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 3288, 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 3288, 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 § 3288.205(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 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.

BILLING CODE 4210–67–P

APPENDIX (This appendix will not be codified in the CFR)

DISPUTE RESOLUTION CERTIFICATION

Pursuant to 42 U.S.C. 5422(g) (section 623(g) of the National Manufactured Housing Construction and Safety Standards Act of 1974), HUD will implement a dispute resolution program in each state that does not have a program meeting the requirements of 42 U.S.C. 5422(c)(12). This Dispute Resolution Certification Form will be used for states to self-certify the adequacy of the state's dispute resolution program and for HUD to review that self-certification. Acceptance of your state's program will be determined by reviewing whether the response to Part II of this form complies with the requirements of 24 CFR 3288.205. Your answers to the following questions are requested for a proper review. Please answer each question concisely and certify the responses as full and accurate at the end of the form. Use additional pages if necessary.

Submit completed form to: Office of Manufactured Housing Programs
Department of Housing and Urban Development
Room ____
451 Seventh Street, SW
Washington, DC 20410

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-1000

Part I

Name, address, telephone number, and email address of the state agency responsible for administering the dispute resolution program:

Name and title of the administrator or director in charge of the state agency:

Name, title, address, telephone number, and email address of the person responsible for administering the dispute resolution program:

Part II

Indicate whether the state dispute resolution program being administered meets the following minimum requirements:

1. Provides for the timely resolution of disputes regarding responsibility for correction and repair of defects in manufactured homes involving manufacturers, retailers, and installers?
   Yes _____ No _____

2. Provides for the issuance of appropriate orders for the correction and repair of defects in the manufactured homes? Yes _____ No _____

3. Provides a coverage period for disputes involving defects that are reported within a minimum of one year from the date beginning on the date of the first installation? Yes _____ No _____

4. Provides adequate funding and personnel to carry out the program? Yes _____ No _____

Part III – Additional Information

1. Describe the state's dispute resolution program.

2. Describe how disputes regarding responsibility for correction and repair of defects in manufactured homes involving retailers, manufacturers, or installers are resolved.

3. Describe how the state's dispute resolution program addresses defects as defined in 24 CFR Part 3288, and any special requirements applicable to defects that involve an unreasonable risk of injury or death to occupants of a manufactured home or significant loss or damage to valuable personal property.

4. Explain the state's requirements for providing timely resolution of disputes.

5. What is the time period for initiating a dispute resolution process?

6. Describe the appropriate orders issued as part of the state's dispute resolution program.

7. Describe the staff and funding utilized by the state's dispute resolution program.

Part IV

COMPLIANCE CERTIFICATION

I hereby certify to the best of my knowledge that the answers given are truthful, accurate, and complete.

Date: _____ (Signature)

By: _____

(Print or type name and official capacity) _____

_____ (State)

[FR Doc. 07–2363 Filed 5–11–07; 8:45 am]
BILLING CODE 4210–67–C