

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3284

[Docket No. FR-4868-P-01]

RIN 2502-A116

Manufactured Housing Program: Minimum Payments to States

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the minimum payments to states approved as State Administrative Agencies under the National Manufactured Housing Construction and Safety Standards Act of 1974 in order to provide for a more equitable guarantee of minimum funding from the Department's appropriation for this program and to avoid the differing per-unit payments to the states that have occurred under the present rule. This rule would base the minimum payments to states upon their participation in production or siting of new manufactured homes.

DATES: *Comment Due Date:* March 31, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone (202) 708-6401. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

On August 13, 2002, HUD published a final rule, at 67 FR 52832, on the Manufactured Housing Program Fee. The August 13, 2002 rule modified the amount of the fee collected from manufacturers to fund HUD's

responsibilities under the program and ensured that states would receive at least a steady level of funding from the fees collected by HUD. Based on program experience, HUD is proposing to amend 24 CFR 3284.10, entitled, "Payments to states." At the same time, the Department will submit to the Manufactured Housing Consensus Committee (MHCC) a draft proposal to amend 24 CFR 3282.307 to increase the amounts paid out of fee collections to approved and conditionally approved states according to an established formula set forth in that section. In accordance with section 604(b) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) (the Act), the MHCC will have 120 days to comment on the proposed increase before it is published as a proposed rule for public comment.

Minimum Payments

The rule published August 13, 2002, in part, prescribed minimum payments to each state participating in the manufactured housing program as a State Administrative Agency under regulations implementing section 620(e)(3) of the Act (42 U.S.C. 5419(e)(3)). Section 620(e)(3) states that "the Secretary shall continue to fund the states having approved state plans in the amounts which are not less than the allocated amounts, based on the fee distribution system in effect on [December 26, 2000]."

In the previous rule, the Department implemented that statutory requirement by establishing the yearly payment to the approved states at not less than the amount paid to that state for the 12 months ending on December 26, 2000. That minimum amount was based upon payments that had been made when production levels were believed to be low enough to establish a reasonable minimum payment to each approved state. The Department had hoped that implementing the requirement in this way would provide additional certainty to those states in their budget cycles.

However, production and sales of new homes in some states have continued to decline to significantly lower levels than during the year 2000. As a result, the August 2002 rule would now require inequitable payments among approved states, in addition to inequitable payments between approved states and other states. Under that rule, some states would receive more funding than other states for each unit of manufactured housing produced or sited in those states. For example, State A—a fully approved state in which the production and siting level has decreased by 30

percent since the current rule's base year of 2000 (the levels in some states have decreased by more)—may, in effect, receive a total of \$17.00 or more per unit sited and produced in State A, because that payment would represent a pro rata portion of the inflated base year amount. But State B—in which production and siting level has remained steady or has increased, or which is not an approved state—will still be paid a total of \$11.50 per unit sited and produced in State B, as prescribed by 24 CFR 3282.307.

Although some inequity might have been foreseen during the formulation of the August 2002 rule, the Department was not expecting the imbalances that have now resulted nor did any commenter raise the concern. Therefore, in order to ensure a more equitable distribution of funds, the Department has determined that it should implement the statutory requirement in a way that is more directly based on the distribution system in effect at the time of the amendments to the Act. The statutory requirements would be implemented in a final rule that would assure that amounts established in the formula used to distribute funds to states (see 24 CFR 3282.307(b)) will not be decreased below their current levels, *i.e.*, \$9 for each transportable section first located within an approved state and \$2.50 for each transportable section produced in an approved state.

The Department also has found that the current rule allows uncertainty about which states are considered approved for purposes of the minimum payment requirement. Conditionally approved states are permitted to participate in the program and carry out their state plans, pursuant to 24 CFR 3282.302(c), but this same section also provides that conditionally approved states shall not be considered approved for all purposes. The Act permits the Department to continue its previous practice of making formula payments to conditionally approved states that are paid using fee collections. See section 620(c) of the Act, (42 U.S.C. 5419(c)), authorizing fee amounts to be used for program activities engaged in by HUD before December 27, 2000. By contrast, the protection provided in the new section 620(e)(3) of the Act—for minimum payments—is a new provision and is applicable only to states having "approved State plans" (42 U.S.C. 5419(e)(3)). This section may appropriately cover only fully approved states, especially in light of the language in § 3282.302(c) that provides that conditional approval allows a state to participate in the program but does not constitute approval of a state plan.

As the Department proposes to amend the rule, all states receiving amounts allocated from the fees collected from manufacturers will be paid the same per-unit amounts determined in accordance with the per-unit formula in 24 CFR 3282.307(b). In the event that the formula amounts are changed in the future, however, the proposed revision in 24 CFR 3284.10 would ensure that each fully approved state would be paid not less than \$9 for each transportable section first located within that state and \$2.50 for each transportable section produced in that state. It is not likely that, in the future, HUD would reduce these amounts, which have been in effect for over 10 years and are currently paid to all participating states. Therefore, the proposed approach to revising § 3284.10 builds on the language in § 3282.307(b) that provides for distribution of a portion of the fees among both fully approved and conditionally approved states.

The Department is proposing to revise § 3284.10 to specify that each fully approved state would continue to receive payments that are *no less than*: (1) \$9.00 for each transportable section of new manufactured housing that is first located on the premises of a retailer or purchaser in that state; and (2) \$2.50 for each transportable section of new manufactured housing that is produced in that state. Providing this guarantee to fully approved states complies with both the requirement in section 620(e)(3) of the Act and 24 CFR 3282.302(c). These minimum payments also are consistent with the amounts specified in § 3282.307 for distribution to all participating states, but do not prevent HUD from amending § 3282.307 in any future rulemaking to increase the amounts actually distributed to those states. In fact, in an action that is separate from this rulemaking, HUD will present to the MHCC a draft proposal to amend § 3282.307(b) to increase the amount paid to an approved or conditionally approved state for each transportable section of new manufactured housing that is produced in that state. In accordance with requirements established in section 604(b) of the Act (42 U.S.C. 603(b)), HUD must provide the MHCC 120 days to review and submit comments on the draft proposal to amend § 3282.307 before HUD publishes the proposal in the **Federal Register** for public comment. The ability of HUD to adopt any additional increases in the amounts paid to participating states will depend on HUD receiving appropriated amounts that are sufficient to fund its program responsibilities, including the new

responsibilities for national installation and dispute resolution programs and support of the Manufactured Housing Consensus Committee.

In addition to being more equitable for the participating states, HUD believes, after some experience and upon further consideration, that this proposed method of implementing the new statutory requirement concerning minimum payments to the states would simplify the related administrative burdens of HUD and the states. For many years, HUD and the states have been making and receiving payments based on the manufacturing location and first siting of new homes, pursuant to the provisions in § 3282.307. Payments will continue to be made to all participating states using the same system under which HUD and the states have been operating for years. The proposed revised implementation of the statutory provision on minimum payments would be based on the same methodology used for compliance with § 3282.307; therefore, the revised approach would not require any new payment or accounting structures and would implement the statutory requirement seamlessly.

Finally, by removing the reference to “calendar year,” the revised rule would permit the Department to obligate money due the states from fee collections on the federal fiscal year to which the program is subject for operational authority through the appropriations process. Under the current rule, the payment to the states is calculated on a calendar year basis, and accurate calculation of the unmet balance can only be done after the close of the calendar year. In December 2000, however, the manufactured housing program became subject to the federal government’s annual fiscal year (October through September) appropriations process. Because the two annual schedules—calendar year for payments to states, and fiscal year for program operations—do not coincide, the program’s budgeting and reconciliation processes are complicated unnecessarily, and the potential for inadvertent violations of governmentwide budgeting requirements is increased.

Findings and Certifications

Justification for 30-Day Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, the Department is shortening its usual 60-day public comment period to 30 days for this proposed rule. Because of its experience with the rule

published as final in August 2002, the Department does not expect to receive detailed or numerous comments on this proposed rule. Persons likely to comment on this rule also will be familiar with the underlying requirement because of the recent rulemaking that addressed the same subject. The Department seeks a quick resolution of any changes to the implementation of the statutory requirement concerning minimum payments, which will restore equitable distribution of funds to participating states, simplify the administrative procedures of the states and the Department, and will minimize any nuisance resulting from development of unnecessary accounting structures.

Unfunded Mandates Reform Act

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

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, this rule sets forth fiscal requirements which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act and related federal laws and authorities.

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect only states that participate in the manufactured housing program, and will have a negligible economic impact. Notwithstanding HUD’s determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s program responsibilities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from

publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. 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.

Executive Order 12866, 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 economically significant,

as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500.

List of Subjects in 24 CFR Part 3284

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 3284 as follows:

PART 3284—MANUFACTURED HOUSING PROGRAM FEE

1. The authority citation for 24 CFR Part 3284 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5419, and 5424.

2. Revise § 3284.10 to read as follows:

§ 3284.10 Minimum payments to states.

For each transportable section of each new manufactured housing unit produced or sited in a state that has a state plan fully approved pursuant to § 3282.302 of this chapter, HUD will pay such state a total amount that is the greater of the amount established pursuant to § 3282.307 of this chapter, or the amount determined by adding:

(a) \$9.00, if after leaving the manufacturing plant, the transportable section is first located on the premises of a retailer or purchaser in that state (or \$0, if it is not); and

(b) \$2.50, if the transportable section is produced in a manufacturing plant in that state (or \$0, if it is not).

Dated: January 30, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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