DAPIA; or

(ii) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect, that have been

approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(2) The installation of the home has been inspected as required by § 3286.503 and an inspector has verified the installation as meeting the requirements of this part.

(3) All installation defects brought to the installer's attention have been corrected.

(b) *Recipients of certification.* The installer must provide a signed copy of its certification to the retailer that contracted with the purchaser or lessee for the sale or lease of the home, and to the purchaser or other person with whom the installer contracted for the installation work.

§ 3286.113 Information provided by retailer.

(a) *Tracking information.* Within 30 days from the time a purchaser or lessee enters into a contract to purchase or lease a manufactured home, the retailer or distributor of the home must provide HUD with the following information:

(1) The home's serial number and manufacturer's certification label number;

(2) The name and address of the retailer or distributor that is selling or leasing the home;

(3) The state and address where the home is to be sited, and, if known, the name of the local jurisdiction; and

(4) The name of the purchaser or lessee.

(b) *Installation information.* Within 30 days from the date of installation, the retailer or distributor of the home must provide HUD with the following information:

(1) The name, address, telephone number, and license number of the licensed installer;

(2) The date of installer certification of completion of the installation;

(3) The date a qualified inspector verified the installation as being in compliance with the requirements of this part; and

(4) The name, address, and telephone number of the qualified inspector who performed the inspection of the installation as required by § 3286.109.

(c) *Method of providing information.*

(1) The retailer or distributor must provide a copy of the information set forth in paragraphs (a) and (b) of this section to HUD by providing a copy of the information to HUD by facsimile, e-mail, or first-class or overnight delivery.

(2) The information must be sent to: Administrator, Office of Manufactured

Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410-8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the URL of the Web site is <http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm> and the toll-free telephone number to contact the Office of Manufactured Housing Programs is 1-800-927-2891, extension 57.

(d) *Correcting information.* If the information provided by the retailer changes after it has been provided to HUD, the retailer must correct the information within 10 business days after the retailer learns of the change.

(e) *Record retention requirements.* The retailer or distributor must maintain a copy of the records required in paragraphs (a) and (b) of this section for 3 years from the date of installation, as under § 3286.115.

§ 3286.115 Date of installation.

The date of installation will be the date the installer has certified that all required inspections have been completed, all utilities are connected, and the manufactured home is ready for occupancy as established, if applicable, by a certificate of occupancy, except as follows: If the manufactured home has not been sold to the first person purchasing the home in good faith for purposes other than resale by the date the home is ready for occupancy, the date of installation is the date of the purchase agreement or sales contract for the manufactured home.

§ 3286.117 Completion of sale date.

(a) *Date of sale defined.* For purposes of determining the responsibilities of a manufacturer, retailer, or distributor under subpart I of part 3282 of this chapter, the sale of a manufactured home will not be considered complete until all the goods and services that the manufacturer, retailer, or distributor agreed to provide at the time the contract was entered into have been provided.

(b) *Compliance with construction and safety standards.* When a retailer or manufacturer is providing the installation and an installer installs a home in such a way as to create an imminent safety hazard or cause the home to not comply with the construction and safety standards in part 3280 of this chapter, and those issues are discovered during the installation of the home, the sale or lease of the home is not complete until the home is corrected.

Subpart C—Installer Licensing in HUD-Administered States

§ 3286.201 Purpose.

The purpose of this subpart C is to establish the requirements for a person to qualify to install a manufactured home in accordance with the HUD-administered installation program. Installers will be required to meet licensing, training, and insurance requirements established in this part. Licensed installers will self-certify their installations of manufactured homes to be in compliance with the Model Manufactured Home Installation Standards in part 3285 of this chapter. In order for such an installer to self-certify compliance with the installation standards, the installer will have to assure that acceptable inspections, as required in subpart F of this part, are performed.

§ 3286.203 Installation license required.

(a) *Installation license required.* (1) Any individual or entity that engages in the business of directing, supervising, or controlling initial installations of new manufactured homes in a state without a qualifying installation program must itself have, or must employ someone who has, a valid manufactured home installation license issued in accordance with the requirements of this subpart C. For each installation covered under these requirements, the licensed installer, and any company that employs the licensed installer, will be responsible for the proper and competent performance of all employees working under the licensed installer's supervision and for assuring that the installation work complies with this part.

(2) A business that employs a licensed installer to represent the business and hold the installer's license retains primary responsibility for performance of the installation work in compliance with the requirements of this part.

(3) A license is not required for individuals working as direct employees of a licensed installer or for the company that employs a licensed installer, provided that those individuals are supervised by a licensed installer.

(4) The installer must display an original or a copy of a valid installation license at the site of the installation while performing work related to the installation of the home.

(5) The installer is responsible for understanding and following, as applicable, the approved manufacturer installation instructions and any alternative installation design and instructions that have been certified by

a professional engineer or registered architect, that have been approved by the manufacturer and DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(b) *Installation license not required.* An installation license is not required for:

(1) Site preparation that is not subject to the requirements of part 3285 of this chapter;

(2) Connection of utilities to the manufactured home;

(3) Add-ons subject to the requirements of § 3282.8(j) of this chapter;

(4) Temporary installations on dealer, distributor, manufacturer, or other sales or storage lots, when the manufactured home is not serving as an occupied residence;

(5) Home maintenance, repairs, or corrections, or other noninstallation-related work performed by the home manufacturer under warranty or other obligations or service agreements;

(6) Installations performed by authorized representatives of the Federal Emergency Management Agency in order to provide emergency housing after a natural disaster; or

(7) Work performed at the home site that is not covered by the federal installation standards in part 3285 of this chapter or the requirements of this part.

§ 3286.205 Prerequisites for installation license.

(a) *Required experience.* (1) In order to obtain an installation license to perform manufactured home installations under the HUD-administered installation program, an individual must meet at least one of the following minimum experience requirements:

(i) 1,800 hours of experience installing manufactured homes;

(ii) 3,600 hours of experience in the construction of manufactured homes;

(iii) 3,600 hours of experience as a building construction supervisor;

(iv) 1,800 hours as an active manufactured home installation inspector;

(v) Completion of one year of a college program in a construction-related field; or

(vi) Any combination of experience or education from paragraphs (a)(1)(i) through (a)(1)(v) of this section that totals 3,600 hours.

(2) An installer who is certified or licensed to perform manufactured home installations in a state with a qualifying

installation program may be exempted by the Secretary from complying with these experience requirements, if the Secretary determines that the state requirements are substantially equal to the HUD experience requirements.

(b) *Required training—(1) Initial applicant.* An applicant for an installation license must complete 12 hours of training, at least 4 hours of which must consist of training on the federal installation standards in part 3285 of this chapter and the installation program regulations in this part. An installer who is licensed to perform installations in a state with a qualified installation program may postpone the training requirements of this section until October 20, 2009.

(2) *Renewal applicant.* In order to qualify for renewal of an installation license, the licensed installer must complete 8 hours of continuing education during the 3-year license period, including in any particular subject area that may be required by HUD to be covered in order to assure adequate understanding of installation requirements.

(3) The training required under this paragraph (b) must be conducted by trainers who meet the requirements of subpart D of this part and must meet the curriculum requirements established in § 3286.308 or § 3286.309, as applicable.

(c) *Testing.* An applicant for an installation license must have successfully received a passing grade of 70 percent on a HUD-administered or HUD-approved examination covering the Manufactured Home Installation Program and the federal installation standards in part 3285.

(d) *Surety bond or insurance.* An applicant for an installation license must provide evidence of and must maintain, when available in the state of installation, a surety bond or insurance that will cover the cost of repairing all damage to the home and its supports caused by the installer during the installation up to and including replacement of the home. HUD may require the licensed installer to provide proof of the surety bond or insurance at any time. The licensed installer must notify HUD of any changes or cancellations with the surety bond or insurance coverage.

§ 3286.207 Process for obtaining installation license.

(a) *Where to apply.* An applicant for an initial or renewed installation license must provide the applicant's legal name, address, and telephone number to HUD. The application, with all required information, must be sent to: Administrator, Office of Manufactured

Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410-8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the current URL of the Web site is <http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm>, and the current toll-free telephone number to contact the Office of Manufactured Housing Programs is 1-800-927-2891, extension 57.

(b) *Proof of experience.* Every applicant for an initial installation license must submit verification of the experience required in § 3286.205(a). This verification may be in the form of statements by past or present employers or a self-certification that the applicant meets those experience requirements, but HUD may contact the applicant for additional verification at any time. The applicant must also provide to HUD employment information relevant to the applicant's experience as an installer, including the dates and type of such employment. An installer who is certified or licensed to perform manufactured home installations in a state with a qualifying installation program may seek an exemption from the experience requirement by submitting proof of such certification or license.

(c) *Proof of training.* Every applicant for an initial installation license, or the renewal of an installation license, must submit verification of successful completion of the training required in § 3286.205(b). This verification must be in the form of a certificate of completion from a qualified trainer that the applicant has completed the requisite number of hours of a qualifying curriculum, as set out in § 3286.308 or § 3286.309.

(d) *Proof of surety bond or insurance.* Every applicant for an installation license must submit the name of the applicant's surety bond or insurance carrier and the number of the policy required in § 3286.205(d).

(e) *Other application submissions.* (1) Every applicant for an installation license must submit a list of all states in which the applicant holds a similar installation certification or license, and a list of all states in which the applicant has had such a certification or license revoked, suspended, or denied.

(2) When the examination is not administered by HUD, every applicant for an initial installation license must submit certification of a passing grade on the examination required by § 3286.205(c).

(f) *Issuance or denial of an installation license.* (1) When HUD confirms that an applicant has met the

requirements in this subpart C, HUD will either:

(i) Provide an installation license to the applicant that, as long as the installation license remains in effect, establishes the applicant's qualification to install manufactured homes in a state subject to the HUD-administered installation program; or

(ii) Provide a written explanation of why HUD deems the applicant to not qualify for an installation license, including on grounds applicable under § 3286.209 for suspension or revocation of an installation license and any other specified evidence of inability to adequately meet the requirements of this part.

(2) An applicant who is denied an installation license under this subpart C, other than for failure to pass the installation license test, may request from HUD an opportunity for a presentation of views, in accordance with subpart D of part 3282 of this chapter, for the purpose of establishing the applicant's qualifications to obtain an installation license.

(g) *Assignment of license prohibited.* An installation license issued under this part may not be transferred, assigned, or pledged to another entity or individual.

§ 3286.209 Denial, suspension, or revocation of installation license.

(a) *Oversight.* The Secretary may make a continuing evaluation of the manner in which each licensed installer is carrying out his or her responsibilities under this subpart C.

(b) *Denial, suspension, or revocation.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may deny, suspend, or revoke an installation license under this part. An installation license may be denied, suspended, or revoked for, among other things:

(1) Providing false records or information to any party;

(2) Refusing to submit information that the Secretary requires to be submitted;

(3) Failure to comply with applicable requirements of parts 3285, 3286, or 3288 of this chapter;

(4) Failure to take appropriate actions upon a failed inspection, as provided in § 3286.509;

(5) Fraudulently obtaining or attempting to obtain an installation license, or fraudulently or deceptively using an installation license;

(6) Using or attempting to use an expired, suspended, or revoked installation license;

(7) Violating state or federal laws that relate to the fitness and qualification or

ability of the applicant to install homes; or

(8) Engaging in poor conduct or workmanship as evidenced by one or more of the following:

(i) Installing one or more homes that fail to meet the requirements of § 3286.107;

(ii) An unsatisfied judgment in favor of a consumer;

(iii) Repeatedly engaging in fraud, deception, misrepresentation, or knowing omissions of material facts relating to installation contracts;

(iv) Having a similar state installation license or certification denied, suspended, or revoked;

(v) Having the renewal of a similar state installation license or certification denied for any cause other than failure to pay a renewal fee; or

(vi) Failure to maintain the surety bond or insurance required by § 3286.205(d).

(c) *Other criteria.* In deciding whether to suspend or revoke an installation license, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and siting of manufactured homes are not unduly disrupted.

(d) *Reinstating an installation license.* An installer whose installation license has been denied, suspended, or revoked may submit a new application in accordance with this subpart C. Installers whose installation licenses have been suspended may also reinstate their installation licenses in any manner provided under the terms of their suspensions.

§ 3286.211 Expiration and renewal of installation licenses.

(a) *Expiration.* Each installation license issued or renewed under this subpart C will expire 3 years after the date of its issuance or renewal.

(b) *Renewal.* An application for the renewal of an installation license must include the information required by, and must be submitted to, HUD in accordance with § 3286.207, and must be submitted at least 60 days before the date the license expires. Any person applying for a license renewal after the date the license expires must apply for a new installation license following the requirements established under this subpart C for application for an initial installation license.

Subpart D—Training of Installers in HUD-Administered States

§ 3286.301 Purpose.

The purpose of this subpart D is to establish the requirements for a person

to qualify to provide the training required under subpart C of this part. This training is required for manufactured home installers who want to be licensed in accordance with the HUD-administered installation program.

§ 3286.303 Responsibilities of qualified trainers.

(a) *Curriculum and hours.* In providing training to installers for the purpose of qualifying installers under the HUD-administered installation program, qualified trainers must adequately address the curriculum and instruction-time requirements established in subparts C and D of this part.

(b) *Attendance records.* Qualified trainers must maintain records of the times, locations, names of attendees at each session, and content of all courses offered. When an attendee misses a significant portion of any training session, the trainer must assure that the attendee makes up the missed portion of the instruction.

(c) *Certificates of completion of training.* Qualified trainers must provide certificates of completion to course attendees that indicate the level of compliance with the applicable curriculum and time requirements under subparts C and D of this part.

(d) *Record retention.* All records maintained by trainers and continuing education providers must be retained for 3 years, and must be made available to HUD upon request.

(e) *Testing of installers.* Qualified trainers may be authorized to administer the installation license testing required for initial licensing of installers, as set forth in § 3286.205(c).

§ 3286.305 Installation trainer criteria.

(a) *Trainer qualification required.* (1) All classes that provide manufactured home installation education classes used to satisfy the requirements for the initial issuance and renewal of installation licenses under subpart C of this part must be taught by trainers who are registered with HUD as qualified trainers. In order to register with HUD as a qualified trainer, a person must meet the experience requirements of this section.

(2) Any entity other than a natural person may also provide initial training and continuing education, as long as such entity establishes its qualification as a trainer by providing evidence and assurance that the entity's individual trainers meet the requirements of this section.

(b) *Experience prerequisites.* In order to qualify as a trainer, an individual or other training entity must provide to

HUD evidence that each individual who will be responsible for providing training:

(1) Has a minimum of 3,600 hours of experience in one or more of the following:

(i) As a supervisor of manufactured home installations;

(ii) As a supervisor in the building construction industry;

(iii) In design work related to the building construction industry; or

(2) Has completed a 2-year educational program in a construction-related field.

(c) *Certification of curriculum.* In order to register as a qualified trainer, an individual or other training entity must submit to HUD certification that training provided in accordance with this subpart D will meet the curriculum requirements established in § 3286.308 or § 3286.309, as applicable.

§ 3286.307 Process for obtaining trainer's qualification.

(a) *Where to apply.* An applicant for qualification as a trainer must provide the applicant's legal name, address, and telephone number to HUD. The application, with all required information, must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington DC 20410-8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the URL of the Web site is <http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm>, and the toll-free telephone number to contact the Office of Manufactured Housing Programs is 1-800-927-2891, extension 57.

(b) *Proof of experience.* (1) Every individual applicant for initial qualification as a trainer must submit verification of the experience required in § 3286.305. This verification may be in the form of statements by past or present employers or a self-certification that the applicant meets those experience requirements, but HUD may contact the applicant for additional verification at any time. The applicant must also provide to HUD employment information relevant to the applicant's experience as a trainer, including the dates and type of such employment. A trainer who is licensed, or otherwise certified, to provide manufactured home installation training in a state with a qualifying installation program may seek an exemption from the experience requirement by submitting proof of such license or other certification. An individual who applies for renewal qualification as a trainer is not required

to submit additional proof of experience.

(2) An entity that seeks to be designated as a qualified trainer must provide evidence and assurance that the entity's individual trainers meet the experience requirements in § 3286.305.

(c) *Other qualification information.*

(1) An applicant for initial or renewal qualification as a trainer must submit to HUD a list of all states in which the applicant has had a similar training qualification revoked, suspended, or denied.

(2) An applicant also must submit to HUD a certification that training provided in accordance with this subpart D will meet the curriculum requirements established in § 3286.308 or § 3286.309, as applicable.

(d) *Confirmation or denial of qualification.* (1) When HUD confirms that an applicant has met the experience and curriculum requirements in this section, HUD will either:

(i) Provide to the applicant a written confirmation that the applicant is a qualified trainer under this part, and will add the applicant's name to a list maintained by HUD of qualified trainers; or

(ii) Provide a written explanation of why HUD deems the applicant to not qualify as a trainer, including on grounds applicable under § 3286.311 for suspension or revocation of a qualification and any other specified evidence of inability to meet the requirements of this part.

(2) An applicant whose qualification is denied by HUD may request an opportunity for a presentation of views, in accordance with subpart D of part 3282 of this chapter, for the purpose of establishing the applicant's qualifications to be a qualified trainer or the adequacy of any training curriculum that is challenged by HUD.

(e) *Assignment of qualification prohibited.* A qualification issued under this subpart D may not be transferred, assigned, or pledged to another entity or individual.

§ 3286.308 Training curriculum.

(a) *Curriculum for initial installer licensing.* The training provided by qualified trainers to installers to meet the initial requirements of the HUD-administered installation program must include at least 12 hours of training, at least 4 hours of which must consist of training on the federal installation standards in part 3285 of this chapter and the installation program regulations in this part. The curriculum must include, at a minimum, training in the following areas:

(1) An overview of the Act and the general regulatory structure of the HUD manufactured housing program;

(2) An overview of the manufactured home installation standards and regulations established in parts 3285 and 3286 of this chapter, and specific instruction including:

- (i) Preinstallation considerations;
- (ii) Site preparation;
- (iii) Foundations;
- (iv) Anchorage against wind;
- (v) Optional features, including comfort cooling systems;
- (vi) Ductwork and plumbing and fuel supply systems;
- (vii) Electrical systems; and
- (viii) Exterior and interior close-up work;

(3) An overview of the construction and safety standards and regulations found in parts 3280 and 3282 of this chapter;

(4) Licensing requirements applicable to installers;

(5) Installer responsibilities for correction of improper installation, including installer obligations under applicable state and HUD manufactured housing dispute resolution programs;

(6) Inspection requirements and procedures;

(7) Problem-reporting mechanisms;

(8) Operational checks and adjustments; and

(9) Penalties for any person's failure to comply with the requirements of this part 3286 and parts 3285 and 3288 of this chapter.

(b) *Updating curriculum.* Qualified trainers must revise and modify course curriculum as needed to include, at a minimum, any relevant modifications to the Act or the implementing standards and regulations in this chapter, as well as to provide any training further mandated by HUD.

§ 3286.309 Continuing education—trainers and curriculum.

(a) *HUD-mandated elements.* Only qualified trainers are permitted to provide any training on particular subject areas that are required by HUD to be an element of the continuing education requirement set out in § 3286.205(b)(2) for the renewal of an installer's license. In implementing this requirement, HUD will:

(1) Establish the minimum number of hours and the required curriculum for such subject areas, according to experience with the program and changes in program requirements; and

(2) Provide information about the hours and curriculum directly to qualified trainers and licensed installers, or through general publication of the information.

(b) *Other training.* (1) The remainder of the 8 hours required to meet the continuing education requirement may be met through training provided either by qualified trainers or by any combination of the following:

- (i) Accredited educational institutions, including community colleges and universities;
- (ii) A provider of continuing education units who is certified by the International Association for Continuing Education and Training;
- (iii) Agencies at any level of government; and
- (iv) State or national professional associations.

(2) The curriculum for the remainder of the 8 hours of continuing education training must relate to any aspect of manufactured home installation or construction, or to the general fields of building construction or contracting.

§ 3286.311 Suspension or revocation of trainer's qualification.

(a) *Oversight.* The Secretary may make a continuing evaluation of the manner in which each qualified trainer is carrying out the trainer's responsibilities under this subpart D.

(b) *Suspension or revocation of qualification.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may suspend or revoke a trainer's qualification under this part. A trainer's qualification may be suspended or revoked for cause, which may include:

- (1) Providing false records or information to HUD;
- (2) Refusing to submit information required to be submitted by the Secretary in accordance with the Act;
- (3) Certifying, or improperly assisting certification of, a person as having met the training requirements established in this part when that person has not completed the required training;
- (4) Failing to appropriately supervise installation training that is used to meet the requirements of this part and that is provided by other persons; and
- (5) Any other failures to comply with the requirements of this part.

(c) *Other criteria.* In deciding whether to suspend or revoke a trainer's qualification, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and siting of manufactured homes are not unduly disrupted.

(d) *Reinstating qualification.* A trainer whose qualification has been suspended or revoked may submit a new application to be qualified in accordance with this subpart D no

sooner than 6 months after the date of suspension or revocation. A trainer whose qualification has been suspended may also reinstate the qualification in any manner provided under the terms of the suspension.

§ 3286.313 Expiration and renewal of trainer qualification.

(a) *Expiration.* Each notice of qualification issued or renewed under this subpart D will expire 5 years after the date of its issuance or renewal.

(b) *Renewal.* An application for the renewal of a trainer qualification must be submitted to HUD in accordance with § 3286.307, and must be submitted at least 60 days before the date the trainer's term of qualification expires. Any person applying for a qualification renewal after the date the qualification expires must apply for a new qualification, following the requirements established under this subpart D for application for initial qualification as an installation trainer.

Subpart E—Installer Responsibilities of Installation in HUD-Administered States

§ 3286.401 Purpose.

The purpose of this subpart E is to set out the responsibilities of the installer who is accountable for the installation of a manufactured home in compliance with the requirements of the HUD-administered installation program.

§ 3286.403 Licensing requirements.

An installer of manufactured homes must comply with the licensing requirements set forth in subpart C of this part.

§ 3286.405 Installation suitability.

(a) *Site appropriateness.* Before installing a manufactured home at any site, the installer must assure that the site is suitable for installing the home by verifying that:

- (1) The site is accessible;
- (2) The site is appropriate for the foundation or support and stabilization system that is to be used to install the home in accordance with the federal installation standards or alternative requirements in part 3285 of this chapter;
- (3) The data plate required by § 3280.5 of this chapter is affixed to the home, that the home is designed for the roof load, wind load, and thermal zones that are applicable to the intended site; and
- (4) The installation site is protected from surface run-off and can be graded in accordance with part 3285.

(b) *Installer notification of unsuitable site.* If the installer determines that the

home cannot be installed properly at the site, the installer must:

(1) Notify the purchaser or other person with whom the installer contracted for the installation work, identifying the reasons why the site is unsuitable;

(2) Notify the retailer that contracted with the purchaser for the sale of the home, identifying the reasons why the site is unsuitable;

(3) Notify HUD, identifying the reasons why the site is unsuitable;

(4) Decline to install the home until the site and the home are both verified by the installer as suitable for the site under this section; and

(5) Ensure that all unique characteristics of the site have been fully addressed.

(c) *Installer notification of failures to comply with the construction and safety standards.* If the installer notices and recognizes failures to comply with the construction and safety standards in part 3280 of this chapter prior to beginning any installation work, during the course of the installation work, or after the installation work is complete, the installer must notify the manufacturer and retailer of each failure to comply.

(d) *Retailer notification.* The retailer must provide a copy of the notification received in paragraphs (b) and (c) of this section to any subsequent installer.

§ 3286.407 Supervising work of crew.

The installer will be responsible for the work performed by each person engaged to perform installation tasks on a manufactured home, in accordance with the HUD-administered installation program.

§ 3286.409 Obtaining inspection.

(a) *Inspection obligations.* Ten business days prior to the completion of installation, the installer must arrange for a third-party inspection of the work performed, in accordance with subpart F of this part, unless the installer and retailer who contracted with the purchaser for the sale of the home agree, in writing, that during the same time period the retailer will arrange for the inspection. Such inspection must be performed as soon as practicable by an inspector who meets the qualifications set forth in § 3286.511. The scope of the inspections that are required to be performed is addressed in § 3286.505.

(b) *Contract rights not affected.* Failure to arrange for an inspection of a home within 5 business days will not affect the validity or enforceability of any sale or contract for the sale of any manufactured home.

(c) *State or local permits.* The licensed installer should obtain all

necessary permits required under state or local laws.

§ 3286.411 Certifying installation.

(a) *Certification required.* When the installation work is complete, a licensed installer must visit the jobsite and certify that:

(1) The manufactured home has been installed in accordance with:

(i) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary directly or through review by the DAPIA; or

(ii) An installation design and instructions that have been prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

(2) The installation of the home has been inspected as required by § 3286.503, and an inspector has verified the installation as meeting the requirements of this part.

(3) All installation defects brought to the installer's attention have been corrected.

(b) *Recipients of certification.* The installer must provide a signed copy of its certification to the retailer that contracted with the purchaser or lessee for the sale or lease of the home, and to the purchaser or other person with whom the installer contracted for the installation work.

§ 3286.413 Recordkeeping.

(a) *Records to be retained.* The installer must retain:

(1) A record of the name and address of the purchaser or other person with whom the installer contracted for the installation work and the address of the home installed;

(2) A copy of the contract pursuant to which the installer performed the installation work;

(3) A copy of any notice from an inspector disapproving the installation work;

(4) A copy of the qualified inspector's verification of the installation work;

(5) A copy of the installer's certification of completion of installation in accordance with the requirements of this part; and

(6) A copy of foundation designs used to install the home, if different from the designs provided by the manufacturer, including evidence that the foundation designs and instructions were certified by a professional engineer or registered architect, including the name, address,

and telephone number of the professional engineer or architect certifying the designs.

(b) *Retention requirement.* The records listed in paragraph (a) of this section must be maintained for a period of 3 years after the installer certifies completion of installation.

Subpart F—Inspection of Installations in HUD-Administered States

§ 3286.501 Purpose.

The purpose of this subpart F is to provide additional detail about the inspection that must be performed by a qualified third-party inspector before the installation of a manufactured home may be verified by the inspector and certified by the installer under the HUD-administered installation program.

§ 3286.503 Inspection required.

(a) *Timing of requirements.* Ten business days prior to the completion of the installation of each manufactured home, the installer must arrange for a third-party inspection of the work performed, unless the installer and retailer who contracted with the purchaser for the sale of the home agree, in writing, that during the same time period the retailer will arrange for the inspection. Such inspection must be performed as soon as practicable by an inspector that meets the qualifications set out in § 3286.511. The scope of the inspections that are required to be performed is addressed in § 3286.505.

(b) *Disclosure of requirement.* At the time of sale, the retailer must disclose to the purchaser, in a manner provided in § 3286.7, that the manufactured home must be installed in accordance with applicable federal and state law, including requirements for a third-party inspection of the installation. If the cost of inspection of the home's installation is not included in the sales price of the home, the sales contract must include a clear disclosure about whether the purchaser will be charged separately for the inspection of the home's installation and the amount of such charge.

(c) *Providing instructions to inspectors.* Installation instructions must be made available to the inspector at the installation site by the installer.

§ 3286.505 Minimum elements to be inspected.

The installation of every manufactured home that is subject to the HUD-administered installation program is required to be inspected for each of the installation elements included in a checklist. The checklist must include assurance that each of the following elements complies with the

requirements of part 3285 of this chapter:

- (a) Site location with respect to home design and construction;
- (b) Consideration of site-specific conditions;
- (c) Site preparation and grading for drainage;
- (d) Foundation construction;
- (e) Anchorage;
- (f) Installation of optional features;
- (g) Completion of ductwork, plumbing, and fuel supply systems;
- (h) Electrical systems;
- (i) Exterior and interior close-up;
- (j) Skirting, if installed; and
- (k) Completion of operational checks and adjustments.

§ 3286.507 Verifying installation.

(a) *Verification by inspector.* When an inspector is satisfied that the manufactured home has been installed in accordance with the requirements of this part, the inspector must provide verification of the installation in writing and return the evidence of such verification to the installer.

(b) *Certification by installer.* (1) Once an installation has been inspected and verified, the installer is permitted to certify the installation as provided in § 3286.111. The installer must provide a signed copy of the certification to:

- (i) The retailer that contracted with the purchaser for the sale of the home;
- (ii) The purchaser; and
- (iii) Any other person that contracted to obtain the services of the installer for the installation work on the home.

(2) The installer must retain records in accordance with § 3286.413.

§ 3286.509 Reinspection upon failure to pass.

(a) *Procedures for failed inspection.* If the inspector cannot verify the installation of the manufactured home, the inspector must immediately notify the installer of any failures to comply with the installation standards and explain the reasons why the inspector cannot issue verification that the installation complies with the requirements of this part. After the installation is corrected, it must be reinspected before verification can be issued.

(b) *Cost of reinspection.* If there is any cost for the reinspection of an installation that an inspector has refused to verify, that cost must be paid by the installer or the retailer and, absent a written agreement with the purchaser that specifically states otherwise, that cost cannot be charged to the purchaser of the manufactured home.

§ 3286.511 Inspector qualifications.

(a) *Qualifications.* Any individual or entity who meets at least one of the following qualifications is permitted to review the work and verify the installation of a manufactured home that is subject to the requirements of the HUD-administered installation program:

- (1) A manufactured home or residential building inspector employed by the local authority having jurisdiction over the site of the home, provided that the jurisdiction has a residential code enforcement program;
- (2) A professional engineer;
- (3) A registered architect;
- (4) A HUD-accepted Production Inspection Primary Inspection Agency (IPIA) or a Design Approval Primary Inspection Agency (DAPIA); or
- (5) An International Code Council certified inspector.

(b) *Independence required.* The inspector must be independent of the manufacturer, the retailer, the installer, and any other person that has a monetary interest, other than collection of an inspection fee, in the completion of the sale of the home to the purchaser.

(c) *Suspension or revocation of inspection authority.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may suspend or revoke an inspector's authority to inspect manufactured home installations under this part in HUD-administered states. An inspector's authority may be suspended or revoked for cause. In deciding whether to suspend or revoke an inspector's authority to conduct such installation inspections, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and siting of manufactured homes are not unduly disrupted.

(d) *Reinstating inspection authority.* An inspector whose authority to inspect manufactured home installations in HUD-administered states has been suspended or revoked under this section may apply for reauthorization by contacting: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410-8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs at the toll-free telephone number 1-800-927-2891, extension 57.

Subpart G—Retailer Responsibilities in HUD-Administered States

§ 3286.601 Purpose.

The purpose of this subpart G is to set out the requirements that apply to a retailer with respect to the federal installation requirements applicable to new manufactured homes that the retailer sells or leases and that will be installed in states that do not have qualifying installation programs. These requirements are in addition to other requirements that apply to retailers of manufactured homes pursuant to other parts of this chapter.

§ 3286.603 At or before sale.

(a) *Before contract.* (1) The retailer is required to support each transportable section of a manufactured home that is temporarily or permanently located on a site used by a retailer in accordance with the manufacturer's instructions.

(2) Before a purchaser or lessee signs a contract of sale or lease for a manufactured home, the retailer must:

- (i) Provide the purchaser or lessee with a copy of the consumer disclosure statement required in § 3286.7(b); and
- (ii) Verify that the wind, thermal, and roof load zones of the home being purchased or leased are appropriate for the site where the purchaser or lessee plans to install the home for occupancy; and

(iii) If the cost of inspection of the home's installation is not included in the sales price of the home, provide the disclosure required in § 3286.7(b).

(b) *Occupancy site not known.* When at the time of purchase the purchaser does not know the locale for the initial siting of the home for occupancy, the retailer must advise the purchaser that:

(1) The home was designed and constructed for specific wind, thermal, and roof load zones; and

(2) If the home is sited in a different zone, the home may not pass the required installation inspection because the home will have been installed in a manner that would take it out of compliance with the construction and safety standards in part 3280 of this chapter.

(c) *Verification of installer license.* When the retailer or manufacturer agrees to provide any set up in connection with the sale or lease of the home, the retailer or manufacturer must verify that the installer is licensed in accordance with these regulations.

§ 3286.605 After sale.

(a) *Tracking installation information.* The retailer is responsible for providing to HUD the information required pursuant to § 3286.113.

(b) *Other tracking and compliance requirements.* The retailer continues to be responsible for compliance with the tracking and compliance requirements set out in subpart F of part 3282 of this chapter, which are related to HUD construction and safety standards.

§ 3286.607 Recordkeeping.

The retailer is responsible for the reporting and recordkeeping requirements under § 3286.113.

Subpart H—Oversight and Enforcement in HUD-Administered States

§ 3286.701 Purpose.

The purpose of this subpart H is to set out the mechanisms by which manufacturers, retailers, distributors, installers, and installation inspectors will be held accountable for assuring the appropriate installation of manufactured homes. The requirements in subpart A of this part are applicable in all states, the requirements in subparts B through H are applicable in states where the HUD-administered installation program operates, and the requirements in subpart I are applicable in states with qualifying installation programs. It is the policy of the Secretary, regarding manufactured home installation program enforcement matters, to cooperate with state or local agencies having authority to regulate the installation of manufactured homes. In addition to actions expressly recognized under this subpart H and other provisions in this part, however, HUD may take any actions authorized by the Act in order to oversee the system established by the regulations in this part.

§ 3286.703 Failure to comply.

(a) *Penalties and injunctive relief.* Failure to comply with the requirements of this part is a prohibited act under section 610(a)(7) of the Act, 42 U.S.C. 5409(a). Any person who fails to comply with the requirements of this part is subject to civil and criminal penalties, and to actions for injunctive relief, in accordance with sections 611 and 612 of the Act, 42 U.S.C. 5410 and 5411.

(b) *Presentation of views.* When practicable, the Secretary will provide notice to any person against whom an action for injunctive relief is contemplated and will afford such person an opportunity to request a presentation of views. The procedures set forth in §§ 3282.152 through 3282.154 of this chapter shall apply to each request to present views and to each presentation of views authorized in accordance with this section.

(c) *Investigations.* The procedures for investigations and investigational proceedings are set forth in part 3800 of this chapter.

§ 3286.705 Applicability of dispute resolution program.

(a) *Generally.* Regardless of any action taken under § 3286.703, for any defect in a manufactured home that is reported during the one-year period beginning on the date of installation, as specified in § 3286.115, any rights and remedies available under the HUD dispute resolution program, as implemented in part 3288 of this chapter, continue to apply as provided in that part.

(b) *Waiver of rights invalid.* Any provision of a contract or agreement entered into by a manufactured home purchaser that seeks to waive any recourse to either HUD or a state dispute resolution program is void.

Subpart I—State Programs

§ 3286.801 Purpose.

The purpose of this subpart I is to establish the requirements that must be met by a state to implement and administer its own installation program, either as part of its approved state plan or under this subpart, in such a way that the state would not be covered by the HUD-administered installation program. This subpart I also establishes the procedure for determining whether a state installation program meets the requirements of the Act for a qualifying installation program that will operate in lieu of the HUD-administered installation program.

§ 3286.803 State qualifying installation programs.

(a) *Qualifying installation program supersedes.* The HUD-administered installation program will not be implemented in any state that is identified as fully or conditionally accepted under the requirements and procedures of this subpart I or in accordance with part 3282 of this chapter.

(b) *Minimum elements.* To be accepted as a fully qualifying installation program, a state installation program must include the following elements:

(1) Installation standards that meet or exceed the requirements of § 3286.107(a) and that apply to every initial installation of a new manufactured home within the state;

(2) The training of manufactured home installers;

(3) The licensing of, or other method of certifying or approving, manufactured home installers to perform the initial

installations of new manufactured homes in the state;

(4) A method for inspecting the initial installations of new manufactured homes in the state that is implemented and used to hold installers responsible for the work they perform; and

(5) Provision of adequate funding and personnel to administer the state installation program.

(c) *Conditional acceptance.* (1) A state installation program that meets the minimum requirements set forth under paragraphs (b)(1), (4), and (5) of this section may be conditionally accepted by the Secretary if the state provides assurances deemed adequate by the Secretary that the state is moving to meet all of the requirements for full acceptance. If the Secretary conditionally accepts a state's installation program, the Secretary will provide to the state an explanation of what is necessary to obtain full acceptance.

(2) A conditionally accepted state will be permitted to implement its own installation program in lieu of the HUD-administered program for a period of not more than 3 years. The Secretary may for good cause grant an extension of conditional approval upon petition by the state.

(d) *Limited exemptions from requirements.* A state installation program may be accepted by the Secretary as a qualifying installation program if the state can demonstrate that it lacks legal authority, as a matter of federal law, to impose the minimum requirements set forth under paragraph (b) of this section in certain geographic areas of the state, but that the minimum requirements do apply in all other geographic areas of the state.

§ 3286.805 Procedures for identification as qualified installation program.

(a) *Submission of certification.* (1) A state seeking identification as having a qualified installation program must submit a completed State Installation Program Certification form to the Secretary for review and acceptance and indicate if the installation program will be part of its approved state plan in accordance with part 3282 of this chapter.

(2) A state must include a qualified installation program as part of any state plan application submitted for approval under § 3282.302 of this chapter, if the state does not have a fully or conditionally approved state plan in effect at the time of submission of the state plan application. In all other cases, a qualified installation program is permitted, but is not required, to be submitted as a part of a state plan

approved in accordance with § 3282.305 of this chapter.

(b) *HUD review and action.* (1) The Secretary will review the State Installation Program Certification form submitted by a state and may request that the state submit additional information as necessary. Unless the Secretary has contacted the state for additional information or has conditionally accepted or rejected the state installation program, the state installation program will be considered to have been accepted by the Secretary as a fully qualifying installation program as of the earlier of:

(i) Ninety days after the Secretary receives the state's completed State Installation Program Certification form; or

(ii) The date that the Secretary issues notification to the state of its full acceptance.

(2) A notice of full or conditional acceptance will include the effective date of acceptance.

(c) *Rejection of state installation program.* (1) If the Secretary intends to reject a state's installation program, the Secretary will provide to the state an explanation of what is necessary to obtain full or conditional acceptance. The state will be given 90 days from the date the Secretary provides such explanation to submit a revised State Installation Program Certification form.

(2) If the Secretary decides that any revised State Installation Program Certification form is inadequate, or if the state fails to submit a revised form within the 90-day period or otherwise indicates that it does not intend to change its form, the Secretary will notify the state that its installation program is not accepted.

(3) A state whose State Installation Program Certification form is rejected has a right to a presentation of views on the rejection using the procedures set forth under subpart D of part 3282 of this chapter. The state's request for a presentation of views must be submitted to the Secretary within 60 days after the Secretary has provided notification that the state's installation program has been rejected.

§ 3286.807 Recertification required.

(a) *Recertification.* To maintain its status as a qualified installation program when the installation program is not part of the approved state plan in accordance with part 3282 of this chapter, a state must submit a new State Installation Program Certification form to the Secretary for review and action as follows:

(1) Every 5 years after the state's most recent certification as a qualified installation program; and

(2) Whenever there is a change to the state's installation program or a change in the HUD requirements applicable to qualifying installation programs such that the state's installation program no longer complies with the minimum requirements set forth in § 3286.803(b), regardless of when the state's next regular recertification of its installation program would be due.

(b) *Due date of recertification.* (1) A state's recertification required in paragraph (a) of this section must be filed within 90 days of, as applicable:

(i) The 5-year anniversary of the effective date of the Secretary's acceptance of the state's most recent certification as a qualified installation program; and

(ii) The effective date of the state or HUD action that makes a significant change to the state's installation program.

(2) Upon petition by the state, the Secretary may for good cause grant an extension of the deadline for recertification.

(c) *Failure to Recertify.* (1) A state whose certification of its installation program, when the installation program is not part of the approved state plan in accordance with part 3282 of this chapter, has been accepted by the Secretary is permitted to administer its installation program in lieu of the HUD-administered installation program until the effective date of a notification by the Secretary that the state's certification of its installation program is no longer approved.

(2) A state whose recertification of its installation program is rejected by the Secretary has a right to a presentation of views on the rejection using the procedures set forth under subpart D of part 3282 of this chapter. The state's request for a presentation of views must be submitted to the Secretary within 60 days after the Secretary has provided notification that the state's recertification of its installation program has been rejected.

§ 3286.809 Withdrawal of qualifying installation program status.

(a) *Voluntary withdrawal.* Any state that intends to withdraw from its responsibilities to administer a qualifying installation program should provide the Secretary with a minimum of 90 days notice.

(b) *Involuntary withdrawal.* Whenever the Secretary finds, after affording notice and an opportunity for a hearing

in accordance with subpart D of part 3282 of this chapter, that a state installation program fails to comply substantially with any provision of the installation program requirements or that the state program has become inadequate, the Secretary will notify the state of withdrawal of acceptance or conditional acceptance of the state installation program. The HUD-administered installation program will begin to operate in such state at such time as the Secretary establishes in issuing the finding.

§ 3286.811 Effect on other manufactured housing program requirements.

A state with a qualifying installation program will operate in lieu of HUD with respect to only the installation program established under subparts B through H of this part. No state may permit its installation program, even if it is a qualified installation program under this part, to supersede the requirements applicable to HUD's Manufactured Housing Construction and Safety Standards and enforcement programs. Regardless of whether a state has a qualified installation program:

(a) *Construction and safety standards.* Any responsibilities, rights, and remedies applicable under the Manufactured Home Construction and Safety Standards Act in part 3280 of this chapter and the Manufactured Home Procedural and Enforcement Regulations in part 3282 of this chapter continue to apply as provided in those parts; and

(b) *Dispute resolution.* For any defect in a manufactured home that is reported during the one-year period beginning on the date of installation defined in § 3286.115, any responsibilities, rights, and remedies applicable under the HUD dispute resolution program as implemented in part 3288 of this chapter continue to apply as provided in that part.

§ 3286.813 Inclusion in state plan.

If a state installation program is included in a state plan approved in accordance with § 3282.302 of this chapter, the state installation program is subject to all of the requirements for such a state plan, including annual review by HUD.

Dated: June 5, 2008.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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