

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280, 3282 and 3288

[Docket No. FR-4813-P-02; HUD-2005-0038]

RIN 2502-AH98

Manufactured Housing Dispute Resolution Program

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a federal manufactured housing 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 one-year period beginning on the date of installation.

DATES: *Comment Due Date:* December 19, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: <http://www.regulations.gov>; or
- The HUD electronic Web site at: <http://www.epa.gov/feddocket>. Follow the link entitled "View Open HUD Dockets." Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (fax) comments are not acceptable. In all cases, communications must refer to the above docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708-3055

(this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at <http://www.epa.gov/feddocket>.

FOR FURTHER INFORMATION CONTACT:

William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, 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 housing 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 (SAA) under HUD's manufactured housing 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 SAA after December 26, 2005, must provide for such a dispute resolution program as part of its plan. Any state that is conditionally or fully approved on December 26, 2005, will not be required to include a dispute resolution program in its state plan as long as the state maintains conditional

or full approval status. Section 623(g)(2) of the Act also requires HUD to implement, beginning on December 27, 2005, a HUD Manufactured Housing Dispute Resolution Program that will meet the above requirements in any state that has not established a program that complies with the Act.

Advance Notice of Proposed Rulemaking

On March 10, 2003 (68 FR 11452), HUD issued an Advance Notice of Proposed Rulemaking (the ANPRM) asking for comments on how the federal manufactured housing dispute resolution program should be structured and implemented. Seven state agencies, several statewide and national manufacturing housing associations, individuals, the Manufactured Housing Consensus Committee (MHCC), and other organizations, such as consumer groups and dispute resolution organizations, submitted comments. References to the comments received on a particular issue are made throughout this preamble.

II. Principle Behind Proposed Rule For the HUD-Administered Program

General

In designing the HUD Manufactured Housing Dispute Resolution Program to operate in HUD-administered states, HUD considered the approaches of existing state dispute resolution programs, examined various dispute resolution processes, and consulted with experts at the Department of Justice. Many commenters, including the MHCC, encouraged the creation of a dispute resolution process that incorporated the widely accepted processes of mediation, negotiation, and arbitration. HUD considered these processes carefully, as well as alternative approaches used in some state programs. HUD proposes the program described below as a way to achieve several goals. First, the dispute resolution program should be based on processes widely accepted by the alternative dispute resolution community and that have been proven to be successful in resolving disputes. Second, the program must be fair and expeditious. Third, the dispute resolution program must be easily accessible to all likely users. Specifically, the program should include homeowners, as well as manufacturers, retailers, and installers that are mentioned in the Act. The proposed program establishes procedures to resolve disputes among manufacturers, retailers, and installers. Although the Act does not require their

participation, HUD views homeowners as an integral part of the dispute resolution process. The MHCC and the majority of commenters favored the participation of homeowners. Virtually all commenters acknowledged a role for the homeowners in initiating the dispute resolution process and the value of homeowner input in the process. In its comments, the MHCC recommended that "Any party to the process (the consumer, manufacturer, retailer or installer) should be permitted to initiate the dispute resolution process." The MHCC also stated that "Consumers are eligible to participate in the process if they desire." Fourth, the program should conserve the resources and expenses of all of the parties and the Department.

The degree to which HUD has authority to use additional approaches to meet this last goal is currently being examined. For example, the MHCC and commenters have recommended that parties that use and receive the benefits of the dispute resolution process in specific cases pay at least a portion of the direct costs associated with the program in those cases. This is an approach used by many states that currently have dispute resolution programs. Such user charges would generally not be intended to cover the purely administrative costs to HUD of implementing the program, but might 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. HUD is currently reviewing this approach and will not introduce a user-fee approach until HUD's authority on the approach is clear. Nevertheless, HUD is requesting comments on the advisability of incorporating such fees in HUD-administered states. If user fees are incorporated, what are appropriate amounts to be paid for what services? Should homeowners be required to pay any fees? If the dispute goes to arbitration, should all fees be paid by the party or parties determined to be responsible for the defect?

For the Federal program, HUD proposes the use of two widely accepted methods of dispute resolution, as well as an opt-out provision that would allow commercial entities an opportunity to resolve disputes outside the federal program. The program would employ elements of mandatory mediation and nonbinding arbitration. Several commenters, including the MHCC, suggested using a combination

of mediation and arbitration for the federal program.

Mediation is a process that uses a neutral party or mediator to facilitate discussion between disputing parties. The primary goal of mediation is to have parties reach a mutually agreeable solution to their dispute. The mediator acts as a guide throughout the process and helps the parties to focus on the issues in order to reach an agreement. The mediator does not have final decision-making authority. Arbitration is an adjudicative process in which a neutral person, or a panel of neutral persons, makes a ruling after considering written evidence, oral argument, or both.

The objective of the dispute resolution program proposed by HUD is to resolve most requests for dispute resolution before arbitration and thereby minimize the cost to parties. HUD expects that a substantial number of potential disputes would be resolved through the Commercial Opt-Out Option. At appropriate times after the federal program is implemented, the Secretary will review the structure of the program and make modifications as necessary, using notice-and-comment rule-making procedures. The Secretary will check for any indication that the program discourages or impedes direct negotiation among the affected parties themselves and, if so, will try to modify the program to avoid this undesirable consequence. The proposed program reflects the Executive Branch's emphasis on utilizing dispute resolution processes to resolve conflicts in a cost-effective and expeditious manner, as well as 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.*).

Relationship With Notification and Correction Requirements

The proposed program is also not inconsistent with other requirements of the Act. For example, nothing in these regulations absolves the manufacturer of its notification and correction requirements under subpart I of 24 CFR part 3282 (Subpart I). Nothing in either a state or the Federal Dispute Resolution Program will interfere with Subpart I. Subpart I is based on the statutory requirements in sections 613 and 615 of the Act (42 U.S.C. 5412 and 5414), while the authority for the dispute resolution program is found under section 623 of the Act (42 U.S.C. 5422).

Section 615 imposes upon manufacturers certain specific requirements for notification and correction when a manufactured home does not comply with the Manufactured Home Construction and Safety Standards in part 3280 or contains an imminent safety hazard. Section 613 of the Act requires manufacturers to correct or replace homes sold to retailers that have not yet been sold to purchasers. Nothing in section 623 of the Act changes the requirements in sections 613 and 615.

If this proposed rule is implemented, manufacturers would continue to be responsible for compliance with Subpart I, and HUD and the SAAs would continue to have authority to assure and enforce manufacturers' compliance with Subpart I. Sections 613 and 615 of the Act do not provide authority for any consumer enforcement of the notification and correction requirements, and are distinguishable from section 623 of the Act, which provides authority for the dispute resolution program. If a manufacturer receives a homeowner complaint about a manufactured home, the manufacturer has received information that triggers its Subpart I responsibilities. However, a homeowner does not trigger the dispute resolution process unless the homeowner follows the specific steps provided in this proposed rule. Thus, the dispute resolution program provides an additional homeowner protection mechanism.

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 anticipates using contractors as screening neutrals, mediators, and arbitrators. HUD also anticipates that the contractors used would be required to become familiar with HUD's manufactured housing program, as many commenters, including the MHCC, recommended. 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. Independence is also an important factor.

The HUD Manufactured Housing Dispute Resolution Program would be governed by the Administrative Dispute Resolution Act, 5 U.S.C. 571 *et seq.* The proposed dispute resolution program consists of six parts, in addition to the

opt-out option. The six components are: Initial Notification of a Problem, Initiating Dispute Resolution, Intake and Screening, Mediation, Nonbinding Arbitration, and Secretarial Review. Commercial entities, when they are the only parties involved in a dispute concerning who is responsible for correcting a defect, may elect to opt out of the HUD Manufactured Housing Dispute Resolution Program. The commercial entities would then engage in a neutral evaluation process of their own design. The dispute resolution program will be applicable to manufactured homes installed after December 27, 2005, or the effective date of a final rule, whichever is later. Under the HUD Manufactured Housing Program, alleged defects must be reported to the manufacturer, retailer, installer, or HUD within one year of the date of installation of the manufactured home, in order to be eligible for the dispute resolution program.

IV. HUD Manufactured Housing 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 be germane in any state that through state law adopts and implements its own qualifying dispute resolution program and certifies its program to HUD as described in Section VI of this preamble.

A. Initial Notification of a Problem

As previously discussed, alleged defects that can be referred into the dispute resolution program must be reported within the first year after the date of home installation. As used in HUD's Manufactured Housing Dispute Resolution Program and this new part 3288, the term "defect" is defined to parallel its definition in the Act. Accordingly, the proposed rule also makes clear for the dispute resolution program that the term "defect" covers each defect in the installation, construction, or safety of the home. Commenters familiar with HUD's long-established program for manufactured housing 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 housing program, the term has been defined to encompass only construction and safety standards, and to exclude matters that implicated significant health and safety issues. See

the definition in § 3282.7(j). For purposes of the 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. In reviewing this proposed rule and preparing comments, commenters should be mindful of the broader use of the term as it applies to rights and responsibilities established under this new part 3288, as distinguished from the term's historical use in the program in part 3282.

As previously discussed, alleged defects must be reported within one year of the date of home installation. The Department strongly encourages the parties, especially homeowners, to seek to resolve disputes directly with the party or entities that they believe to be responsible before initiating the federal manufactured housing dispute resolution process. Nevertheless, all parties, including homeowners, must report the existence of possible defects within the one-year period in order to preserve the option of initiating the federal manufactured housing dispute resolution process. The Department recommends that reports of defects be made in writing, including but not limited to email, written letter, certified mail, or fax. Reports would also be permitted by telephone. A report of a defect should, at a minimum, include a description of the alleged defect. Parties alleging defects are encouraged to send any written correspondence via certified or express mail, so that there would be proof of date of delivery. The Department welcomes comments on effective ways for homeowners to report the existence of defects. After reporting a defect, the reporting party would be encouraged to allow time for a satisfactory response before initiating the HUD Manufactured Housing Dispute Resolution Program after having reported a problem.

B. Initiating the Process

Parties may initiate the federal manufactured housing dispute resolution process by submitting a request for dispute resolution to the dispute resolution provider or by calling a toll-free number. Requests for dispute resolution may come from homeowners, retailers, manufacturers, or installers.

C. Intake and Screening

Once the request for dispute resolution has been received by the dispute resolution provider, the

Screening Neutral would review the sufficiency of the information provided with the request for initiation of a dispute resolution process. If a defect is properly alleged, the Screening Neutral would forward the request for mediation. If the Screening Neutral determines there is sufficient documentation of a defect presenting an unreasonable risk of injury or death, a copy of the request would be sent to HUD. If a request is lacking any of the required information, the Screening Neutral would contact the requester in order to supplement the initial request. The specific time periods for intake and screening are not codified because the Department anticipates establishing these directly as part of the contracting process with the third-party dispute resolution provider. HUD will, however, publicize these time periods on its website. The Department is interested in comments on this plan for establishing and announcing the intake and screening schedules.

D. Mandatory Mediation

The second stage in the process is mandatory mediation. The dispute resolution provider would select a mediator, who would be a different individual from the Screening Neutral used during the intake and screening process. The mediator would mediate the dispute and attempt to facilitate a settlement. The parties would be given 30 days 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 would have a maximum of 10 days to reach an agreement. Sample agreements would be made available to the parties as drafting guidance. Upon reaching and signing an agreement, copies of any settlements reached would be forwarded to the parties and to HUD by the mediator. All other documents and communications used in the mediation would 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. The MHCC commented that a 30-day period seemed an appropriate time in which to complete corrective repairs. Additional comments on the reasonableness of the periods are requested.

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 may, within 15 days of the expiration of the mediation period, request nonbinding arbitration. The party requesting nonbinding arbitration would be required to submit a written request for arbitration to the dispute resolution provider. The dispute resolution provider would determine how an arbitrator would 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. If a party chooses not to participate in the arbitration, the process would continue without input from that party. The arbitrator would have the authority to issue orders to compel the completion of the record, conduct onsite inspections, dismiss frivolous allegations, and set hearing dates and deadlines. The arbitrator would be required to complete the arbitration within 21 days of receipt of the request for arbitration. After conducting a hearing, the arbitrator would provide HUD with a written nonbinding recommendation as to who the responsible party or parties are and what actions should be taken. The contents of the recommendation would only be made available to the Secretary. Comments are requested on whether 21 days is sufficient time for the arbitration and whether additional time should be allowed for special circumstances.

F. Secretarial Review

The final stage of the process is Secretarial Review. After the arbitrator makes a recommendation, it would be forwarded to the Secretary. The Secretary would review the recommendation and the record. The Secretary would accept, modify, or reject the recommendation. Once the Secretary acts, he or she would issue an order that assigns responsibility. In the order for correction, the Secretary would 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 the Secretary would be considered a violation of section 610(a)(5) of the Act (42 U.S.C. 5409(a)(5)).

The responsible party or parties would be required to pay for or provide any repair of the home. The Secretary may apportion the costs for correction and repair if culpability rests with more than one party. The Department is interested in comments on the

procedures outlined in Sections IV.C through IV.F of this preamble, particularly on whether the proposed time limits are reasonable. Comments are also welcome on whether or not there should be a time limit for Section IV.F and, if so, what a reasonable limit should be.

G. Commercial Opt-Out Option When Homeowners Are Not Responsible

Manufacturers, retailers, and installers ("commercial parties") 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 would have the option to opt out of the HUD Manufactured Housing Dispute Resolution Program completely, in order to seek neutral evaluation outside of the structure of the HUD Manufactured Housing Program. To participate in the Commercial Opt-Out Option, any of the commercial 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 opt out no more than 5 days after receiving notice from the Screening Neutral of a request for dispute resolution and before the HUD Manufactured Housing Dispute Resolution Program has commenced. Participants who elect to opt out must agree to engage a neutral expert. The selected neutral expert would evaluate the dispute and make an assignment of responsibility for correction and repair. The actual process followed would be designed and agreed to by the participants; there are no particular procedural requirements, such as witnesses or formal evidence. The participants may elect to memorialize the assignment of responsibility in writing. 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 participants may inform the Department of the outcome. At any time after 30 days of the Opt-Out Option notification, any party, including the homeowner, may invoke the HUD Manufactured Housing Dispute Resolution Program and proceed to mediation by following the established procedures.

The Commercial Opt-Out Option was designed taking into account MHCC comments endorsing an alternate simplified process with minimal HUD involvement. HUD expects that the Commercial Opt-Out Option would allow for the resolution of disputes concerning defects in a cost-effective, expeditious, and fair manner in HUD-

administered states. The Department is soliciting comments on the Commercial Opt-Out Option, and specifically on whether the option would ensure that homeowners' problems are adequately addressed and remedied. Comments are also welcomed on the reasonableness of the 5-day time period in which parties must opt out after receiving notice of a request for dispute resolution.

V. Informing Homeowners About Manufactured Housing Dispute Resolution

One key component of the HUD Manufactured Housing Dispute Resolution Program will be notifying homeowners about the availability of dispute resolution in HUD-administered states through the HUD Manufactured Housing Dispute Resolution Program and in all other states through state dispute resolution programs. In its comments, the MHCC suggested that information about the HUD Manufactured Housing Dispute Resolution Program be made available in a standard notice that the retailer would provide to each homeowner at or before the signing of the sales contract. The homeowner would be required to sign a notice evidencing receipt. The Department is also considering notifying the homeowner by requiring a one-page informational document on the HUD Manufactured Housing Dispute Resolution Program to be included with the closing materials. The one-page informational document would mention that HUD will maintain a list of states that are operating state programs at <http://www.hud.gov>, to help homeowners determine whether their state has a program or if their state is a HUD-administered state and they should use the HUD Manufactured Housing Dispute Resolution Program. Additional comments on homeowner notification are welcomed.

In addition, the Department proposes notifying the public about the HUD Manufactured Housing Dispute Resolution Program through the Consumer Manual that 42 U.S.C. 5416 and 24 CFR 3282.207 currently require to be provided with each manufactured home. The manufacturer would be required to include in the Consumer Manual the specific language, or its equivalent, that is set out in the proposed revision of § 3282.207 in the proposed rule. The language would give detailed information about the dispute resolution program. The Department also welcomes comments on the specific proposal and language for notification in the Consumer Manual.

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

The HUD Manufactured Housing Dispute Resolution Program would not be implemented in states that request to be certified and that have dispute resolution programs that comply with the minimum requirements set out in these regulations. These states would administer their own dispute resolution programs. The responses to the ANPRM showed the diversity and innovation of state dispute resolution programs. Among HUD's goals in the implementation of the HUD Manufactured Housing Dispute Resolution Program proposed in this rule is to encourage the growth and continued innovation of state programs. In furtherance of this goal, this rule would establish a self-certification process for each state. A state dispute resolution program would be required to meet criteria listed in the self-certification form, but the rule establishing this form would not specify how the criteria are to be met. In this way, states will have more flexibility to design dispute resolution programs or modify existing ones according to their individual preferences and circumstances. Comments received from the MHCC strongly supported states creating and operating their own programs.

Under the rule as proposed, each state wishing to implement its own dispute resolution program must certify compliance with the minimum requirements by submitting a completed Dispute Resolution Certification Form to HUD for review and acceptance. In part, the form would serve as a self-certification very similar to the self-certification process the MHCC and other commenters proposed in their responses to the ANPRM. The Dispute Resolution Certification Form developed by HUD and attached as an Appendix to this proposed rule directs respondents to answer questions specifically related to how their dispute resolution programs comply with the requirements stated in the Act and this regulation. The Certification Form would require identification of the state agency that administers the dispute resolution program, the director of that agency, and the person who directly supervises the administration of the program. A brief written description of the state's dispute resolution program would be required, including information on how disputes are resolved regarding responsibility for correction and repair of defects in manufactured homes involving retailers, manufacturers, or installers and how the

program provides for the timely resolution of disputes and the issuance of appropriate orders. HUD intends to put information about states that are certified, including each state's contact information, on its Web site.

The minimum requirements for self-certification are set forth in Part II of the proposed Certification and include: (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 at least one year from the date beginning on the date of installation; (4) provisions for homeowners to initiate complaints for resolution and to have homeowner interests protected; (5) provisions for adequate funding and personnel; and (6) provisions for conflict of interest safeguards that ensure that a dispute resolver does not have a significant interest in the outcome of a particular dispute or a significant relationship to a person involved in a particular dispute. Any state that certifies that its program meets these six minimum requirements would be accepted and permitted to implement its own program.

A state that meets the minimum requirements set forth under § 3288.205 (e) and (f), and three of the four minimum requirements under § 3288.205(a)–(d), may be conditionally accepted by the Secretary. A state that is conditionally accepted would be permitted to implement its own program for a period of not more than 3 years absent extension of this period by HUD. Part III of the proposed Certification requires more detailed information about the state's program. HUD anticipates that Part III, as well as the other parts of the Certification, would be used to assess whether future modification of the HUD Manufactured Housing Dispute Resolution Program will be necessary.

In reviewing a state's certification, HUD may contact the state to request additional clarification or information as necessary. States that are rejected would be notified and given 30 days to submit a revised Certification. States that fail to submit a revised Certification or are otherwise still rejected would have a right to a hearing on the rejection using the procedures set forth under subpart D of Part 3282. If a state has a dispute resolution program as part of its state plan, it would be reviewed as part of the state plan. Accepted states would be required to recertify every 3 years or

when there is any significant change to the state program, whichever is the earlier. If the Secretary becomes aware at any time that a state no longer meets the minimum requirements set forth under § 3288.205, or failed to properly recertify, the acceptance of the Certification may be revoked after an opportunity for a hearing. HUD welcomes comments especially from the states on the certification requirements.

HUD seeks comments from states that currently have dispute resolution programs on whether their programs include the homeowner. If such a state does not, the commenter is asked to identify any homeowner protections that are in place and to address the feasibility of adding the homeowner to its program.

VII. Specific Issues for Comment

In addition to commenting on the specific provisions included in this proposed rule, the public is invited to comment on the following questions, and any other related matters or suggestions:

(1) What other methods should be used to notify and educate the homeowner about the HUD Manufactured Home Dispute Resolution Program and the availability of state programs in non-HUD-administered states? Should a temporary notice be required to be posted in each home?

(2) What criteria should be used for conditional acceptance of state dispute resolution programs?

(3) What should be the criteria for determining whether there is adequate staffing and resources?

(4) What type of conflict-of-interest provision should states administering their own dispute resolution program be required to have?

VIII. Conforming Amendments

Since HUD is using the term "manufactured home" in this proposed rule, HUD 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 housing program.

IX. 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 proposed information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Under this Act, an agency may not conduct or sponsor, and a person is not

required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The following table provides information on the estimated public reporting burden:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
State Certification for Manufactured Housing Dispute Resolution	17	1	17	1	17
Federal manufactured housing dispute resolution information*	3,600	1	3,600	1	3,600

* Almost all of the details of the requests for federal dispute resolution will follow initial complaints already sent to the manufacturer or to the federal manufactured housing program.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, any comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame, however, does not affect the deadline for comments to the agency on the proposed rule. Comments must refer to the proposal by name and docket number (FR-4813-P-02) and must be sent to: HUD Desk Officer, Office of

Management and Budget, New Executive Office Building, Washington, DC 20503 and Kathleen O. McDermott, Reports Liaison Officer, Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9116, Washington, DC 20410-8000.

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 proposed 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 proposed 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 then 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 and \$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 housing dispute resolution process in the year 2006. 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. This would provide a savings of \$402 or 75 percent per home.

The small increase in total cost associated with this proposed 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 only be subject 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 disproportional 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.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and, in so doing, certifies that the rule would not have a significant economic impact on a substantial number of small entities. The proposed rule does not provide an exemption for small entities. This proposed rule does not establish any responsibilities for all parties, but rather establishes a process whereby all may come to an amicable solution.

Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

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 housing 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, for the reasons stated in the preamble, HUD proposes to amend parts 3280 and 3282 and add a new part 3288 in chapter XX of title 24 of the Code of Federal Regulations 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 continues to read as follows:

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

4. In § 3282.207, redesignate paragraph (e) as paragraph (f), and add a new paragraph (e) to read as follows:

§ 3282.207 Manufactured home consumer manual requirements.

* * * * *

(e) The manufacturer must include the following language or its equivalent in the consumer manual:

Many states have a dispute resolution program that homeowners may use to resolve problems with manufacturers, retailers, or installers concerning defects in their manufactured homes. In states where there is not a dispute resolution program that meets the federal requirements, the HUD Manufactured Housing Dispute Resolution Program will operate. These are "HUD-administered states." You may contact HUD at (202) 708-6423 or (800) 927-2891, or visit the HUD Web site at <http://www.hud.gov> to determine whether you have a state program or should use the HUD Manufactured Housing Dispute Resolution Program. Contact information for state programs is also available on the HUD website. If you have 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, homeowners may use the HUD Manufactured Housing Dispute Resolution Program to resolve disputes among manufacturers, retailers, or installers for the correction or repair of defects in their manufactured home that were reported during the one-year period starting at the date of installation. Even after the one-year period, manufacturers have continuing responsibility to review certain problems that affect the intended use of the manufactured home or its parts, but correction of those problems may no longer be required under federal law. The HUD Manufactured Housing Dispute Resolution Program is not for cosmetic or minor problems in the home. It is for problems that make the home or components of the home not fit for the ordinary use for which they were intended.

The steps and information outlined below apply only to the HUD Manufactured Housing Dispute Resolution Program that operates in HUD-administered states. Under the HUD Manufactured Housing Dispute Resolution Program, homeowners must first report defects to the manufacturer, retailer, installer, or HUD. Homeowners are encouraged to report defects in writing, including but not limited to e-mail, written letter, certified mail, or fax and may also make a report by telephone. To demonstrate

that the report was made within one 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, fax or e-mail. 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 or problem.

Homeowners are encouraged to send reports of an alleged defect to the manufacturer, retailer, or installer of the manufactured home. 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; or e-mailed to mhs@hud.gov.

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 must 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 the report of alleged defect or problem notification was made;
- (4) Identification of the entities or persons to whom the report of the alleged defect was sent, and the method that was used to make the report;
- (5) The date of installation of the manufactured home affected by the defect; and
- (6) A description of the alleged defect.

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 the Office of Manufactured Housing Programs at (202) 708-6423 or (800) 927-2891.

A screening agent from a dispute resolution provider will review the request and, if appropriate, forward the request to a mediator. The mediator will mediate the dispute and attempt to facilitate a settlement. If the parties are unable to reach a settlement, any party may request nonbinding arbitration. Should any party refuse to participate, the arbitration shall proceed without that party's input. Once the arbitrator makes a determination, the arbitrator will forward it to the Secretary of HUD, who may then adopt, modify, or reject the recommendation. The responsible party or parties will be required to pay for or provide any repair of the home.

In circumstances where manufacturers, retailers, and/or installers are involved and agree that one of them and not the homeowner is responsible for the alleged defect, these commercial entities will have the opportunity to resolve the dispute

outside of the HUD Manufactured Housing Dispute Resolution Program by exercising the Commercial Opt-Out Option. Homeowners will maintain the right to be present at any meetings and to be informed of the outcome when the Commercial Opt-Out Option is exercised. At any time after 30 days of the Opt-Out Option notification, any participant or the homeowner may invoke the HUD Manufactured Housing Dispute Resolution Program and proceed to mediation.

* * * * *

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 Effective date.

Subpart B—HUD Manufactured Housing 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.
- 3288.35 Mediation.
- 3288.40 Nonbinding arbitration.
- 3288.45 Secretarial review and order.

Subpart C—Commercial Opt-Out Option in HUD-Administered States

- 3288.100 Scope and applicability.
- 3288.105 Time when Commercial Opt-Out Option available.
- 3288.110 Opt-out 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 housing program requirements.

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

Subpart A—General

§ 3288.1 Purpose and scope.

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. 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 one-year period beginning on the date of installation.” 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 Housing Dispute Resolution Program that HUD will administer in any state that does not establish a program that complies with the Act. Subpart C of this part provides an option for parties that are not homeowners to resolve disputes outside of the HUD Manufactured Housing Dispute Resolution Program under subpart B. Subpart D of this part establishes the minimum requirements that must be met by a state wishing 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. The purpose of this part is to provide a dispute resolution process 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 installation in manufactured homes. In carrying out this purpose, it is assumed that if a manufactured home contains a defect that was not caused by the homeowner, the manufacturer, retailer, or installer is responsible for the defect and the dispute resolution process is an appropriate means to resolve issues of responsibility for correction and repair of the home.

§ 3288.3 Definitions.

The following definitions apply in this part:

Appropriate order means an order issued by the Secretary 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 the purchase agreement or sales contract for the manufactured home.

Day means a calendar day.

Defect includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended, including but not limited to a defect in the

construction, safety, or installation of the home.

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

Homeowner means the first person to purchase or lease the home in good faith for purposes other than resale.

Manufactured home has the same meaning as “manufactured home” as defined at 24 CFR 3280.2.

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

Timely reporting means the reporting of an alleged defect within one year after the date of installation of a manufactured home.

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 Effective date.

The requirements of this part are applicable to manufactured homes installed after December 27, 2005, or after the initial effective date of this part, whichever is later.

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

§ 3288.10 Applicability.

The requirements of the HUD Manufactured Housing 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) *Eligible parties.* Manufacturers, retailers, and installers of manufactured homes are eligible to initiate action under and participate in the HUD Manufactured Housing Dispute Resolution Program. Homeowners may also initiate and participate in the HUD Manufactured Housing Dispute Resolution Program.

(b) *Eligible disputes.* Only disputes concerning alleged defects that have been reported to the manufacturer, retailer, installer, or HUD within one year after the date of installation of the manufactured home are eligible for the

HUD Manufactured Housing Dispute Resolution Program. The matter eligible for dispute resolution is the defect alleged in a timely report and any related issues.

§ 3288.20 Reporting a defect.

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

(b) *Content of report.* No particular form or format is required to report a defect, but any such report should at a minimum include a description of the alleged defect or problem.

(c) *Record of report.* (1) *Report made to parties.* (i) *To evidence timeliness.* To avoid issues of lack of timely reporting, the report of a defect that is made to the manufacturer, retailer, or installer of the manufactured home should be done in a manner that will create a dated record of the report to demonstrate that the report was made within one year after the date of installation, for example, by certified mail, fax, or e-mail. For reports made by telephone, making a contemporaneous note of the phone call is recommended.

(ii) *Obligation to retain.* For purposes of this part, each report of a defect, including logs of telephonic complaints received by a manufacturer, retailer, and/or installer, must be maintained for three years from the date of receipt, if the report is made within one year after the date of installation.

(2) *Reports made to HUD.* (i) Reports of alleged defects that arise in the manufactured home in the first year after its installation can be sent to HUD:

- (A) In writing at: HUD, Office of Regulatory Affairs and Manufactured Housing, Attn: Dispute Resolution, 451 Seventh Street, SW., Washington, DC 20410–8000;
- (B) By telephone at: (202) 708–6423 or (800) 927–2891;
- (C) By fax at: (202) 708–4213; and
- (D) By e-mail at mhs@hud.gov.

(d) *Effect of report.* The reporting of a defect does not initiate the dispute resolution process, but only establishes whether the requirement of timely reporting in accordance with § 3288.15(b) has been met.

§ 3288.25 Initiation of dispute resolution.

(a) *Preliminary effort.* HUD strongly encourages the party reporting the defect to seek to resolve the dispute directly with the party or parties that they believe are responsible before initiating the federal dispute resolution process.

(b) *Request for dispute resolution.* Any of the parties may initiate the HUD

Manufactured Housing Dispute Resolution Program process at any time after a 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 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 HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708-6423 or (800) 927-2891; or

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

(c) *Required information.* The dispute resolution provider will request at least the following information to initiate the dispute resolution process:

(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 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 defect; and

(6) A description of the alleged defect.

§ 3288.30 Screening of dispute resolution request.

(a) *Review for sufficiency.* Once 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 a defect is properly alleged, the request will be forwarded for mediation.

(b) *Insufficient information.* If a request for dispute resolution is lacking any information required to determine if the dispute resolution process should proceed, the Screening Neutral will contact the requester in order to supplement the initial request.

§ 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 then mediate the dispute and attempt to facilitate a settlement.

(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.

(2) *Defects presenting an unreasonable risk of injury, death, or significant loss or damage to valuable personal property.* For mediations involving defects that appear to present an unreasonable risk of injury, death, or significant loss or damage to valuable personal property, the parties have a maximum of 10 days to reach a mediated 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 settlement agreement.

(c) *Written settlement agreement.* 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 and to HUD.

(d) *Confidentiality.* Except for the report of an alleged defect, any request for dispute resolution, any agreement to mediate, and any written settlement agreement, all other documents and communications 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.* If the parties fail to reach a settlement through mediation under § 3288.35, any party may, within 15 days of the expiration of any time permitted under § 3288.35(b), initiate nonbinding arbitration.

(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 names and addresses of all relevant parties, including the party making the request;

(ii) A brief description of the alleged defect or a copy of the report of the 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 provide for the selection of an arbitrator. The arbitrator will have the authority to:

(1) Set hearing dates and deadlines;

(2) Conduct onsite inspections;

(3) Issue orders to compel the completion of the record;

(4) Dismiss frivolous allegations;

(5) Make a disposition

recommendation to the Secretary; and

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

(d) *Proceedings.* (1) The arbitrator may conduct either a record review or a telephonic hearing if the parties do not request an in-person hearing under paragraph (d)(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.

(2) If any party wants to request an in-person hearing, in which the parties or their representatives 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.

(e) *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 correcting a defect.

(f) *Completion of arbitration.* 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 a written, nonbinding recommendation as to which party or parties are responsible for the defect, and what corrective actions should be taken.

§ 3288.45 Secretarial review and order.

(a) *Appropriate order.* The Secretary will review the arbitrator's recommendation provided in accordance with § 3288.40(f) and the record, if any, of the arbitration, and will issue an order accepting, modifying, or rejecting the recommendation. The Secretary will forward a copy of the order to the arbitrator and to each of the parties, whether or not a party participated in the arbitration.

(b) *Contents of order.* If the Secretary 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) A date by which the correction of all defects must be completed, taking into consideration the seriousness of the defect.

(c) *Failure to comply.* A party's failure to comply with an order issued pursuant to this part will be considered a violation of section 610(a)(5) of the Act (42 U.S.C. 5409(a)(5)).

Subpart C—Commercial Opt-Out Option 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 permits manufacturers, retailers, and installers of manufactured homes to use expert neutrals of their choosing to resolve disputes concerning defects in manufactured homes. The Commercial Opt-Out Option may be initiated after a defect has been reported, but no more than 5 days after notification from the Screening Neutral of a request for dispute resolution and before the HUD Manufactured Housing Dispute Resolution Program has commenced. Once the Opt-Out Option is initiated, none of the opt-out participants or the homeowner can invoke the HUD Manufactured Housing Dispute Resolution Program for 30 days.

§ 3288.105 Time when Commercial Opt-Out Option available.

(a) The Commercial Opt-Out Option may be initiated after a defect has been reported, but no more than 5 days after notification from the Screening Neutral of a request for dispute resolution and before the HUD Manufactured Housing Dispute Resolution Program has commenced, by a written notification to HUD's dispute resolution provider. The notification may be made to the dispute resolution provider by mail, fax, e-mail, or other delivery at the address provided at <http://www.hud.gov>.

(b) No particular form or format is required to provide notification for the Commercial Opt-Out Option, but the party or parties submitting the notification must include a statement from the parties stating that the homeowner is not responsible for the alleged defect and make reasonable

efforts to 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 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 defect; and

(6) A description of the alleged defect.

§ 3288.110 Opt-out agreements.

(a) *Required agreement.* To use the Commercial Opt-Out Option, as appropriate, the manufacturer, retailer, and installer of the manufactured home at issue 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 expert 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 expert'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 Housing 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 federal dispute resolution program.

§ 3288.205 Minimum requirements.

The HUD Manufactured Housing 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:

(a) The timely resolution of disputes regarding responsibility for correction and repair of defects in manufactured homes involving manufacturers, retailers, or installers;

(b) The issuance of appropriate orders for correction and repairs of defects in the homes;

(c) A coverage period for disputes that includes at least defects that are reported within one year from the date of installation;

(d) Provisions for homeowners to initiate complaints for resolution and to have homeowner interests protected;

(e) Provisions for adequate funding and personnel; and

(f) Provisions for conflict of interest safeguards which ensure that a dispute resolver does not have a significant interest in the outcome of a particular dispute or a significant relationship to a person involved in a particular dispute.

§ 3288.210 Acceptance and recertification process.

(a) *Submission of certification.* A State seeking certification must submit to HUD for review and acceptance a completed Dispute Resolution Certification Form as provided by HUD. The certification may be submitted as a part of, or independent of, a State plan under § 3282.302 of this chapter.

(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 the 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 the minimum requirements set forth under § 3288.205(e) and (f), and

three of the four minimum requirements under § 3288.205(a) through (d) may be conditionally accepted by the Secretary. 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 the Secretary becomes aware at any time that a State no longer meets the minimum requirements set forth under § 3288.205, the acceptance of the Certification may be revoked after an opportunity for a hearing.

(e) *Recertification.* To maintain its accepted status, a State must submit a current Dispute Resolution Certification Form to HUD for review and acceptance:

(1) Every three years within 90 days of the day and month of its most recent date of acceptance; or

(2) Whenever there is a significant change to the program, whichever is the earlier. A State that is conditionally accepted will be permitted to implement its own program for a period of not more than three years absent extension of this period by HUD.

(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.

§ 3288.215 Effect on other manufactured housing program requirements.

A State with an accepted dispute resolution program will operate in lieu

of HUD's Manufactured Housing 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 housing 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.

Dated: September 27, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

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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. Your answers to the following questions are necessary 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
451 Seventh Street, SW
Room _____
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 installation? Yes _____ No _____

4. Provides for homeowners to initiate complaints for resolution and to have homeowner interests protected? Yes _____ No _____
5. Provides adequate funding and personnel? Yes _____ No _____
6. Provides conflict of interest safeguards that ensure that a dispute resolver does not have a significant interest in the outcome of a particular dispute or a significant relationship to a person involved in a particular dispute? Yes _____ No _____

Part III – Additional Information

1. Describe, in detail, 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 average length of time it takes to complete the dispute resolution process from the time a complaint has been received, if there is sufficient program experience for data to be available?
6. What is the time period for initiating a dispute resolution process?
7. Describe the appropriate orders issued as part of the state's dispute resolution program.
8. Describe the staff and funding utilized by the state's dispute resolution program.
9. Explain the safeguards provided for in the state's dispute resolution program to ensure that the system is fair to manufacturers, retailers, installers, and homeowners.

Part IV

COMPLIANCE CERTIFICATION

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

Date: _____
(Signature)

By: _____

(Print or type name and official capacity)

(State)