



Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
on July 21, 2006

Valeri Stiers Malone, Chair

Michael H. Bray, Member

Carlos Amaral, Member

Kimberly A. Shambley, Member

Frances Shannon, Member

Texas Department of Housing and Community Affairs
Manufactured Housing Board Meeting
July 21, 2006

ROLL CALL

	<u>Present</u>	<u>Absent</u>
Valeri Stiers Malone, Chair	_____	_____
Michael H. Bray, Member	_____	_____
Carlos Amaral, Member	_____	_____
Kimberly A. Shambley, Member	_____	_____
Frances Shannon, Member	_____	_____
Number Present	_____	
Number Absent		_____

_____, Presiding Officer

MANUFACTURED HOUSING BOARD MEETING
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
221 E. 11th Street, Room 116, Austin, Texas 78701
July 21, 2006 10:30 a.m.

AGENDA

CALL TO ORDER, ROLL CALL
CERTIFICATION OF QUORUM

Chair
Chair

The Board of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA) will meet to consider and possibly act upon:

ACTION ITEMS

- | | | |
|---------|---|-------------|
| Item 1. | Presentation, discussion and consideration to approve minutes of board meeting of May 5, 2006. | Chair |
| Item 2. | Presentation, discussion and consideration of possible approval of the State Office of Administrative Hearings (SOAH) Proposal for Decision:

In the Matter of the Complaint of TDHCA vs. David Barroso dba Sweet Homes,
Docket Number: 332-06-0118. | Jim Hicks |
| Item 3. | Presentation, discussion and consideration to approve the FY 2007 Operating Budget. | Kassu Asfaw |
| Item 4. | Presentation, discussion and consideration to approve the FY 2008 - 2009 Legislative Appropriations Request. | Kassu Asfaw |
| Item 5. | Presentation, discussion and consideration to approve renewal of the administrative services agreement for FY 2007 between the Manufactured Housing Division and TDHCA. | Tim Irvine |
| Item 6. | Presentation, discussion and consideration to approve adoption of proposed 10 TAC, Chapter 80 (§§80.208, 80.240 & 80.260). | Tim Irvine |

EXECUTIVE SESSION

Chair

Note: The Board may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

- (a) If necessary, the Board will go into executive session to discuss Personnel Matters pursuant to Section 551.074, Texas Government Code.
- (b) If necessary, the Board will go into executive session for Consultation with Attorney pursuant to Section 551.071, Texas Government Code.

RECONVENE

Chair

Reconvene in public session and take action on any matters coming out of Executive Session.

PUBLIC COMMENT

Chair

REPORT ITEMS

Executive Director's Report	Tim Irvine
Proposed HUD Installation Rules	Tim Irvine

ADJOURN

Chair

To access this agenda or request information, please visit our website at www.tdhca.state.tx.us or contact Sharon Choate, TDHCA, 507 Sabine, Austin, Texas 78701, 512-475-2206, sharon.choate@tdhca.state.tx.us.

Individuals who require auxiliary aids, services or translators for this meeting should contact Gina Esteves, ADA Responsible Employee, at 512-475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Agenda Action Item No. 1

**MINUTES OF THE REGULAR MEETING OF THE
MANUFACTURED HOUSING BOARD**

On Friday, May 5, 2006, at 10:30 a.m., there was a regular meeting of the Manufactured Housing Board (the "Board") in Room 116 of the State Insurance Annex Building, 221 East 11th Street, Austin, Texas. Michael Bray presided. Michael Bray, Kim Shambley, and Frances Shannon, constituting a quorum, were in attendance. The following Manufactured Housing Division (the "MHD") staff were present: Kassu Asfaw, Sharon Choate, Joe Garcia, Tim Irvine, and Piper Smith. The following staff from the Texas Department of Housing and Community Affairs (other than the MHD) were present: Veronica Chapa, David Gaines, and John Gonzales. The following members of the general public were present: Bill Beville, Bobbie Hill, Glenna Hodge, Henry Gates Steen, Jr., and Randy Witzke.

Michael Bray called the roll, confirmed the presence of a quorum, and asked for a motion to approve the minutes. Upon motion of Kim Shambley, duly seconded by Frances Shannon, the minutes of the previous meeting were approved as presented.

Tim Irvine presented proposed rules that staff was recommending that the Board approve to be published in the Texas Register for public comment.

Bobbie Hill, Executive Director of the Texas Manufactured Housing Association, commented that the proposed changes to 10 TAC §80.119(b)(3) be changed to eliminate the use of "must." Randy Witzke, General Counsel for Solitaire, expressed the view that the rule, as proposed, would amount to requiring a specific contractual term and, therefore, would be beyond the MHD's statutory authority to adopt. Randy Witzke suggested adding language that would be more specific as to when the term needed to be disclosed, suggesting that it be at the time of the final contract. Bill Beville of PSIA, Inc. stated the view that before proceeding the Board should require staff to provide a report analyzing the instances where delivery problems such as the rule would address have arisen. Tim Irvine indicated that in staff's view the rule did not pose a requirement to add a contractual requirement since it presupposes that the installer has already agreed to provide delivery and installation and it does not require a completely firm date as it allows for a description of how a delivery and installation date could be extended.

Upon motion of Kim Shambley, duly seconded by Frances Shannon, the Board approved publishing in the *Texas Register* for public comment the proposed changes to 10 TAC §80.119(b)(3).

Upon motion of Frances Shannon, duly seconded by Kim Shambley, the Board approved publishing in the *Texas Register* for public comment the proposed changes to 10 TAC §80.208.

Upon motion of Kim Shambley, duly seconded by Frances Shannon, the Board approved publishing in the *Texas Register* for public comment the proposed changes to 10 TAC §80.240(a)(13).

Upon motion of Frances Shannon, duly seconded by Kim Shambley, the Board approved publishing in the *Texas Register* for public comment the proposed changes to 10 TAC §80.240(a)(14).

Upon motion of Frances Shannon, duly seconded by Kim Shambley, the Board approved publishing in the *Texas Register* for public comment the proposed changes to 10 TAC §80.240(a)(15).

Tim Irvine presented a report on licensing. Bill Beville, PSIA, commented on the requirement to perform failure analysis on complaints and offered on a contract basis, to provide such analysis. He also recommended that the MHD inspect 100% of the first installations of all newly-licensed installers.

Mr. Bray raised the issue of whether a licensed seller had any fiduciary relationship to their customer, and Randy Witzke expressed the view that in the context of manufactured housing the imposition of any such relationship would be inappropriate.

It was requested that staff begin the practice of routinely posting meetings so that an executive session, if needed, could be held.

Tim Irvine delivered the Executive Director's Report, and Kassu Asfaw delivered the Financial Report.

Henry Gates Steen, Jr. provided public comment on the filing and recordation of tax liens.

The next meeting of the Board was tentatively set for 10:30 a.m. July 21, 2006.

There being no further business to come before the Board, the meeting was adjourned at 1:03 p.m.

Timothy K. Irvine, Secretary

Approved:

Michael Bray



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION

Rick Perry
GOVERNOR

Timothy K. Irvine
EXECUTIVE DIRECTOR

Board Members
Presiding Officer, Valeri Stiers Malone
Carlos Amaral
Michael H. Bray
Kimberly A. Shambley
Frances Shannon

TO: Governing Board of the Manufactured Housing
Division of the Texas Department of Housing and
Community Affairs

FROM: Jim R. Hicks, Consumer Protection Manager

THROUGH: Timothy K. Irvine, Executive Director

SUBJECT: Summary of Proposal for Decision

David Barroso dba Sweet Homes ("Respondent")

Docket Number: 332-06-0118

Complaint Numbers: MHD2005001190-L, MHD2005001299-L, MHD2005000445-W,
MHD2005001116-L, MHD2005000794-L, MHD2005000142-L,
MHD2005001297-L, MHD2005001324-L, MHD2006000165-I,
MHD2006000163-I, MHD2005000023-W, MHD2005001301-L,
MHD2006000158-I, MHD20050001260-L, MHD2005001366-W,
MHD2005001296-L, MHD2005001257-I, MHD2006000242-L,
MHD2006000243-L, MHD2006000234-L, MHD2006000339-L,
MHD2006000333-W, MHD2006000400-L

Background

It was found and determined by the staff of the Manufactured Housing Division that:

MHD2005001190-L

On or about June 6, 2005, Tim Ford filed complaint number MHD2005001190-L with the Department. On or about August 22, 2003, Respondent sold used manufactured home NTA0981697/8 to Tim Ford, a consumer under the Act. At the time of sale, there were unpaid taxes owed on the home for years 2001 and 2002 in Bexar County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2005001299-L

On or about July 20, 2005, Justin Mooney filed complaint number MHD2005001299L with the Department. On or about August 1, 2004, Respondent sold used manufactured home NTA1087613/4 to Justin Mooney, a consumer under the Act. At the time of sale there were tax liens for unpaid taxes in years 2002-2004 outstanding in Bexar County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2005000445-W

On or about November 22, 2004, John Johanson filed complaint number MHD2005000445-W with the Department. On or about September 29, 2004, Respondent sold manufactured home PFS0633571 to John Johanson, a consumer under the Act. The Department issued a Warranty Order and Inspection Report on or about February 14, 2005, and Respondent was ordered to correct the matters set forth in the inspection report within 40 days and provide the Department with proof of compliance within an additional 10 days. Respondent did not comply with the Department's order. Failure to comply with a Warranty Order of the Department is a violation of sections 1201.354 and 1201.356(e) of the Act.

MHD2005001116-L

On or about May 19, 2005, Rick and Karen Caveness filed complaint number MHD2005001116-L with the Department. On or about April 23, 2003, Respondent sold used manufactured home RAD1277989/90 to Rick and Karen Caveness, consumers under the Act. At the time of sale there were tax liens for unpaid taxes in years 2001-2003 outstanding in Bandera County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2005000794-L

On or about February 24, 2005, Vester Potter filed complaint number MHD2005000794-LRV with the Department. On or about May 17, 2004, Respondent sold used manufactured home PFS0437329 to Vester Potter, a consumer under the Act. At the time of sale there were tax liens for unpaid taxes in years 1998 and 1999 outstanding in Travis County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2005000142-L

On or about September 15, 2004, Jennifer Grossman and Robert Graziano filed complaint number MHD2005000142L with the Department. On or about March 23, 2003, Respondent sold used manufactured home PFS0430617 to Jennifer Grossman and Robert Graziano, consumers under the Act. At the time of sale there were tax liens for unpaid taxes in years 2001-2003 outstanding in Bexar County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2005001297-L

On or about July 20, 2005, Russell Luce filed complaint number MHD2005001297-L with the Department. On or about February 2, 2003, Respondent sold used manufactured home PFS0691210/11 to Russell Luce, a consumer under the Act. At the time of sale there were tax liens for unpaid taxes in years 2002 and 2003 outstanding in Medina County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2005001324-L

On or about July 27, 2005, Scott and Shannon McCreless filed complaint number MHD2005001324LRV with the Department. On or about April 14, 2005, Respondent sold used manufactured home NTA0625497/8 to Scott and Shannon McCreless, consumers under the Act. At the time of sale there were tax liens for years 2000-2004 outstanding in Guadalupe County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act. The home was inspected on September 13, 2005, and found not to be habitable, in violation of section 1201.455 of the Act. The Department issued a Warranty Order and Inspection Report. Respondent did not comply with the Warranty Order, in violation of sections 1201.354 and 1201.356(e) of the Act.

MHD2006000165-I

The Department initiated complaint number MHD06000165-IV. On or about September 12, 2004, Respondent installed manufactured home RAD923388/89/90 for John Squire, a consumer under the Act. The Department inspected the home on or about June 3, 2005, and installation deviations were cited. On June 20, 2005, the Department issued a Warranty Order and Installation Report requiring correction of these deviations within 40 days, as provided in section 1201.356 of the Act. Respondent did not comply with the Warranty Order in violation of sections 1201.354 and 1201.356(e) of the Act.

MHD2006000163-I

The Department initiated complaint number MHD 2006000163-IV. On or about June 25, 2003, Respondent installed manufactured home RAD0986827 for Richard Mason, a consumer under the Act. The home was inspected by the Department on or about June 9, 2005, and installation deviations were cited. On June 20, 2005, the Department issued a Warranty Order and Installation Report requiring correction of these deviations within 40 days, as provided in section 1201.356 of the Act. Respondent did not comply with the Warranty Order in violation of sections 1201.354 and 1201.356(e) of the Act.

MHD2005000023-W

On or about August 27, 2005, Gary Schroeder filed complaint number MHD2005000023WU with the Department. On or about May 23, 2005 Gary Schroeder, a consumer under the Act, purchased used manufactured home NTA1017079 from Respondent. On or about October 13, 2005, the Department performed a consumer complaint inspection on Mr. Schroeder's home and assigned warranty items to the Respondent. Travis Holcomb, an inspector for the Department, hand delivered a Warranty Order and Inspection Report on November 17, 2005. Respondent did not comply with the Warranty Order in violation of sections 1201.354 and 1201.356(e) of the Act.

MHD2005001301-L

On or about July 30, 2005, Cecil Nelms and Lisa Lincoln filed complaint number MHD2005001301L with the Department. On or about January 6, 2005 Cecil Nelms and Lisa Lincoln, consumers under the Act, purchased used manufactured home PFS0671275 from Respondent. On or about November 21, 2005 the Department issued a Warranty Order and Inspection Report. Respondent did not comply with the Warranty Order in violation of sections 1201.354 and 1201.356(e) of the Act.

MHD2006000158-I

The Department initiated complaint number MHD2006000158IV. On or about September 12, 2004, Respondent installed used manufactured home PFS0666420/1 for

John Squire, a consumer under the Act. The Department performed an inspection of the home and cited installation deviations. On June 20, 2005, the Department issued a Warranty Order requiring correction of these deviations within 40 days, as provided for in section 1201.356 of the Act. Respondent did not submit documentation showing compliance with the notice and Warranty Order in violation of sections 1201.354 and 1201.356(e) of the Act.

MHD2005001260-L

On or about July 15, 2005, Steven and Irene Gonzalez filed complaint number MHD2005001260LRV with the Department. On or about May 8, 2003, Respondent sold used manufactured home PFS0702935/6 to Steven and Irene Gonzalez, consumers under the Act. At the time of sale there were unpaid taxes for tax years 2002 and 2003 in Bexar County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2005001366-W

On or about August 18, 2005, Theska Wilson filed complaint number MHD2005001366W with the Department. On or about December 31, 2002, Respondent sold used manufactured home PFS0584977 to Theska Wilson, a consumer under the Act. At the time of the sale there were unpaid taxes owing for tax years 2000, 2001, and 2002, in Atascosa County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2005001296-L

In July 2005, Matt and Rhonda Molter filed complaint number MHD2005001296LRV with the Department. On or about August 4, 2004, Respondent sold used manufactured home PFS0560128/9 to Matt and Rhonda Molter, consumers under the Act. At the time of sale there were unpaid taxes for tax year 2004 in Comal County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2005001257-I

In July 2005, Debra and Richard Hoedebecke filed complaint number MHD2005001257II with the Department. On or about November 2003, Respondent sold used manufactured home PFS0381011/12 to Debra and Richard Hoedebecke, consumers under the Act. Taxes on this home were outstanding in Bexar County for years 2001-2003 at the time of sale. Therefore Respondent failed to give good and marketable title as required by section 1201.451 of the Act. An inspection of the home was performed by the Department on August 23, 2005, and installation deviations were cited. On September 1, 2005, the Department issued a Warranty Order and Inspection Report requiring correction of these deviations within 40 days, as provided for in section 1201.356 of the Act. Respondent did not submit documentation showing compliance with the notice and Warranty Order in violation of sections 1201.354 and 1201.356(e) of the Act.

MHD2006000242-L

On or about November 3, 2005, Albert Gomez filed complaint number MHD2006000242LRV with the Department. On or about October 19, 2004, Respondent sold used manufactured home RAD1208558 to Albert Gomez, a consumer under the Act. At the time of sale there were unpaid taxes for years 2002-2004 in Nueces County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2006000243-L

On or about November 7, 2005, Jennifer Forga filed complaint number MHD2006000243LRV with the Department. On or about March 5, 2005, Respondent sold used manufactured home PFS0553871 to Jennifer Forga, a consumer under the Act. At the time of sale there were unpaid taxes in Maverick County for years 2001-2004. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

MHD2006000339-L & MHD2006000333-W

On or about November 28, 2005, John Miller filed complaint numbers MHD2006000339LRV and MHD2006000333WU with the Department. On or about October 11, 2005, Respondent sold used manufactured home PFS0728762/63 to John Miller, a consumer under the Act. On or about January 6, 2006, the Department issued Warranty Order and Inspection Report requiring Respondent to make certain repairs to Mr. Miller's home. Respondent did not submit documentation showing compliance with the notice and Warranty Order in violation of sections 1201.354 and 1201.356(e) of the Act.

MHD2006000400-L

On or about December 21, 2005, Dan Gamblin filed complaint number MHD2006000400LRV with the Department. On or about October 18, 2004, Respondent sold used manufactured home PFS0569654 to Dan Gamblin, a consumer under the Act. At the time of sale there were unpaid taxes for the year 2000 in Maverick County. Therefore, Respondent failed to give good and marketable title as required by section 1201.451 of the Act.

After proper notice, an administrative hearing was held on April 20, 2006. An Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) issued the attached Proposal for Decision (PFD) as a result of that meeting.

Proposal for Decision

The Proposal for Decision dated June 8, 2006, recommends that the Respondent be assessed an administrative penalty of twenty-three thousand dollars (\$23,000.00).

Recommendation

It is recommended that the Board approve the following administrative action with respect to the Respondent, as supported by the record and the PFD.

Respondent be assessed an administrative penalty of twenty-three thousand dollars (\$23,000.00).

DOCKET NO. 332-06-0118

COMPLAINT NOS. MHD2005001190-L, MHD2005001299-L, MHD2005000445-W, MHD2005001116-L, MHD2005000794-L, MHD2005000142-L, MHD2005001297-L, MHD2005001324-L, MHD2006000165-I, MHD2006000163-I, MHD2005000023-W, MHD2005001301-L, MHD2006000158-I, MHD20050001260-L, MHD2005001366-W, MHD2005001296-L, MHD2005001257-I, MHD2006000242-L, MHD2006000243-L, MHD2006000234-L, MHD2006000339-L, MHD2006000333-W, MHD2006000400-L

THE MANUFACTURED HOUSING	§	BEFORE THE
	§	
DIVISION OF THE TEXAS	§	GOVERNING BOARD OF THE
	§	
DEPARTMENT OF HOUSING AND	§	MANUFACTURED HOUSING DIVISION
	§	
COMMUNITY AFFAIRS	§	OF THE TEXAS DEPARTMENT OF
	§	
vs. DAVID BARROSO DBA SWEET HOMES	§	HOUSING AND COMMUNITY AFFAIRS

FINAL ORDER

I. PREAMBLE

CAME ON TO BE CONSIDERED, the matter of the enforcement action identified as MHD2005001190-L, MHD2005001299-L, MHD2005000445-W, MHD2005001116-L, MHD2005000794-L, MHD2005000142-L, MHD2005001297-L, MHD2005001324-L, MHD2006000165-I, MHD2006000163-I, MHD2005000023-W, MHD2005001301-L, MHD2006000158-I, MHD20050001260-L, MHD2005001366-W, MHD2005001296-L, MHD2005001257-I, MHD2006000242-L, MHD2006000243-L, MHD2006000234-L, MHD2006000339-L, MHD2006000333-W, MHD2006000400-L, *In the Matter of the Complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. David Barroso dba Sweet Homes*, pursuant to the Texas Manufactured Housing Standards Act, Occupations Code, Section 1201; Chapter 2306 of the TEX. GOVT. CODE ANN. ch. 2306 (“Ch. 2306”); and the Administrative Procedures Act, TEX. GOVT. CODE ANN. ch. 2001 (“ch. 2001”). The Governing Board issues this Final Order based on the Findings of Fact and Conclusions of Law set forth in the Proposal for Decision of the Administrative Law Judge in this case which is hereby adopted in its entirety (a copy of which is attached). The Board’s vote in this case(s) was _____ for _____ against, and _____ abstention(s).

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Final Order

In the Matter of David Barroso dba Sweet Homes

Docket No. 332-06-0118

Complaint No. MHD2005001190-L, MHD2005001299-L, MHD2005000445-W, MHD2005001116-L, MHD2005000794-L, MHD2005000142-L, MHD2005001297-L, MHD2005001324-L, MHD2006000165-I, MHD2006000163-I, MHD2005000023-W, MHD2005001301-L, MHD2006000158-I, MHD20050001260-L, MHD2005001366-W, MHD2005001296-L, MHD2005001257-I, MHD2006000242-L, MHD2006000243-L, MHD2006000234-L, MHD2006000339-L, MHD2006000333-W, MHD2006000400-L

II. ORDER

NOW, THEREFORE, IT IS ORDERED BY THE GOVERNING BOARD OF THE MANUFACTURED HOUSING DIVISION OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS THAT:

1. Respondent be assessed an administrative penalty of \$23,000.00 for violations of the Act and Rules as detailed in the Proposal for Decision;
2. Respondent shall pay the penalty to the Texas Department of Housing and Community Affairs within thirty (30) days of the date of this FINAL ORDER. The penalty payment shall be mailed to Texas Department of Housing and Community Affairs, PO Box 12489, Austin, TX 78711-2489;
3. **In the event the final decision is appealed by the Respondent, the full cost of the preparation of the transcript and all administrative costs authorized by Ch. 2001, are hereby assessed against the Respondent; and**
4. The determination of the Texas Department of Housing and Community Affairs in the above-captioned matter is approved. The Respondent **SHALL CEASE AND DESIST** from violating the Act and Rules of the Texas Department of Housing and Community Affairs.

SIGNED AND ENTERED this _____ day of _____, 2006.

Valeri Stiers Malone, Presiding Officer
Governing Board of the Manufactured Housing Division
Texas Department of Housing and Community Affairs

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Final Order

In the Matter of David Barroso dba Sweet Homes

Docket No. 332-06-0118

Complaint No. MHD2005001190-L, MHD2005001299-L, MHD2005000445-W, MHD2005001116-L,
MHD2005000794-L, MHD2005000142-L, MHD2005001297-L, MHD2005001324-L,
MHD2006000165-I, MHD2006000163-I, MHD2005000023-W, MHD2005001301-L,
MHD2006000158-I, MHD20050001260-L, MHD2005001366-W, MHD2005001296-L,
MHD2005001257-I, MHD2006000242-L, MHD2006000243-L, MHD2006000234-L,
MHD2006000339-L, MHD2006000333-W, MHD2006000400-L

CERTIFICATION

I certify that a true and correct copy of the forgoing has been sent by U.S. certified mail (Number 7005 1160 0000 4170 5225), return receipt requested, to David Barroso dba Sweet Homes' attorney Gershon D. Cohen , 1777 N.E. Loop 410, Suite 600, San Antonio, TX 78217 on this the _____ day of _____, 2006.

Jerry Jensen, Investigator

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 8, 2006

Tim Irvine
Executive Director
Texas Department of Housing
and Community Affairs, Manufactured Housing Division
507 Sabine St., 10th Floor
Austin, Texas 78711-2489

VIA HAND DELIVERY

**RE: Docket No. 332-06-0118; Texas Department of Housing and Community Affairs
v. David Barroso d/b/a Sweet Homes**

Dear Mr. Irvine:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Rivas", written over a horizontal line.

Steven M. Rivas
Administrative Law Judge

SMR/rm
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**
Nichole Bunker-Henderson, Assistant Attorney General, Attorney General of Texas, Administrative Law
Division, 300 W. 15th Street, 12th Floor, Austin, TX 78701 - **VIA HAND DELIVERY**
Jim Hicks, Texas Department of Housing and Community Affairs, Manufactured Housing Division, 507 Sabine
St., 10th Floor, Austin, TX 78711-2489 - **VIA HAND DELIVERY**
Gershon D. Cohen, Attorney at Law, 1777 N. E. Loop 410, Suite 600, San Antonio, TX 78217 - **VIA
REGULAR MAIL**

SOAH DOCKET NO. 332-06-0118

TEXAS DEPARTMENT OF	§	BEFORE THE STATE OFFICE
HOUSING AND COMMUNITY	§	
AFFAIRS,	§	
Petitioner	§	
	§	
V.	§	OF
	§	
DAVID BARROSO	§	
D/B/A SWEET HOMES,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Manufactured Housing Division (Division) of the Texas Department of Housing and Community Affairs (Department or Staff) brought this enforcement action against David Barroso d/b/a Sweet Homes (Respondent) for violating Texas Manufactured Housing Standards Act (the Act), TEX. OCC. CODE ANN. Chap 1201. Staff recommended that Respondent be assessed an administrative penalty for failing to timely transfer good and marketable titles after sales of used manufactured homes, failing to comply with Warranty Order and Installation Reports, and failing to meet habitability requirements . Despite being sent proper notice, Respondent did not appear and was not represented at the hearing in the matter. Based on Respondent's failure to appear, Staff's allegations were accepted as true, establishing the violations. The Administrative Law Judge (ALJ) agrees with Staff's recommendation.

I. PROCEDURAL HISTORY

The hearing convened on April 20, 2006, before ALJ Steven M. Rivas in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Nichole Bunker-Henderson, Assistant Attorney General, who moved for a default based on Respondent's failure to appear.

Staff offered competent evidence establishing that appropriate notice of the hearing was provided to Respondent. Those matters are set forth in the Findings of Fact and Conclusions of Law.

II. RECOMMENDATION

Based on the following Findings of Fact and Conclusions of Law and in accordance with 1 TEX. ADMIN. CODE § 155.55, the ALJ granted Staff's motion for default and recommends that Respondent be assessed an administrative penalty for the violations alleged and established in this proceeding.

III. FINDINGS OF FACT

1. On September 15, 2005, Staff of the Texas Department of Housing and Community Affairs (Staff or Department) mailed its notices of alleged violations and administrative hearing to David Barroso dba Sweet Homes (Respondent).
2. The notices were mailed to Respondent's address of record at 15000 Camino Real, Kyle, Texas 78640 by both U.S. regular mail and certified mail, return receipt requested. This address is contained in the Department's official records, pursuant to 10 TEX. ADMIN. CODE § 1.12, as the last known address for Respondent provided to the Department.
3. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; and a short, plain, statement of the matters asserted.
4. The notice of hearing advised Respondent in 12-point bold-faced type that failure to appear at the hearing could result in the factual allegations within the notice being deemed true and the granting by default of the relief sought in the notice.
5. The hearing was convened before Administrative Law Judge, Steven M. Rivas, at the State Office of Administrative Hearings ("SOAH") as scheduled on April 20, 2006, in the William P. Clements Building, 300 W. 15th St., Austin, Texas.
6. The Department appeared at the hearing and was represented by Nicole Bunker-Henderson, Assistant Attorney General. Respondent was neither present nor represented. Respondent

did not file for a continuance or provide either prior or subsequent explanation for the failure to appear.

7. On or about June 6, 2005, Tim Ford filed complaint number MHD200500190-L with the Department. On or about August 22, 2003, Respondent sold used manufactured home NTA0981697/8 to Tim Ford, a consumer under the Act. At the time of sale, there were unpaid taxes owed on the home for years 2001 and 2002 in Bexar County, Texas. Therefore, Respondent failed to give good and marketable title.
8. On or about July 20, 2005, Justin Mooney filed complaint number MHD2005001299L with the Department. On or about August 1, 2004, Respondent sold used manufactured home NTA1087613/4 to Justin Mooney, a consumer under the Act. At the time of sale there were tax liens for unpaid taxes in years 2002-2004 outstanding in Bexar County, Texas. Therefore, Respondent failed to give good and marketable title.
9. On or about November 22, 2004, John Johanson filed complaint number MHD2005000445-W with the Department. On or about September 29, 2004, Respondent sold manufactured home PFS0633571 to John Johanson, a consumer under the Act. The Department issued a Warranty Order and Inspection Report on or about February 14, 2005, and Respondent was ordered to correct the matters set forth in the inspection report within 40 days and provide the Department with proof of compliance within an additional 10 days. Respondent did not comply with the Department's order.
10. On or about May 19, 2005, Rick and Karen Caveness filed complaint number MHD2005001116-L with the Department. On or about April 23, 2003, Respondent sold used manufactured home RAD1277989/90 to Rick and Karen Caveness, consumers under the Act. At the time of sale there were tax liens for unpaid taxes in years 2001-2003 outstanding in Bandera County, Texas. Therefore, Respondent failed to give good and marketable title.
11. On or about February 24, 2005, Vester Potter filed complaint number MHD2005000794-LRV with the Department. On or about May 17, 2004, Respondent sold used manufactured home PFS0437329 to Vester Potter, a consumer under the Act. At the time of sale there were tax liens for unpaid taxes in years 1998 and 1999 outstanding in Travis County, Texas. Therefore, Respondent failed to give good and marketable title.
12. On or about September 15, 2004, Jennifer Grossman and Robert Graziano filed complaint number MHD2005000142L with the Department. On or about March 23, 2003, Respondent sold used manufactured home PFS0430617 to Jennifer Grossman and Robert Graziano, consumers under the Act. At the time of sale there were tax liens for unpaid taxes in years 2001-2003 outstanding in Bexar County, Texas. Therefore, Respondent failed to give good and marketable title.

13. On or about July 20, 2005, Russell Luce filed complaint number MHD2005001297-L with the Department. On or about February 2, 2003, Respondent sold used manufactured home PFS0691210/11 to Russell Luce, a consumer under the Act. At the time of sale there were tax liens for unpaid taxes in years 2002 and 2003 outstanding in Medina County, Texas. Therefore, Respondent failed to give good and marketable title.
14. On or about July 27, 2005, Scott and Shannon McCreless filed complaint number MHD2005001324LRV with the Department. On or about April 14, 2005, Respondent sold used manufactured home NTA0625497/8 to Scott and Shannon McCreless, consumers under the Act. At the time of sale there were tax liens for years 2000-2004 outstanding in Guadalupe County. Therefore, Respondent failed to give good and marketable title. The home was inspected on September 13, 2005, and found not to be habitable. The Department issued a Warranty Order and Inspection Report. Respondent did not comply with the Warranty Order.
15. The Department initiated complaint number MHD06000165-IV. On or about September 12, 2004, Respondent installed manufactured home RAD923388/89/90 for John Squire, a consumer under the Act. The Department inspected the home on or about June 3, 2005, and installation deviations were cited. On June 20, 2005, the Department issued a Warranty Order and Installation Report requiring correction of these deviations within 40 days. Respondent did not comply with the Warranty Order.
16. The Department initiated complaint number MHD 2006000163-IV. On or about June 25, 2003, Respondent installed manufactured home RAD0986827 for Richard Mason, a consumer under the Act. The home was inspected by the Department on or about June 9, 2005, and installation deviations were cited. On June 20, 2005, the Department issued a Warranty Order and Installation Report requiring correction of these deviations within 40 days. Respondent did not comply with the Warranty Order.
17. On or about August 27, 2005, Gary Schroeder filed complaint number MHD2005000023 WU with the Department. On or about May 23, 2005 Gary Schroeder, a consumer under the Act, purchased used manufactured home NTA1017079 from Respondent. On or about October 13, 2005, the Department performed a consumer complaint inspection on Mr. Schroeder's home and assigned warranty items to the Respondent. Travis Holcomb, an inspector for the Department, hand delivered a Warranty Order and Inspection Report on November 17, 2005. Respondent did not comply with the Warranty Order.
18. On or about July 30, 2005, Cecil Nelms and Lisa Lincoln filed complaint number MHD2005001301L with the Department. On or about January 6, 2005 Cecil Nelms and Lisa Lincoln, consumers under the Act, purchased used manufactured home PFS0671275 from Respondent. On or about November 21, 2005 the Department issued a Warranty Order and Inspection Report. Respondent did not comply with the Warranty Order.

19. The Department initiated complaint number MHD2006000158IV. On or about September 12, 2004, Respondent installed used manufactured home PFS0666420/1 for John Squire, a consumer under the Act. The Department performed an inspection of the home and cited installation deviations. On June 20, 2005, the Department issued a Warranty Order requiring correction of these deviations within 40 days. Respondent did not submit documentation showing compliance with the notice and Warranty Order.
20. On or about July 15, 2005, Steven and Irene Gonzalez filed complaint number MHD20050001260LRV with the Department. On or about May 8, 2003, Respondent sold used manufactured home PFS0702935/6 to Steven and Irene Gonzalez, consumers under the Act. At the time of sale there were unpaid taxes for tax years 2002 and 2003 in Bexar County, Texas. Therefore, Respondent failed to give good and marketable title.
21. On or about August 18, 2005, Theska Wilson filed complaint number MHD2005001366W with the Department. On or about December 31, 2002, Respondent sold used manufactured home PFS0584977 to Theska Wilson, a consumer under the Act. At the time of the sale there were unpaid taxes owing for tax years 2000, 2001, and 2002, in Atascosa County, Texas. Therefore, Respondent failed to give good and marketable title.
22. In July 2005, Matt and Rhonda Molter filed complaint number MHD2005001296LRV with the Department. On or about August 4, 2004, Respondent sold used manufactured home PFS0560128/9 to Matt and Rhonda Molter, consumers under the Act. At the time of sale there were unpaid taxes for tax year 2004 in Comal County, Texas. Therefore, Respondent failed to give good and marketable title.
23. In July 2005, Debra and Richard Hoedebecke filed complaint number MHD2005001257II with the Department. On or about November 2003, Respondent sold used manufactured home PFS0381011/12 to Debra and Richard Hoedebecke, consumers under the Act. Taxes on this home were outstanding in Bexar County for years 2001-2003 at the time of sale. Therefore Respondent failed to give good and marketable title. An inspection of the home was performed by the Department on August 23, 2005, and installation deviations were cited. On September 1, 2005, the Department issued a Warranty Order and Inspection Report requiring correction of these deviations within 40 days. Respondent did not submit documentation showing compliance with the notice and Warranty Order.
24. On or about November 3, 2005, Albert Gomez filed complaint number MHD2006000242LRV with the Department. On or about October 19, 2004, Respondent sold used manufactured home RAD1208558 to Albert Gomez, a consumer under the Act. At the time of sale there were unpaid taxes for years 2002-2004 in Nueces County, Texas. Therefore, Respondent failed to give good and marketable title.

25. On or about November 7, 2005, Jennifer Forga filed complaint number MHD2006000243LRV with the Department. On or about March 5, 2005, Respondent sold used manufactured home PFS0553871 to Jennifer Forga, a consumer under the Act. At the time of sale there were unpaid taxes in Maverick County for years 2001-2004. Therefore, Respondent failed to give good and marketable title.
26. On or about November 28, 2005, John Miller filed complaint numbers MHD2006000339LRV and MHD2006000333WU with the Department. On or about October 11, 2005, Respondent sold used manufactured home PFS0728762/63 to John Miller, a consumer under the Act. On or about January 6, 2006, the Department issued Warranty Order and Inspection Report requiring Respondent to make certain repairs to Mr. Miller's home. Respondent did not submit documentation showing compliance with the notice and Warranty Order.
27. On or about December 21, 2005, Dan Gamblin filed complaint number MHD2006000400LRV with the Department. On or about October 18, 2004, Respondent sold used manufactured home PFS0569654 to Dan Gamblin, a consumer under the Act. At the time of sale there were unpaid taxes for the year 2000 in Maverick County, Texas. Therefore, Respondent failed to give good and marketable title.
28. The administrative penalty of \$1,000.00 for each separate violation of the Act was reasonable. This resulted in a total administrative penalty of \$23,000.
29. The requirement that Respondent comply with Department Rule 80.127(i), which requires Respondent to pay full restitution owed to any customer, was reasonable.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction in this case pursuant to the Texas Manufactured Housing Standards Act (the Act), TEX. OCC. CODE ANN. Chap 1201, and has authority to take disciplinary action pursuant to TEX. OCC. CODE ANN. § 1201.605 and TEX. GOV'T CODE ANN. ch. 2306.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this action, including the authority to issue a proposal for decision, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice was provided to Respondent pursuant to the Act, TEX. GOV'T CODE ANN. chs. 2001 and 2306, 1 TEX. ADMIN. CODE § 155.55, and 10 TEX. ADMIN. CODE § 80.126.

4. Respondent violated §1201.451 of the Act by failing to timely and appropriately transfer good and marketable titles to purchasers of used manufactured homes.
5. Respondent violated §1201.354 and §1201.356(e) of the Act by failing to comply and/or show documentation of compliance with Warranty Reports issued by the Department.
6. Respondent violated §1201.455 by failing to comply with the requirement of habitability for used manufactured homes.
7. Based upon the foregoing Findings of Fact and Conclusions of Law and the criteria set forth in TEX. GOV'T CODE ANN § 2306.604, Respondent should be assessed an administrative penalty of \$23,000.00 and be required to pay full restitution owed to any customer.

SIGNED June 8, 2006.



**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

Agenda Action Item No. 3

**Texas Department of Housing and Community Affairs
Historical Budget Analysis
Manufactured Housing Division
For FY 2007 and 2006**

D R A F T

Budget Categories	FY 07 Budget (a)	FY 06 Budget (b)	Variance (a-b)	Percentage Change
Salaries and Wages	\$ 2,868,656	\$ 2,780,460	\$ 88,196	3.2%
3 % & 4% Salaries Increase	82,654	106,000	-23,346	-22.0%
Payroll Related Costs	825,000	805,535	19,465	2.4%
Travel In-State	200,000	200,000	0	0.0%
Travel Out-of State	0	0	0	0.0%
Home Owner Consumer Claims (Rider # 18)	100,000	100,000	0	0.0%
Professional Fees	20,000	33,000	-13,000	-39.4%
Materials and Supplies	65,000	65,000	0	0.0%
Repairs/Maintenance	40,000	56,000	-16,000	-28.6%
Printing and Reproduction	60,000	50,000	10,000	20.0%
Rental/Lease	90,000	256,000	-166,000	-64.8%
Membership Dues	500	500	0	0.0%
Registration Fees	500	500	0	0.0%
Texas Online	19,120	14,000	5,120	36.6%
Professional Liability Insurance	13,000	13,000	0	0.0%
Employee Tuition	0	2,500	-2,500	-100.0%
Advertising	200	200	0	0.0%
Freight/Delivery	3,000	4,000	-1,000	-25.0%
Temporary Help	100,000	50,000	50,000	100.0%
Furniture/Equipment	0	26,000	-26,000	-100.0%
Communications/Utilities	130,500	130,500	0	0.0%
Capital Outlay	58,800	10,000	48,800	488.0%
State Office of Risk Management	10,000	10,000	0	0.0%
Subtotal	4,686,930	4,713,195	(26,265)	-0.6%
Indirect Support	490,048	490,048	(490,048)	-100.0%
Total Manufactured Housing	\$ 5,176,978	\$ 5,203,243	\$ (516,313)	-9.9%
FTE's	64	64	-	0.0%
Method of Finance:				
General Revenue	119,120	114,000	5,120	4.5%
Appropriated Receipts	3,251,515	4,875,243	(1,623,728)	-33.3%
Federal Funds	1,316,295	214,000	1,102,295	515.1%
Total Method of Finance	\$ 5,176,978	\$ 5,203,243	\$ (516,313)	-9.9%

Texas Department of Housing and Community Affairs
 Manufactured Housing Division
 Operating Budget Allocation to Direct Strategies
 For FY 2007

Description	Expenditures	E.1.1. Titling & Licensing	E.1.2. Installation Inspections	E.1.3. Complaints Enforcement	E.1.4. Texas Online	Total Budget
Salaries and Wages	\$ 2,868,656	966,156	1,006,050	896,450	\$	2,868,656
3% Salaries Increase	82,654	7,439	38,021	37,194		82,654
Payroll Related Costs	825,000	74,250	379,500	371,250		825,000
Travel In-State	200,000	5,000	105,000	90,000		200,000
Travel Out-of State	0	0	0	0		0
Home Owner Consumer Claims (Rider # 18)	100,000	0	0	100,000		100,000
Professional Fees	20,000	1,800	9,200	9,000		20,000
Materials and Supplies	65,000	5,850	29,900	29,250		65,000
Repairs/Maintenance	40,000	3,600	18,400	18,000		40,000
Printing and Reproduction	60,000	5,400	27,600	27,000		60,000
Rental/Lease	90,000	8,100	41,400	40,500		90,000
Membership Dues	500	45	230	225		500
Registration Fees	500	45	230	225		500
Texas Online	19,120	0	0	0	19,120	19,120
Professional Liability Insurance	13,000	876	6,274	5,850		13,000
Employee Tuition	0	0	0	0		0
Advertising	200	18	92	90		200
Freight/Delivery	3,000	270	1,380	1,350		3,000
Temporary Help	100,000	81,195	9,403	9,402		100,000
Furniture/Equipment	0	0	0	0		0
Communications/Utilities	130,500	11,745	60,030	58,725		130,500
Capital Outlay	58,800	5,292	27,048	26,460		58,800
State Office of Risk Management	10,000	900	4,600	4,500		10,000
	\$ 4,686,930	\$ 1,177,981	\$ 1,764,358	\$ 1,725,471	\$ 19,120	\$ 4,686,930
		29	16.80	18.20		64

Method of Finance:

	General Revenue	Appropriated Receipts	Federal Funds	Total
Strategy One:	1,177,981	0	1,177,981	1,177,981
Strategy Two:	1,764,358	0	1,126,741	1,764,358
Strategy Three:	1,725,471	100,000	1,028,482	1,725,471
Strategy Four	19,120	19,120	0	19,120
	\$ 4,686,930	\$ 119,120	\$ 3,333,204	\$ 1,234,606

Indirect Support:

	F.1.1.	F.1.2.	F.1.3.	Total
Central Administration	254,825	254,825		254,825
Information Resource Technologies	156,815	156,815		156,815
Operating Support	78,408		78,408	78,408
	\$ 490,048	\$ 254,825	\$ 156,815	\$ 78,408

Method of Finance:

Appropriated Receipts	\$ 490,048	\$ 254,825	\$ 156,815	\$ 78,408	\$ 490,048
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**Manufactured Housing Division
Revenue Summary and Projections
For FY 2006-07**

FEE TYPE	FY 2007 Projected (c)	FY 2006 Act/Est. (d)	Variance (c-d)	Percentage Change
Training	62,000	62,000	-	0%
Titles	5,225,000	5,783,000	(558,000)	-10%
Licenses	1,417,000	1,417,000	-	0%
Inspections	1,361,000	1,361,000	-	0%
Admin. Penalties	9,620	9,620	-	0%
Public Information	1,600	1,600	-	0%
Reimbursement - HORTF	443,658	443,658	-	0%
Returned Check Charge	30	30	-	0%
	8,519,908	9,077,908	(558,000)	-6%
Federal Funds:				
Floors Shipped	453,960	453,960	-	0
Floors Produced	128,040	128,040	-	0
	582,000	582,000	-	0
Total	\$ 9,101,908	\$ 9,659,908	\$ (558,000)	\$ (0.06)

** Note: The assumptions for FY 2007 revenues use the actual/estimates for FY 2006 and modified historical trends.*

**Texas Department of Housing and Community Affairs
 Manufactured Housing Division
 Budget and Expense Status
 From September to August
 For FY 2006**

Budget Categories	Annual Budget (a)	*1 YTD Act/Est Expenses Sep - Aug (b)	YTD Variance Sep - Aug (a-b)	Remaining Budget As of August
Salaries and Wages	\$ 2,886,460	2,728,152	158,308	158,308
Payroll Related Costs	805,535	725,000	80,535	80,535
Travel In-State	200,000	198,000	2,000	2,000
Travel Out-of State	0	0	0	0
Home Owner Consumer Claims (Rider # 18) *2	100,000	653,658	(553,658)	(553,658)
Professional Fees	33,000	20,000	13,000	13,000
Materials and Supplies	65,000	19,407	45,593	45,593
Repairs/Maintenance	56,000	37,000	19,000	19,000
Printing and Reproduction	50,000	35,000	15,000	15,000
Rental/Lease	256,000	175,000	81,000	81,000
Membership Dues	500	400	100	100
Registration Fees	500	500	0	0
Texas Online	14,000	14,000	0	0
Professional Liability Insurance	13,000	13,000	0	0
Employee Tuition	2,500	0	2,500	2,500
Advertising	200	200	0	0
Freight/Delivery	4,000	2,000	2,000	2,000
Temporary Help	50,000	214,000	(164,000)	(164,000)
Furniture/Equipment	26,000	5,000	21,000	21,000
Communications/Utilities	130,500	125,000	5,500	5,500
Capital Outlay	10,000	48,786	(38,786)	(38,786)
State Office of Risk Management	10,000	9,545	455	455
Subtotal	4,713,195	5,023,648	-310,453	(310,453)
Indirect Support	490,048	473,000	17,048	17,048
Total Manufactured Housing *3	\$ 5,203,243	\$ 5,496,648	\$ (293,405)	\$ (293,405)

* 1 YTD expenses column represents actual expenditures from September to June, and projected expenditures from July to August.

* 2 The Consumer Claims payment of \$653,658 has been projected to be reduced by projected reimbursement amount of \$443,658. The remaining balance of \$210,000 was assumed unrecoverable because several retailers went under.

* 3 Had the negative remaining budget balance of \$293,405 been adjusted by the projected reimbursement amount of \$443,658, it would have had a positive amount of \$150,253.

Exhibit A

**Manufactured Housing
Administrative Support Schedule
Fiscal Year 2007**

	FTE's	Salaries	Payroll Related Costs	Total
Support:				
Internal Audit	0.40	21,788	5,011	26,799
Policy and Public Affairs	0.60	31,052	7,142	38,194
Human Resources	0.90	51,753	11,903	63,657
Facilities and Space Management	0.75	33,258	7,649	40,907
Information Systems	1.80	107,681	24,767	132,448
Financial Administration:				
Director, Financial Administration	0.15	12,481	2,871	15,351
Executive Assistant	0.05	2,523	580	3,103
Manager of Budget, Travel and Payroll	0.05	4,108	945	5,053
Payroll	0.30	16,470	3,788	20,258
Accounting Manager	0.25	19,459	4,476	23,935
Travel	0.30	13,418	3,086	16,505
Payables	0.25	13,778	3,169	16,947
Program Accountant	1.00	48,036	11,048	59,084
Purchasing	0.50	22,609	5,200	27,809
Total Support, Manufactured Housing	7.3	398,413	\$ 91,635	\$ 490,048

Agenda Action Item No. 4

**Texas Department of Housing and Community Affairs
 Legislative Appropriations Request
 Manufactured Housing Division
 For FY 2008 and 2009**

D R A F T

Description	FY 08 Budget	FY 09 Budget	Variance
Salaries and Wages	\$ 3,021,363	\$ 3,173,217	\$ 151,855
Other Personnel Costs	100,000	125,000	25,000
Travel In-State	200,000	200,000	-
Travel Out-of State	-	-	-
Professional Fees	134,000	134,000	-
Consumable Supplies	40,000	40,000	-
Utilities	31,000	31,000	-
Rent - Building	66,130	66,130	-
Rent - Machines	24,000	24,000	-
Other Operating Expenses	637,025	637,025	-
Client Services	-	-	-
Grants	-	-	-
Capital Expenditure	220,410	199,850	(20,560)
Total Manufactured Housing	\$ 4,473,928	\$ 4,630,222	\$ 156,295

FTE's	64	64	-
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Method of Finance:

Appropriated Receipts	4,173,928	4,330,222
Federal Funds	300,000	300,000
Total Method of Finance	\$ 4,473,928	\$ 4,630,222

Texas Department of Housing and Community Affairs
 Manufactured Housing Division
 Legislative Appropriations Request
 For FY 2008

Description	Expenditures	E.1.1. SOL & Licensing	E.1.2. Inspections	E.1.3. Complaints Enforcement	E.1.4. Texas Online	Total Budget
Salaries and Wages	\$ 3,021,363	\$ 1,116,616	\$ 1,009,030	\$ 895,717		\$ 3,021,363
Other Personnel Costs	100,000	36,957	33,397	29,646		100,000
Travel In-State	200,000	5,000	111,793	83,207		200,000
Travel Out-of State	0	0	0	0		0
Professional Fees	134,000	49,523	44,751	39,726		134,000
Consumable Supplies	40,000	14,783	13,359	11,858		40,000
Utilities	31,000	11,457	10,353	9,190		31,000
Rent - Building	66,130	24,440	22,085	19,605		66,130
Rent - Machines	24,000	8,870	8,015	7,115		24,000
Other Operating Expenses	637,025	228,354	106,434	283,117	19,120	637,025
Client Services	0	0	0	0		0
Grants	0	0	0	0		0
Capital Expenditure	220,410	\$ 81,458	73,609	65,343		220,410
Total Manufactured Housing	\$ 4,473,928	\$ 1,577,457	\$ 1,432,826	\$ 1,444,525	\$ 19,120	\$ 4,473,928
FTE's		29.0	16.8	18.2		64

Method of Finance:

	Appropriated Receipts	Federal Funds	Totals
Strategy One:	1,577,457	1,577,457	1,577,457
Strategy Two:	1,432,826	100,000	1,432,826
Strategy Three:	1,444,525	200,000	1,444,525
Strategy Four:	19,120	19,120	19,120
Total	\$ 4,473,928	\$ 300,000	\$ 4,473,928

Texas Department of Housing and Community Affairs
 Manufactured Housing Division
 Legislative Appropriations Request
 For FY 2009

Description	Expenditures	E.1.1. SOL & Licensing	E.1.2. Inspections	E.1.3. Complaints Enforcement	E.1.4. Texas Online	Total Budget
Salaries and Wages	\$ 3,173,217	\$ 1,172,737	\$ 1,059,744	\$ 940,736		\$ 3,173,217
Other Personnel Costs	125,000	46,197	41,746	37,058		125,000
Travel In-State	200,000	5,000	111,793	83,207		200,000
Travel Out-of State	0	0	0	0		0
Professional Fees	134,000	49,523	44,751	39,726		134,000
Consumable Supplies	40,000	14,783	13,359	11,858		40,000
Utilities	31,000	11,457	10,353	9,190		31,000
Rent - Building	66,130	24,440	22,085	19,605		66,130
Rent - Machines	24,000	8,870	8,015	7,115		24,000
Other Operating Expenses	637,025	228,354	106,434	283,117	19,120	637,025
Client Services	0	0	0	0		0
Grants	0	0	0	0		0
Capital Expenditure	199,850	73,859	66,743	59,248		199,850
Total Manufactured Housing	\$ 4,630,222	\$ 1,635,219	\$ 1,485,023	\$ 1,490,860	\$ 19,120	\$ 4,630,222

FTE's 29.0 16.8 18.2 64

Method of Finance:

	Appropriated Receipts	Federal Funds	Totals
Strategy One:	1,635,219		1,635,219
Strategy Two:	1,485,023	100,000	1,485,023
Strategy Three:	1,490,860	200,000	1,490,860
Strategy Four:	19,120		19,120
Total	\$ 4,630,222	\$ 300,000	\$ 4,630,222

**Texas Department of Housing and Community Affairs
 Manufactured Housing Division
 Legislative Appropriations Request
 Revenue Summary and Projection
 For FY 2008-09**

FEE TYPE	FY 2008 Projected (c)	FY 2009 Projected (d)	Variance (c-d)	Percentage Change
Training	62,000	62,000	\$ -	0%
Statement of Ownership and Allocation (SOLs)	5,225,000	5,225,000	-	0%
Licenses	1,417,000	1,417,000	-	0%
Inspections	1,361,000	1,361,000	-	0%
Admin. Penalties	9,620	9,620	-	0%
Public Information	1,600	1,600	-	0%
Reimbursement - HORTF	443,658	443,658	-	
Returned Check Charge	30	30	-	0%
	\$ 8,519,908	\$ 8,519,908	\$ -	0%
Federal Funds:				
Floors Shipped	453,960	453,960	-	0%
Floors Produced	128,040	128,040	-	0%
	\$ 582,000	\$ 582,000	\$ -	0%
Total	\$ 9,101,908	\$ 9,101,908	\$ -	0%

** Note: The assumptions for FY 2008-09 revenues use the actual/estimates for FY 2006-07 and modified historical trends.*

ADMINISTRATIVE SERVICES AND COST REIMBURSEMENT AGREEMENT

AMENDMENT NO. ~~7~~ [6]

DRAFT

SECTION 1. The **Texas Department of Housing and Community Affairs**, a public and official department of the State of Texas ("TDHCA"), and the **Manufactured Housing Division**, an independent entity within TDHCA ("MH Division") do hereby contract and agree to amend their original agreement as initially executed by the Executive Director of TDHCA effective September 1, 2001 through August 31, ~~2007~~ [2006] for the performance of administrative services.

SECTION 2. The parties hereto agree to amend the agreement identified above so that Section 1.1, Scope of Services, is revised to read hereafter as given below:

“Section 1.1, Scope of Services.

- (A) During the term of this Agreement, TDHCA shall provide administrative support services to the MH Division from TDHCA’s Internal Audit; Governmental Communications; Human Resources; Facilities and Support; Information Systems; and Financial Services areas and such incidental services as may be necessary (collectively the "Services") as further specified in Exhibit A to this agreement. TDHCA shall be solely responsible for furnishing the necessary supplies, services, equipment, and offices to provide such Services. All such Services are subject to oversight and direction by the MH board of directors, the Executive Director of the MH Division, and such MH Division employees as either of them may designate, subject to any conflicting requests from TDHCA’s Executive Director, TDHCA’s board of directors, and the immediate supervisors of the TDHCA employees performing such Services. The Services shall be provided in a manner consistent with the manner in which they are provided to other operations of TDHCA, except as TDHCA and the MH Division may otherwise agree.
- (B) During the term of this Agreement, MH Division shall provide the following services to TDHCA:
- (1) housing inspections by MH Division inspectors, as requested by TDHCA; and
 - (2) special projects and consulting by the executive director of the MH Division and/or designees, as requested by the executive director of TDHCA.

The MH Division shall be solely responsible for furnishing the necessary supplies, services, equipment, and offices to provide such services to TDHCA. The services of the MH Division are subject to oversight and direction by the TDHCA’s board of directors, the executive director of TDHCA, and such TDHCA employees as either of them may designate, subject to any conflicting requests from MHD’s board of directors, MHD’s executive director, and the immediate supervisors of the MHD employees performing such service.”

SECTION 3. The parties hereto agree to amend the agreement identified in Section 1 above so that Exhibit A is revised hereafter to read as given in Exhibit A to this amendment.

SECTION 4. The parties hereto agree to amend the agreement identified in Section 1 above so that Section 3.3, "Payments to MH Division for Services" is added to read hereafter as given below:

"Section 3.3, Payments to MH Division for Services.

As compensation for the Services performed by MH Division employees pursuant to this Agreement, TDHCA shall pay MH Division at the rate of \$28.25 per hour for the services described in Section 1.1(B)(1) and \$43.65 per hour for the services described in Section 1.1(B)(2)."

SECTION 5: The parties hereto agree that this amendment shall become effective on September 1, 2006 [2005].

SECTION 6. The parties hereto agree that all of the terms of the agreement identified in Section 1 above shall remain in effect and shall continue to govern except to the extent that they conflict with the terms of this amendment.

SECTION 7. By the signing of this amendment, the parties hereto expressly understand and agree that this amendment shall become a part of the agreement identified in Section 1 above as though it were set forth word for word herein.

WITNESS OUR HANDS EFFECTIVE SEPTEMBER 1, 2006 [2005].

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

By: _____
Michael Gerber [Edwina P. Carrington]
Executive Director

MANUFACTURED HOUSING DIVISION

By: _____
Timothy K. Irvine
Executive Director

**Exhibit A
 Manufactured Housing Division
 Administrative Support Schedule
 Fiscal Year 2007**

	FTE's	Salaries	Payroll Related Costs	Total
Support:				
Internal Audit	0.40	21,788	5,011	26,799
Policy and Public Affairs	0.60	31,052	7,142	38,194
Human Resources	0.90	51,753	11,903	63,657
Facilities and Space Management	0.75	33,258	7,649	40,907
Information Systems	1.80	107,681	24,767	132,448
Financial Administration:				
Director, Financial Administration	0.15	12,481	2,871	15,351
Executive Assistant	0.05	2,523	580	3,103
Manager of Budget, Travel and Payroll	0.05	4,108	945	5,053
Payroll	0.30	16,470	3,788	20,258
Accounting Manager	0.25	19,459	4,476	23,935
Travel	0.30	13,418	3,086	16,505
Payables	0.25	13,778	3,169	16,947
Program Accountant	1.00	48,036	11,048	59,084
Purchasing	0.50	22,609	5,200	27,809
Total Support, Manufactured Housing	7.3	398,413	\$ 91,635	\$ 490,048

Texas Department of Housing & Community Affairs
Proposal for Adoption
Manufactured Housing Rules
(§§80. 208, 80.240 & 80.260)
Proposed Published in Texas Register Issue: May 26, 2006

NOTE: *Revisions to the originally proposed text are highlighted in blue (changed "taxing unit" to "taxing entity").*

The proposed amendment to §80.11(28) defining a verified claim on the HORTF is withdrawn and may be repropose in §80.133 in the future, which was found to be a more accurate location for the text. The proposed amendment to §80.119(b)(3) requiring an installation date be specified when a person contracts for delivery of a used manufactured home is withdrawn because of opposition to the proposal.

SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

§80.208 Recording Tax Liens on Manufactured Homes.

- (a) Manually filed tax [Tax] liens shall be filed with the Department using the form provided in §80.260(a)(14) of this title (relating to Required and Optional Forms) [this section or by an electronic filing providing the same information]. No other form will be accepted for the manual filing of tax liens. The form must be properly completed.
- (b) Electronically filed tax liens and tax lien releases shall be filed with the Department using the required file layout as provided in §80.240(a)(13) of this title (relating to Tables and Figures). No other format will be accepted for electronic filing of tax liens.

~~{Figure: 10 TAC §80.208(b)}~~ Moved tax lien form to §80.260(a)(14).

~~(c)(b)~~ For tax liens recorded after June 18, 2005, but prior to the effective date of these rules, those tax liens relating to tax years prior to 2001 will be disregarded and will not be treated as having been recorded.

~~(d)~~ If a tax collector wishes, it may file as a central tax collector under a single taxing entity ID number, in which case the liens recorded or released under that taxing entity ID number will extend to all liens created for tax obligations to the taxing entity for which the filer collects. In order, however, to file as a central collector, the filer must complete and provide to the Department the form set out in §80.260(a)(15) of this title (relating to Required and Optional Forms).

SUBCHAPTER H. TABLES AND FIGURES

§80.240. Tables and Figures.

(a) Tables.

(1) – (12) (No change.)

(13) Tax Lien Layout for Electronically Filed Tax Liens.

Texas Department of Housing and Community Affairs
Tax Lien File Layout

MUST be ASCII Fixed Record Layout (Text Format)				
516 bytes total per each record				
All text fields, addresses, names, etc should be left justified.				
ITEM		PICTURE	OFFSET	Additional Information for Accurate Filing
Home Identification				
Label-No		Alpha 10	1-10	The label number must be exactly 10 characters - anything more or less will be invalid. Also, additional text (<i>i.e.</i> , "Lab#" before the label or "A" or "A/B" after the number) will invalidate the field. If there is no label number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field.
Serial-No		Alpha 26	11-36	Serial numbers must only include the number of the first section - and not be prefixed with anything else (<i>i.e.</i> , SER#, #, S#, or using both section letters as A/B). The chances of recording a lien with only a serial number are very slim. Having a label number is the best chance for a successful recording. If there is no serial number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field.
FILLER (blank spaces)		Alpha 20	37-56	Model name is no longer required, so leave the 20-spaces originally allocated for this blank.
Taxpayer Identification				
Taxpayer-Name	Left Justified	Alpha 40	57-96	
Taxpayer -Name2	Left Justified	Alpha 40	97-136	
Taxpayer -Addr1	Left Justified	Alpha 30	137-166	
Taxpayer -Addr2	Left Justified	Alpha 30	167-196	
Taxpayer -City	Left Justified	Alpha 20	197-216	
Taxpayer -State	Left Justified	Alpha 2	217-218	
Taxpayer -Zipcode		Alpha 10	219-228	

ITEM		PICTURE	OFFSET	Additional Information for Accurate Filing
Collector Identification				
Collector-Tax-Entity ID		Alpha 10	229-238	The taxing entity id number MUST be 10 characters and in the following format XXX-XXX-XX. If the State Comptroller's Office has not assigned a taxing entity ID to the taxing entity, enter 999-999-99 in this field.
Collector-Name	Left Justified	Alpha 40	239-278	Enter the name of the taxing jurisdiction.
Collector-Name2	Left Justified	Alpha 40	279-318	Enter the name of the collector.
Collector-Addr1	Left Justified	Alpha 30	319-348	
Collector-Addr2	Left Justified	Alpha 30	349-378	
Collector-City	Left Justified	Alpha 20	379-398	
Collector-State	Left Justified	Alpha 2	399-400	
Collector-Zipcode		Alpha 10	401-410	
Lien Information				
Tax-Roll-Account-No		Alpha 26	411-436	
FILLER (blank spaces)		Alpha 8	437-444	Lien date is the date the lien is received by TDHCA and will be inserted when recorded; so leave the 8-spaces originally allocated for this blank.
Tax-Year - YYYY		Alpha 4	445-448	
FILLER (blank spaces)		Alpha 8	449-456	Tax amount is no longer required, so leave the 8-spaces originally allocated for this blank.
Release-Date – YYYYMMDD		Alpha 8	457-464	The date MUST be formatted as YYYYMMDD and have no slashes or spaces.
FILLER (blank spaces)		Alpha 49	465-513	
County Code		Alpha 3	514-516	A carriage return after entering the 3-digit County Code is needed after each record for proper formatting.

(b) Figures.

(1) - (27) (No change.)

SUBCHAPTER I. FORMS

§80.260. Required and Optional Forms.

(a) Required Forms.

(1) – (13) (No change.)

(14) Tax Lien Record and Release Form.

TAX LIEN RECORD/RELEASE

Please type or print clearly.

BLOCK 1: Information

Taxpayer Name and Tax Roll Account # are for information purposes only. All other information is REQUIRED.

HUD Label or Texas Seal #: _____ **OR** Serial #: _____

Tax Roll Account #: _____

Complete 8-Digit Taxing Entity ID #: _____

County Code (3 digits): _____

County Name: _____

Year for which taxes are owed: _____

Taxpayer Name: _____
(Name)

Taxpayer Address: _____
(Address)

(City) (State) (Zip Code)

Collector's Name & Name of Taxing Entity: _____

Collector's Address: _____
(Address)

(City) (State) (Zip Code)

Collector's Phone #: ()

BLOCK 2: Signature REQUIRED for Tax Lien Recording

I hereby certify that the lien being **RECORDED** with this form is in accordance with all applicable provisions of the Tax Code. If this lien recordation is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

(Collector's Signature) (Date)

BLOCK 3: Signature REQUIRED for Tax Lien Release

I hereby certify that the lien being **RELEASED** with this form has been discharged and should be removed from the records of the Texas Department of Housing and Community Affairs. If this lien release is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

(Collector's Signature) (Date)

Department Use Only

Filing Recorded

Date:

Filing NOT Recorded because:

- No manufactured home ID#(s) provided.
- Our records indicate that this home is real property. No lien can be recorded.
- Received after the filing deadline.
- Required Information not provided.

(15) Notification of filing status as a Central Tax Collector.

NOTIFICATION OF FILING STATUS AS A CENTRAL TAX COLLECTOR

Please type or print clearly.

BLOCK 1: Central Tax Collector Information

Central Collector Name: _____

Central Collector's Address: _____
(Address) *(City)* *(State) (Zip Code)*

Primary Taxing Entity ID#: ____ - ____ - ____ **Central Collector's Phone #:** (____) _____

BLOCK 2: Taxing Jurisdiction Information

County Name: _____ **County Code (3 digits):** _____

Complete 8-Digit Taxing Entity ID #	Name of Taxing Entity

Additional taxing entities may be listed on the reverse side of this form.

BLOCK 3: Notarized Signature Required

Until revoked by written notice to the Department, the undersigned will be the sole agent of each taxing entity listed herein for the recordation and release of tax liens on manufactured homes within the county specified herein. The undersigned represents and warrants that it is acting as a centralized collector and that it has legal authority to record and release such liens under the Primary Taxing Entity ID number designated herein. A lien filed for a particular year under the designated Primary Taxing Entity ID number may be for taxes due to one or more of the entities for which the Central Collection Agent collects, whereas a lien release filed for that year under that same number indicates that ALL taxes due to each entity for which the Agent collects have been discharged. In the event that any of the information provided herein changes, the undersigned agrees and undertakes to provide the Department with written notice of such change at least ten (10) days prior to its taking effect, and until and unless such written notice has been actually received by the Department at least ten (10) days prior to its taking effect, the Department will not be bound by it.

(Central Collector's Signature)

(Date)

Before me personally appeared the person(s) whose signature(s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of _____ 20__.

(Name of Notary)

(Notary Public)

(Commission Expires)

SEAL

Notary Public State of Texas

(b) (No change.)



Federal Register

**Wednesday,
June 14, 2006**

Part V

Department of Housing and Urban Development

24 CFR Part 3286

**Manufactured Home Installation Program;
Proposed Rule**

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 3286

[Docket No. FR-4812-P-02; HUD-2006-0167]

RIN 2502-AH97

**Manufactured Home Installation
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 home installation program. HUD is required to establish such a program in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000. States that have their own installation programs that include the elements required by statute are permitted to administer under their state installation programs, the new requirements that would be established through this proposed and final rulemaking. The new elements required by statute to be integrated into an acceptable manufactured home installation program are: Establishment of qualified installation standards; licensing and training of installers; and inspection of the installation of manufactured homes.

DATES: *Comment Due Date:* August 14, 2006.

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 also may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public. 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 docket number and title. All comments and communications submitted to HUD will be available, without change, 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, an advance

appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410-8000; 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

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) (the Act) is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes. The Act was amended on December 27, 2000 (Manufactured Housing Improvement Act of 2000, Title VI, Pub. L. 106-659, 114 Stat. 2997) to require HUD to, among other things, establish and implement a new manufactured home installation program for states that choose not to operate their own installation programs. Specifically, section 605 of the Act (42 U.S.C. 5404) calls for the establishment of an installation program that includes installation standards, the training and licensing of manufactured home installers, and inspection of the installation of manufactured homes.

A state that wants to operate its own installation program is not required to be a State Administrative Agency (SAA) under HUD's manufactured home program (see 24 CFR part 3282). Under the Act, however, any state that submits a new state plan to become an SAA after December 26, 2005, must include a complying installation program as part of its plan. As a result, after December 26, 2005, any state that becomes an SAA for the first time, or any state that becomes an SAA again after a lapse in its SAA status, will be required to administer its own compliant installation program.

The installation standards that will provide a basis for qualifying an installation program under section 605 of the Act were the subject of a separate proposed rule, which was published on April 26, 2005 (70 FR 21498). In

addition, an Advance Notice of Proposed Rulemaking that solicited public input on the installation program requirements was published on March 10, 2003 (68 FR 11448). Twenty-six commenters responded to the March 2003 notice, including a dozen state agencies, five state and national industry groups, a manufacturer, four state and national consumer groups, and four individuals. The comments and suggestions received from all of these commenters, as well as from the Manufactured Housing Consensus Committee (MHCC), were taken into consideration in the development of this proposed rule. However, not all of the comments could be accommodated, because of statutory authority or cost considerations. For example, the MHCC and commenters have recommended that HUD develop a program database to record and verify installations and to record how installers and other parties meet the installation program requirements. Such a database would be available for recording training, including continuing education; licensing; and installation inspections and verifications. Due to cost considerations, the proposed rule provides for the possibility of such a tracking system, but also provides for less expensive alternative methods. Further, the Department is seeking comment regarding what information should be sent to the Department and what should be retained by retailers and installers.

A number of the comments focused on the administration of state installation programs rather than HUD's development and administration of a federal installation program. These comments were helpful, and HUD is examining the degree to which HUD has authority to use additional suggested approaches to implement its installation program. For example, both the MHCC and a number of commenters suggested that parties that participate in and receive the benefits of the installation program pay at least a portion of the direct costs associated with the program. This is an approach used by many states that currently have installation programs. Such user charges would generally not be intended to cover the purely administrative costs to HUD of implementing the program, but might include fees to obtain an installer's license or to be qualified as a trainer. 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 any user fees until HUD's authority on

such an approach is clear. Nevertheless, HUD is requesting comments on the advisability of incorporating such fees into the installation program for HUD-administered states.

II. General Principles

HUD identified several general principles to guide it in developing this proposed rule. As a starting point, HUD wanted to encourage states to establish and implement their own installation programs. For the federal program, HUD determined that it wanted to concentrate its limited resources on assuring a quality end product, rather than on micromanagement of the installation process, such as negotiating specific methods used by each installer, retailer, and manufacturer.

So that installers would not be dependent on the actions of HUD in order to complete any phase of home installation, HUD wanted to minimize its role in the actual installation process. Instead, HUD has sought to maintain knowledge of the parties involved in the installation process by assuring the collection of certain information regarding the parties' work. Ultimately, the goal for HUD's continued administration of its installation program would be to identify trends or early indicators of potential problems and then address those areas on a systemic basis.

HUD has based its program design on limiting HUD's day-to-day oversight and encouraging participation in the oversight process by local building code authorities. Such a program design would be the most economical and effective approach. In addition, this design would take advantage of the expertise of qualified state and local authorities that are already providing oversight for the installation of manufactured homes.

The HUD-administered installation program outlined in this proposed rule would be based on qualified installer self-certification of the proper installation of the manufactured home, similar to the certification concept used for manufacturers to assert compliance of the home with construction and safety standards. The installation certification would include certification that the work had passed the required inspection, which would include at least certain elements specified in the rule. At the same time, by requiring the retailer to be responsible for certain recordkeeping functions, the rule would recognize that the retailer is an important component of the installation process.

The rule also would establish disclosure requirements to help the

purchaser or lessee understand the installation requirements, and would set out installation-related responsibilities for home manufacturers.

Finally, the rule would establish special procedures for adding to or revising the regulations that would be included in this new part 3286. These procedures would involve the MHCC, a consensus committee established in section 604(a)(3) of the Act (42 U.S.C. 5403), in the issuance of regulations for the installation program and would be in addition to the rulemaking procedures that would otherwise apply.

III. Manufactured Home Installation Program Overview

The statutory concept of the manufactured home installation program, whether HUD-administered or state-administered, is to apply minimum standards to the installation of new manufactured homes, so that qualified persons will install the homes properly. Manufactured homes that are properly installed can provide safe and durable quality housing that can also be highly affordable, since proper installation can mean fewer repairs and longer home-lives.

The proposed rule sets out, in discrete subparts: (1) Manufactured home installation requirements that are applicable in all states (subparts A and H) and to all manufacturers; (2) requirements that are applicable in only those states in which HUD is administering the installation program (subparts B–G); and (3) requirements for states that wish to apply to administer their own installation programs in lieu of the HUD program (subpart I). Further, to make the applicable requirements more readily identifiable, the proposed rule separately organizes the requirements that apply to the retailers, distributors, installers, installation trainers, and installation inspectors in states where HUD administers the installation program. If a term is defined in both this proposed rule and other parts of HUD's manufactured housing program regulations, the final rule may include conforming amendments to assure consistency of the definitions, as appropriate.

Manufacturer Responsibilities (All States). All manufacturers would be required to provide, with each home, an installation design and instructions that have been deemed by a Design Approval Primary Inspection Agency (DAPIA) as providing at least the level of protection that would be provided under the installation standards that will be adopted by HUD in 24 CFR part 3285 (see 70 FR 21498, April 26, 2005). If a home is installed in accordance with

instructions provided by the manufacturer and those instructions do not provide at least the required level of protection, the manufacturer will be responsible for the failure of the home to comply with the installation standards.

The manufacturer's installation instructions also must include instructions for supporting the manufactured home temporarily before the home is first sited for occupancy. In order to prevent the home from being brought out of compliance with the construction and safety standards, the instructions must be adequate to assure support for each transportable section of a manufactured home that is temporarily or permanently located on a site used by the manufacturer, by the retailer or at the home site.

For each home a manufacturer ships, the manufacturer must concurrently provide HUD with certain information that identifies the home and the destination of the shipment. This information is similar to what is required already from manufacturers under regulations set out in 24 CFR 3282.552 relating to the construction of homes. HUD anticipates that the manufacturer's reporting requirements for identifying the home and the destination of the shipment will be satisfied by a consolidated report. Manufacturers, with their homes shipped to retailers and distributors, would also be required to include confirmation that this tracking information has been provided to HUD, and the information must be updated by the retailer or distributor. Manufacturers would also be required to include in their consumer manuals a recommendation that if a manufactured home is reinstalled, the new installation work should be inspected.

Retailer/Distributor Responsibilities (All States). The proposed rule defines "retailer" to include manufacturers and distributors that sell manufactured homes directly to purchasers. All retailers and distributors would be required to support each transportable section of a manufactured home that is temporarily or permanently located on a site used by the retailer or distributor in accordance with the manufacturer's instructions for temporary storage, in order to prevent the home from being brought out of compliance with the construction and safety standards.

The rule would require retailers to provide certain disclosures to purchasers or lessees, either as a separate section of the sales or lease contract or in a separate document. The disclosures are intended to provide important information to consumers

regarding the installation requirements that will apply to their manufactured homes. The proposed rule also reminds parties that the Act prohibits provisions in agreements or contracts that would allow purchasers or lessees to waive any rights afforded to them by the Act.

For each home that is sold or leased, retailers and distributors would be required to maintain a sales or lease record containing specified information for 5 years. For each home that is installed in a state where HUD administers the installation program, retailers and distributors would also be required to update the tracking information that the manufacturers had provided to HUD. This information will enable HUD to determine which homes are to be installed in accordance with the HUD-administered installation program. Additional information provided by the retailers for homes sited in states where HUD administers the installation program will help HUD ascertain whether the installation requirements have been met, and will help HUD identify ways to improve the program.

The proposed rule also assigns other responsibilities to the retailer. Before the manufactured home is sold or leased, the retailer must verify that the home is appropriate for the wind, thermal, and roof loads where the home is to be sited. If the initial home site is not yet known, the retailer must provide additional disclosures to the purchaser or lessee about the design limits of the home and about the risk that an improperly sited home may not pass required inspections. The retailer must also provide the installer with a copy of the approved installation design and instructions.

Installer Responsibilities (HUD-Administered States). The quality of the installation work on a manufactured home will depend primarily on the installer. Because HUD has not previously exercised authority over installers, they are likely to be in need of education about the new requirements that would apply to their work. The amendments to the Act that mandate an installation program recognize the importance of quality installation work to the performance of a purchaser's home. HUD hopes that the network of manufacturers and retailers, who are already familiar with the federal role in manufactured housing, will work to assure an educated and qualified pool of manufactured home installers. To be qualified, an installer will have to demonstrate adequate training, including experience, in order to be recognized by HUD as a licensed installer. The term "installation license"

or "installer's license" is defined in a specific way in the proposed rule, to acknowledge that the term "license" is often understood to imply other characteristics than are applicable under the proposed rule.

An installer would be required to obtain training from approved trainers, who would be responsible for teaching a curriculum that enables installers to pass a HUD-administered or HUD-approved test. The proposed rule establishes both initial training requirements and continuing education requirements for installers.

In addition, an installer seeking a license from HUD would be required to provide evidence of, and maintain, general liability insurance. The term of the license would be 3 years, but the license could be renewed. If an applicant is denied a license on grounds other than failure to pass the installation license test, or if a licensee receives notice that his or her license might be revoked or suspended, the applicant or licensee could request an opportunity to challenge the adverse action in an administrative proceeding.

Not all persons who perform installation work would be required to be licensed. Only licensed installers, however, would be permitted to certify the installation as being in conformance with the applicable instructions and the requirements of HUD's installation program, and the licensed installer would be responsible for all of the installation work. The proposed rule also lists typical work related to the siting of a manufactured home for which an installation license is not required.

After meeting the licensing requirements, an installer would be qualified to install a manufactured home in a state where HUD administers the installation program. The installer would be responsible for installing the home in accordance with the manufacturer's instructions, which must reflect the requirements established by HUD. As part of the installation work, the installer would be required to verify: (1) The suitability of the site for placement of the home and (2) suitability of the proposed foundation or support and stabilization system. If the installer believes the home cannot be installed properly at the site, the installer must notify the contracting parties, including the retailer, and must decline to install the home until the deficiencies are remedied.

After completion of the installation work, the installer or retailer would be required to arrange on a timely basis for the work to be inspected by an appropriate third-party inspector. The

proposed rule does not specify a time for completion of the inspection; rather, the rule merely requires that it be arranged within 5 business days after completion of the installation work. HUD recognizes that inspector availability may be beyond the control of the installer and retailer, but expects that the installer and retailer will have sufficient incentive to complete the inspection without having to establish a deadline for completion.

When the installer has received the verification of compliance from a qualified inspector, the installer may certify the installation work. The installer would then provide the certification to the retailer and a copy of the certification to the purchaser. Finally, the installer is required to maintain certain records relating to the installation for 5 years.

Trainers (HUD-Administered States). The proposed rule establishes experience and curriculum criteria for persons who wish to register as installation trainers under the HUD-administered installation program. HUD proposes allowing a broad range of private persons and entities to provide the required training, which HUD hopes will assure continued ready access to trainers by installer-license candidates throughout the country. Qualified trainers would be required to maintain attendance and other records and to provide certificates of completion of training, and may be authorized to administer the tests required for installers to obtain licenses from HUD. The curriculum that trainers would be required to develop includes an overview of the Act and the regulatory structure of HUD's manufactured home program, as well as general and specific instruction of installation standards and requirements.

The requirements for continuing education to maintain an installer's license beyond the initial 3-year term would be more flexible. Only qualified trainers would be permitted to train on subject areas required by HUD for continuing education, but the balance of the required hours could be met in a variety of ways.

Interested individuals and entities would apply to HUD to be recognized as qualified trainers for a renewable 5-year term. The proposed rule also provides a right for applicants and qualified trainers to request an opportunity to challenge, in an administrative proceeding, any adverse action on their qualification by HUD.

Inspectors (HUD-Administered States). HUD proposes to rely on local building inspectors and professional engineers and architects as

independent, third-party inspectors of all installations of new manufactured homes in states where HUD administers the installation program. Generally, the installer would be responsible for obtaining and paying for the inspection services. The proposed rule sets out the elements that would be included in the inspection checklist, including required permits, specific elements of the minimum installation standards, and operational checks to be completed. The inspector would verify that the installation has been completed in accordance with the requirements of the regulations and would provide evidence of the verification to the installer. The installer must receive this verification before the installer could certify the installation work. The proposed rule also addresses what would happen if an installation cannot be verified as meeting the requirements of the regulations. As with other categories of program participants, inspectors would have a right to request administrative review of an adverse action by HUD on their authority to serve as inspectors in the HUD-administered states.

Enforcement (HUD-Administered States). The proposed rule reiterates that failure to comply with the installation program requirements would be a prohibited act under section 610(a)(7) of the Act (42 U.S.C. 5409(A)). As a result, the violator would be subject to civil and criminal penalties and actions for injunctive relief. In addition, installation defects that are reported in the first year after installation may be addressed in a dispute resolution program that meets the requirements in section 623 of the Act (42 U.S.C. 5422). HUD has published a separate proposed rule to implement the requirements for a qualifying dispute resolution program on October 20, 2005, at 70 FR 61178.

Recordkeeping (All States). As proposed, the rule would require retailers and distributors to maintain a sales or lease record containing specified information for all homes that they sell or lease. In addition, retailers and distributors would be required to report to HUD certain information about each home that is installed in states where HUD administers the installation program, so that HUD can determine which homes are to be installed in accordance with the HUD-administered installation program. This information may be useful if HUD is to structure fees according to the siting of the home. Such a reporting structure might eventually be simplified by establishing Internet-based data entry, rather than using hard-copy reports, and by consolidating installation and construction reporting requirements.

IV. State Installation Programs

Qualifying State Programs. One of HUD's guiding principles in developing the proposed HUD Manufactured Home Installation Program is to encourage the development and continued innovation of state installation programs. The proposed rule would establish that the HUD-administered installation program will operate in a state unless that state certifies, using a form provided in the rule, that it has its own qualifying installation program. A state installation program would be required to meet criteria listed in the self-certification form, but the rule would not specify how the criteria are to be met. In this way, states will have more flexibility to design installation programs or modify existing ones according to their individual preferences and circumstances.

A state's certification would encompass those elements expressly required by the Act to be part of a qualifying program, i.e., standards that provide protection to residents that equals or exceeds the level of protection provided by HUD's model standards; the state's training and licensing of installers; and the state's inspection of installations. An appropriate state official would sign the self-certification, and, at least initially, HUD would perform only a limited review of such certifications. If a state provides for its installation program as part of a state plan, HUD would also consider the installation program when it reviews the state plan. Recertification would be required every 3 years or whenever there is a significant revision in either the state's installation standards or its installation program elements.

Generally, a state that wants to administer its own program will have to assure HUD that all geographical areas of the state would be covered by the applicable installation standards and the other program requirements. An exception would be provided for limited areas of the state that are subject to federal law that prevents the state from having jurisdiction over manufactured home installations in those areas. The certification form would include an item asking the state for information about such situations. The certification form also asks the state to provide other information that will help HUD understand and evaluate its overall approach to implementation of the Act's installation program. Those parts of the certification form that ask for information beyond what is required for the self-certification would be used to assess the utility of future modifications of HUD's installation program.

The proposed rule would permit a state that complies in significant part with the requirements for a state-administered installation program, and that is moving toward full compliance, to be conditionally accepted as a qualifying program for up to 3 years. These states would have to require compliance with the minimum installation standards and would have to provide adequate funding and staffing support to their programs. Similar to the provision for rejection of state plans (see 24 CFR 3282.304), in the proposed rule HUD would provide notice to the state if HUD finds the state's certification inadequate, and HUD would also provide an opportunity to cure the inadequacy. In the event of a failure to cure, HUD would notify the state, by using the procedures in 24 CFR part 3282, subpart D, that the HUD installation program would apply in that state, and that the state has a right to a hearing on the disapproval.

Effect of Other State and Local Requirements. The Act provides specific criteria only for the installation-standards component of a qualifying installation program. In order for a state installation program to satisfy the criteria of the Act, the installation standards imposed by the state must provide at least the specified level of protection to residents of manufactured homes. See section 605(c)(3)(A) of the Act (42 U.S.C. 5404(c)(3)(A)). The Act does not establish such minimum requirements for the other elements that are required to be in a qualifying state program: training and licensing of installers, and inspections.

Further, section 604(d) of the Act (42 U.S.C. 5403(d)) generally reserves to each state the right to establish standards for the stabilizing and support systems and foundation systems of manufactured homes sited in the state. Therefore, state and local requirements that are not inconsistent with the minimum installation standards required by the Act and HUD's regulations might also be applicable to particular installations. For example, a state or local requirement that only licensed persons may perform work to connect the home to utilities would not be affected by this proposed rule.

V. Specific Issues for Comment

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

(1) *Limited exemptions from requirements.* The proposed rule provides that, in limited circumstances, a state may qualify to administer its own

installation program even if the minimum installation standards cannot be applied and enforced in all areas of the state. This limited exemption is intended to apply only where the state can demonstrate that it lacks legal authority, as a matter of federal law, to impose the installation requirements, and the proposed rule would require that the minimum installation standards and other requirements do apply in all other areas of the state. Similarly, the proposed rule provides an exception to application of the installation program requirements to temporary housing units provided to victims of Presidentially declared disasters, when the manufactured home is installed by persons holding an emergency contractor license issued by: (1) The state in which the home is sited or (2) by the Federal Emergency Management Agency. Should the final rule recognize any other exemptions?

(2) Should the manufacturer be required to provide notice about the installation program in the home or in the consumer's manual, in addition to the required disclosure on the sales contract?

(3) Should the final rule set out specific language for the installer to use in certifying that the installation of the home complies with the requirements of HUD's installation program? If so, what information should be included in the installer's certification?

(4) Should the final rule include any requirements for training relating to assuring accessibility and visitability for mobility-challenged persons?

(5) Should the final rule include any special method for tracking homes that are released from one retailer to another? If so, what should be the method?

(6) The proposed rule includes a requirement that retailers notify HUD about new manufactured homes that will be installed in a state where HUD administers the installation program. Should the final rule include a requirement that, when a manufactured home is sold, retailers notify either HUD or the state in which the home is to be installed (if that state has a qualifying installation program)?

(7) For purposes of HUD's enforcement of requirements related to

installation standards and construction and safety standards, HUD may establish a different completion-of-sale date in HUD-administered states than would be applicable in non-HUD-administered states. How should the completion-of-sale date of a manufactured home be affected by the new requirements for installation oversight in: (1) HUD-administered states? (2) In states with their qualifying installation programs? (See 24 CFR 3282.252(b) in HUD's procedural and enforcement regulations, and § 3286.117 in this proposed rule.)

(8) Section 3286.203(b) of this proposed rule lists kinds of work or activities for which an installation license would not be required. Are there other areas that should be included in any such listing in the final rule?

(9) Should holding an installer's license or certification that is issued in a state with a qualifying installation program be recognized as a basis for exempting a HUD license applicant from having to meet the experience requirements that would otherwise apply?

(10) Should a professional engineer, a registered architect, or a Primary Inspection Agency (PIA) be permitted to conduct an installation inspection only if an inspector from the appropriate local jurisdiction is not available to perform the inspection? Should any other persons be permitted to conduct the installation inspections in HUD-administered states, such as qualified inspectors from other states with HUD-approved installation programs or private third parties experienced in residential building construction?

(11) *Disclosures.* Section 3286.603(b) in the proposed rule requires a retailer disclosure when the initial siting location of the manufactured home is not known at the time of sale. Should the final rule instead require the retailer to know at the time of sale where the home is to be sited? If not, should the final rule include the § 3286.603(b) disclosure in the list of written disclosures required in § 3286.7(b) of the proposed rule? Should the final rule expressly require that any or all of these disclosures be signed by the purchaser, as evidence that the required disclosure was made?

(12) *Use of the word "should" instead of "must."* Occasionally in the proposed rule, HUD has used the word "should," rather than the mandatory "must." This usage has been deliberate and generally indicates an area that HUD recognizes as being important to the successful installation of a manufactured home, but in which HUD believes its authority is limited. Commenters are invited to point out instances of where the choice of terminology may be inappropriate.

VI. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the order). 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, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Paperwork Reduction Act

The proposed information collection requirements contained in this rule have been submitted to the 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
§ 3286.5(d)—Manufacturer's temporary installation instructions	78	1	78	20	1,560
§ 3286.7(a)—Manufacturer's notice in the consumer manual	222	608	135,000	0.17	22,500
§ 3286.7(b)—Retailer disclosure before sale (§ 3286.503(b), § 3286.603(a)(2)(i))	5,151	26	135,000	0.17	22,500

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§ 3286.9(a)—Manufacturer providing information to HUD prior to shipment	222	608	135,000	0.17	22,500
§ 3286.9(c)—Manufacturer providing notice to retailer at time of shipment	222	608	135,000	0.17	22,500
§ 3286.9(d)—Manufacturer's notice in the installation instructions	222	608	135,000	0.17	22,500
§ 3286.13—Retailer providing information to HUD (§ 3286.605(a))	340	20	6,750	0.17	1,125
§ 3286.103(a)—Retailer providing installation instructions to the purchaser	340	20	6,750	0.17	1,125
§ 3286.103(b)—Retailer providing installation instructions to the installer	340	17	5,738	0.17	956
§ 3286.111(a)—Installer conduct installation certification of installation (§ 3286.411(a), § 3286.507(b))	1,021	7	6,750	0.5	3,375
§ 3286.111(b)—Installer providing installation certification to retailer and purchaser (§ 3286.411(a), § 3286.507(b))	1,021	7	6,750	0.17	1,125
§ 3286.113(a)—Retailer providing installation information to HUD (§ 3286.605(a))	340	20	6,750	0.25	1,688
§ 3286.207(a)—Installation license application	1,021	1	1,021	1	1,021
§ 3286.207(b)—Proof of experience for license	1,021	1	1,021	1	1,021
§ 3286.207(c)—Proof of training for license	1,021	1	1,021	0.25	255
§ 3286.207(d)—Proof of insurance for license	1,021	1	1,021	0.25	255
§ 3286.207(e)—List of states in which the applicant holds a license	1,021	1	1,021	0.08	85
§ 3286.211(b)—Installation license renewal	1,021	1	1,021	1	1,021
§ 3286.303(b)—Trainers required to keep attendance records	50	1	50	104	5,200
§ 3286.303(c)—Trainers required to provide completion certificates	50	20	1,021	0.17	170
§ 3286.307(a)—Trainer registration application	50	1	50	1	50
§ 3286.307(b)—Trainer proof of experience required	50	1	50	1	50
§ 3286.307(c)—Other trainer qualification required	50	0.02	1	0.25	0.25
§ 3286.313—Expiration and renewal of trainer qualification	50	1	50	1	50
§ 3286.405(b)—Installer notification of inappropriate site	1,021	0.07	68	0.5	34
§ 3286.413—Installer recordkeeping requirements	1,021	1	1,021	24	24,504
§ 3286.805(a)—State Installation Program Certification Form	35	1	35	2	70
§ 3286.807(a)—State Installation Program Recertification Form	35	1	35	1	35
Totals	2,583	723,073	157,276

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 part 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 does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR-4812-P-02) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, FAX: (202) 395-6974;
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 proposed rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment has

been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Executive Order 13132, Federalism

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

HUD is required by statute to establish an installation program

through the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426). However, in accordance with the Act and as set forth in § 3286.15 of this proposed rule, this Manufactured Home Installation Program is not preemptive.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to consider the impact of their rules on small entities. When the proposed regulation will impose a significant economic impact on a substantial number of small entities, the agency must evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities.

HUD conducted a preliminary analysis of the cost impact on small entities for this rule. The completed preliminary analysis concluded that the Manufactured Home Installation Program would have a significant economic impact on a substantial number of small entities. Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C 603), HUD performed an Initial Regulatory Flexibility Analysis (IRFA) that evaluates the potential economic impact on the small entities the regulations will

affect, including: manufacturers, retailers, installers, and trainers. The IRFA also evaluates the differences in cost depending whether the home is single-section or multi-section. A summary of the IRFA follows. As noted above in the preamble, on December 27, 2000, the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C 5401-5426) (the Act) was amended by the Manufactured Housing Improvement Act of 2000, which, among other things, required the Secretary to establish an Installation Program for the enforcement of the Model Manufactured Home Installation Standards in each state that does not have an installation program established by state law and approved by HUD.

The rule would regulate establishments primarily engaged in making manufactured homes (NAICS 321991), the sale or lease of manufactured homes (NAICS 453930), the installation of manufactured homes (NAICS 238990), the training of installers (NAICS 611519), and states administering their own installation programs. The following table summarizes the number of regulated entities and the number of small entities that the proposed rule would affect:

NAICS code	Description of primary entity	Number of regulated entities	SBA size standard	Number of small entities	Percentage of regulated entities
All states—Subpart A is applicable in all states					
321991	Manufacturers	222	500 emp.	198	89
453930	Retailers	5,151	500 emp.	5,151	100
States without installation programs—Subparts B through H are applicable in these states					
453930	Retailers	340	500 emp.	340	100
238990	Installers	1,021	\$12 mil.	1,021	100
611519	Trainers	50	\$6 mil.	50	100
States with installation programs—Subpart I is applicable in these states					
	States	35	50,000 pop.	0	0

Of the 222 firms included under the NAICS 321991 definition, 198 are small manufacturers that fall below the small business threshold of 500 employees. Of the remaining firms involved in the manufactured housing industry regulated by this proposed rule

included under NAICS 453930, NAICS 238990, and NAICS 611519 definitions, none exceed the small business thresholds established for the category. States are not considered small entities since they exceed the small jurisdiction threshold population of 50,000.

Therefore, the rule would affect a substantial number of small entities.

The following table summarizes the cost impacts associated with the proposed rule:

Current manufactured home production—Total	1 \$135,000
Current manufactured home production—HUD-administered states	1 6,750
Number of manufacturers—Total	222
Estimated number of retailers—Total	5,151
Estimated number of retailers—HUD-administered states	340
Estimated number of installers—HUD-administered states	1,021
Estimated number of trainers—HUD-administered states	50
Estimated number of HUD-administered states	15

Total increase for a single wide—All states	17
Total increase for a double wide—All states	17
Total increase for a single wide—HUD-administered states	974
Total increase for a double wide—HUD-administered states	1,023
Total compliance cost per manufacturer—All states	6,672
Total compliance cost per retailer—All states	186
Total compliance cost per retailer—HUD-administered states	514
Total compliance cost per installer—HUD-administered states	6,371
Total compliance cost per trainer—HUD-administered states	2,045
Total compliance cost per state—HUD-administered states	120
Total estimated economic impact	² 9,006,000

¹ Consisting of about 30 percent single-section homes and 70 percent multi-section homes.

² The paperwork component, associated with the reporting and recordkeeping requirements, described above in the Paperwork Reduction Act section of the preamble, accounts for \$3.31 million of the total estimated economic impact.

The overall cost impact for a single-section home is determined to be approximately \$974 per home, and the cost impact for a multi-section home is determined to be about \$1,023 per home in states where HUD administers the installation program. The cost impact for single-section and multi-section homes is determined to be approximately \$17 per home in states where HUD does not administer the installation program. Because state-administered installation programs would be funded through state mechanisms, they are not included in this analysis. State-administered installation programs would also have to encompass those elements expressly required by the Act to be part of a qualifying program, *i.e.*, standards that equal or exceed the level of protection provided by HUD's model standards, training and licensing of installers, and inspection of installations.

Current manufactured home production is approximately 135,000 homes with approximately 6,750 homes in states where HUD will administer the installation program. Of the total production, approximately 30 percent consists of single-section homes and 70 percent consists of multi-section homes. The combined cost impact for all homes in all states is approximately \$9 million annually.

Based on a current installation cost of about \$5,000 for a single-wide home, the \$974 increase in states where HUD would administer the installation program would represent an increase of approximately 20 percent from the current cost of installing a single-section home. Similarly, the current cost of installing a multi-section home is about \$8,000. Therefore, the cost impact of \$1,023 per multi-section home in states where HUD would administer the installation program would represent an increase of about 13 percent from the current cost. These estimated costs and cost impacts represent a significant economic effect on an industry-wide, per-home basis. The increase in total cost associated with this proposed rule

would have a significant economic impact on a substantial number of small entities.

The Department is unaware of any federal rules that conflict with the proposed rule. However, the proposed rule requires duplicative information to that required in 24 CFR 3282.552, which requires manufacturers to submit monthly label reports to their Production Inspection Primary Inspection Agency (IPIA). 24 CFR 3282.553 requires each IPIA to provide the information in the monthly label reports to the Department. Proposed § 3286.9 requires the manufacturer to provide similar information to the Department for the purposes of installation.

In this rule, the Department combined the reporting requirements in 24 CFR 3282.552 and 3286.9 by revising form HUD-302 so that the manufacturer must complete only one form. The proposed rule seeks specific comments regarding this issue.

In drafting the proposed rule, HUD considered numerous alternatives to reduce the economic impacts on small entities. Below are the significant alternatives that were considered:

Section 3286.5(d) Alternative Considered—The Department considered eliminating this requirement. However, the importance of assuring that the temporary supports will be sufficient to prevent the home and its transportable sections from being brought out of conformance with the Construction and Safety Standards in 24 CFR part 3280 prior to sale is a necessary consumer protection.

Section 3286.7(a) Alternative Considered—The Department considered eliminating this requirement. However, the importance of consumer protection with regard to reinstalled homes justifies the costs associated with this section.

Section 3286.7(b) Alternative Considered—The Department considered eliminating this requirement. However, the importance of consumer protection during the

purchase or lease of a manufactured home justifies the costs associated with this section.

Section 3286.9(a) Alternative Considered—The Department considered requiring manufacturers to provide the initial tracking information about homes installed in only those states in which HUD administers the installation program. Such a requirement would reduce the reporting burden on the manufacturers; however, in many instances, manufacturers do not know the destination or address of the home at the time of shipment. Therefore, it is not practical to collect information on homes being installed in HUD-administered states only. In addition, this information is very similar to that information required in 24 CFR 3282.552, and the OMB-approved form HUD-302 has been revised to collect the information using a single form.

Section 3286.9(c) Alternative Considered—The Department considered requiring manufacturers to provide notice to the retailers only for those homes installed in states where HUD administers the installation program. Such a requirement would reduce the reporting burden on the manufacturer; however, in many instances, manufacturers do not know the destination or address of the home at the time of shipment. Therefore, it is not practical to provide notices on homes being installed in HUD-administered states only.

Section 3286.9(d) Alternative Considered—The Department considered eliminating this requirement. However, the importance of consumer protection with regard to the installation of manufactured homes justifies the small costs associated with this section.

Section 3286.13 Alternative Considered—The Department considered requiring the retailer or distributor to provide HUD with tracking information for all homes at the time that a purchaser or lessor enters into a contract to purchase or lease a

manufactured home. As proposed, the rule would significantly reduce the reporting burden for retailers and distributors by requiring them to provide tracking information about homes that are to be installed only in HUD-administered states, and by requiring them to keep all sales records for 5 years.

Section 3286.103(a) Alternative Considered—The Department considered eliminating this requirement. However, the importance of consumer protection with regard to the installation of manufactured homes justifies the costs associated with this section.

Section 3286.111(a) Alternative Considered—The Department considered using contractors to inspect and certify that the installation of the home has been completed correctly. This alternative model would be similar to that of a local building department that monitors the construction of buildings. However, this alternative method would have a substantially larger economic impact on small entities than the proposed requirement. The proposed requirements in § 3286.111(a) models the requirements in 24 CFR 3282.362(c)(2)(i) that requires the home manufacturer to certify that the home has been built in conformance with the Construction and Safety Standards.

Section 3286.113(a) Alternative Considered—The Department considered eliminating this requirement. However, the Department determined that this requirement is necessary to keep necessary records regarding the installation of the home. This section will encourage retailers to use competent installers and keep the retailer part of the installation process. Without this requirement, the retailer would be able to sell homes and take fees for the installation of the homes without being held accountable by the regulations for poor workmanship of the installation.

Section 3286.211 Alternative Considered—Installers are required to renew their licenses every 3 years. This schedule was chosen to reduce the burden of yearly renewals and to ensure that installers will receive timely training on updates to the installation requirements.

Subpart D Alternatives Considered—Subpart D establishes the minimum requirements for a person to provide installation training. The installation training is required for manufactured home installers who want to be licensed in accordance with the HUD-administered installation program.

This Subpart requires qualified trainers to:

- Adequately address the curriculum and instruction time requirements
- Maintain attendance records
- Provide certificates of completion
- Maintain records for 5 years
- Meet minimum experience prerequisites
- Certify that their curriculum meets HUD requirements
- Apply to HUD for qualification

The Department considered requiring trainers to obtain training from the Department prior to qualification; however, this requirement would have an increased cost to the trainer and the federal government. In addition, this requirement may limit the number of eligible trainers since all trainers would have to complete training prior to training installers.

Notwithstanding HUD's determination that this rule would 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 and those of federal statutes. The complete IRFA is available for downloading at <http://www.regulations.gov> and for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500.

Catalog of Federal Domestic Assistance

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

List of Subjects in 24 CFR Part 3286

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

Accordingly, for the reasons stated in the preamble, HUD proposes to add a new part 3286 in chapter XX of Title 24 of the Code of Federal Regulations to read as follows:

PART 3286—MANUFACTURED HOME INSTALLATION PROGRAM

Subpart A—Generally Applicable Provisions and Requirements

Sec.

- 3286.1 Purpose.
- 3286.2 Applicability.
- 3286.3 Definitions.
- 3286.5 Overview of installation program.
- 3286.7 Consumer information.
- 3286.9 Manufacturer shipment responsibilities.
- 3286.11 Temporary storage of units.

- 3286.13 Tracking of homes sold by retailer or distributor.
- 3286.15 Waiver of rights invalid.
- 3286.17 Consultation with the Manufactured Housing Consensus Committee

Subpart B—Certification of Installation in HUD-Administered States

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

Subpart C—Installer Licensing in HUD-Administered States

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

Subpart D—Training of Installers in HUD-Administered States

- 3286.301 Purpose.
- 3286.303 Responsibilities of qualified trainers.
- 3286.305 Installation trainer criteria.
- 3286.307 Process for obtaining trainer's qualification.
- 3286.308 Training curriculum.
- 3286.309 Continuing education—trainers and curriculum.
- 3286.311 Suspension or revocation of trainer's qualification.
- 3286.313 Expiration and renewal of trainer qualification.

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

- 3286.401 Purpose.
- 3286.403 Licensing requirements.
- 3286.405 Site suitability.
- 3286.407 Supervising work of crew.
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Authority: 42 U.S.C. 3535(d), 5404, and 5424.

Subpart A—Generally Applicable Provisions and Requirements

§ 3286.1 Purpose.

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

§ 3286.2 Applicability.

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

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

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

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

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

(2) Temporary housing units provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

(42 U.S.C. 5121 *et seq.*) to victims of Presidentially declared disasters, when the manufactured home is installed by persons holding an emergency contractor license issued by the state in which the home is sited or by the Federal Emergency Management Agency; or

(3) Any manufactured home after the initial installation of the home following the first purchase of the home in good faith for purposes other than resale.

§ 3286.3 Definitions.

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

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

Certification of installation means the certification, provided by an installer under the HUD-administered installation program in accordance with § 3282.111, that indicates that the manufactured home has been installed in compliance with the appropriate design and instructions and has been inspected as required by this part.

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

Design means drawings, specifications, sketches and the related engineering calculations, tests, and data in support of the configurations, structures, and systems to be incorporated in manufactured homes manufactured in a plant.

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

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

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

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

Installation means work done to stabilize, support, or anchor a manufactured home or to join sections of a multi-section manufactured home, when any such work is governed by the

federal installation standards in part 3285 of this chapter or by state installation standards that are certified as part of a qualifying installation program.

Installation instructions means a manufacturer's DAPIA-approved set of specifications to assure that a manufactured home is set up in accordance with the applicable installation standards, as are required under part 3285 of this chapter.

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

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

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

Lessee means any person who leases a manufactured home prior to the first purchase of the home in good faith for purposes other than resale.

Manufactured home means a structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term also includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to § 3282.13 of this chapter and complies with the installation standards established under part 3285 and the construction and safety standards in part 3280 of this chapter, but such term does not include any self-propelled recreational vehicle.

Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

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

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

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

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

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

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

Qualified trainer means a person who has met the requirements established in subpart D of this part to be recognized

as qualified to provide training to installers for purposes of the HUD-administered installation program.

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

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

Secretary means the Secretary of Housing and Urban Development.

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

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

§ 3286.5 Overview of installation program.

(a) *Tracking homes.* Each manufactured home will be tracked from its initial shipment to at least its sale to a purchaser.

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

(c) *Installer requirements.* Installers in states where HUD administers an installation program under this part will be required to meet licensing, training, and insurance requirements established in subparts C, D, and E of this part. Licensed installers in the HUD-administered program will self-certify their installations of manufactured homes to be in compliance with the federal installation standards in part 3285 of this chapter. In order for such an installer to self-certify compliance with the installation standards, the installer will have to assure that acceptable inspections, as required in subpart F of this part, are performed. Additional tracking information on the shipment and installation of these homes will be provided to HUD by the manufacturers and retailers.

(d) *Manufacturer and retailer requirements.* (1) Manufacturers and retailers are responsible for compliance of the home with the construction and

safety standards in part 3280 of this chapter, in accordance with the Act and applicable regulations. Manufacturers and retailers must also comply with applicable requirements in this part relating to the installation of the manufactured home.

(2) In the installation instructions required pursuant to part 3285 of this chapter, the manufacturer must include instructions for supporting the manufactured home temporarily, pending the first siting of the home for occupancy. The instructions must be adequate to assure that the temporary supports used will be sufficient to prevent the home and its transportable sections from being brought out of conformance with the construction and safety standards in part 3280 of this chapter if the home or its sections is stored on such supports for more than 30 days.

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

§ 3286.7 Consumer information.

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

(b) *Retailer disclosures before sale or lease.* Before a purchaser or lessee buys or leases a manufactured home, the retailer must provide the purchaser or lessee with a consumer disclosure. This disclosure may be in a separate document from the sales or leasing contract or may be incorporated, in whole or in part, clearly in a separate section on consumer installation information at the top of the sales or lease contract. The disclosure must include the following information, as applicable:

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

(2) When the home is to be sited in a state that does not administer its own qualifying installation program, the consumer disclosure must clearly state that the home will be required to comply with federal requirements for

the installation of the home, including installation in accordance with federal installation standards set forth in 24 CFR part 3285 and certification by a licensed installer of installation work, regardless of whether the work is performed by the homeowner or anyone else, and when certification includes inspection by an appropriate person;

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

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

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

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

§ 3286.9 Manufacturer shipment responsibilities.

(a) *Providing information to HUD.* Except as provided in paragraph (b) of this section, at or before the time that each manufactured home is shipped by a manufacturer, the manufacturer must provide HUD with information, as applicable, about:

- (1) The serial number and manufacturer's certification label number of the home;
- (2) The manufacturer of the home;
- (3) The name and address of the retailer or distributor that has arranged for the home to be shipped, and the retailer's identification number; and
- (4) Where different from the retailer's or distributor's address, the location to which the home is being shipped and the purchaser's name.

(b) *Method of providing information.* (1) The manufacturer must provide this information by either:

- (i) Entering the data into an Internet-based tracking system established by HUD; or
 - (ii) Providing a copy of the information to HUD by facsimile, e-mail, first-class, or overnight delivery.
- (2) If the information is provided to HUD by facsimile, e-mail, first-class, or overnight delivery, the manufacturer

must send the information to HUD no later than 10 business days after the date the manufactured home is shipped by the manufacturer. The information must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410-8000, or to an alternative address, fax number, or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the URL of the Web site is www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm and the toll-free telephone number to contact the Office of Manufactured Housing Programs is (800) 927-2891, ext. 57.

(c) *Shipment of home to retailer or distributor.* At the time the manufactured home is shipped to a retailer or distributor, the manufacturer must provide notice to the retailer or distributor that tracking information for the home is being provided to HUD, and the information must be updated by the retailer or distributor in accordance with the requirements in § 3286.13. Such notice must include at least all of the information required in paragraph (a) of this section. The manufacturer is also encouraged to provide notice to the retailer that reminds the retailer of its other responsibilities under this part.

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

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

§ 3286.11 Temporary storage of units.

Pursuant to § 3286.5(d), the manufacturer is required to provide instructions for the temporary support of its manufactured homes or sections of homes. Every manufacturer, distributor, and retailer is required to support each transportable section of a manufactured home that is temporarily or permanently located on a site used by the manufacturer, distributor, or retailer in accordance with the manufacturer's instructions.

§ 3286.13 Tracking of homes sold by retailer or distributor.

(a) *Record retention requirements in all states.* The retailer or distributor must maintain a copy of a sales or lease record for each home sold or leased to a purchaser for 5 years from the date of sale under § 3286.117(a). The sales or lease record must contain the following information:

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

(2) The name and address of the retailer or distributor that is selling or leasing the home, and the retailer's identification number;

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

(4) The name of the purchaser or lessee of the home.

(b) *Tracking information in HUD-administered states.* At the time that a purchaser or lessor enters into a contract to purchase or lease a manufactured home to be sited in a state in which HUD administers its installation program, the retailer or distributor of the home must provide HUD with the information set forth in paragraph (a) of this section.

(c) *Method of providing information.*

(1) When required, the retailer or distributor must provide the information in paragraph (a) of this section by either:

- (i) Entering the data into an Internet-based tracking system established by HUD; or
- (ii) Providing a copy of the information to HUD by facsimile, e-mail, first-class, or overnight delivery.

(2) If the information is provided to HUD by facsimile, e-mail, first-class, or overnight delivery, the retailer or distributor must send the information to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410-8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the current URL of the Web site is www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm and the current toll-free telephone number to contact the Office of Manufactured Housing Programs is (800) 927-2891, ext. 57.

(d) *Compliance with HUD-administered installation program.* A retailer or distributor that sells or leases a home to be sited in a state in which HUD administers an installation program under this part must also comply with the applicable requirements set forth in subparts B through G of this part. Any person can

identify the states in which HUD administers an installation program under this part by referring to a list on a website maintained by HUD or by calling HUD. For convenience only, the current URL of the Web site is www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm and the current toll-free telephone number to contact the HUD Office of Manufactured Housing Programs is (800) 927-2891, ext. 57.

§ 3286.15 Waiver of rights invalid.

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

§ 3286.17 Consultation with the Manufactured Housing Consensus Committee.

The Secretary will seek input from the MHCC when revising the installation program regulations in this part 3286. Before publication of a proposed rule to revise these regulations, the Secretary will provide the MHCC with an opportunity to comment on such revision. The MHCC may send to the Secretary any of the MHCC's own recommendations to adopt new installation program regulations or to modify or repeal any of the regulations in this part. Along with each recommendation, the MHCC must set forth pertinent data and arguments in support of the action sought. The Secretary will either: accept or modify the recommendation and publish it for public comment in accordance with section 553 of the Administrative Procedures Act (5 U.S.C. 553), along with an explanation of the reasons for any such modification; or reject the recommendation entirely, and provide to the MHCC a written explanation of the reasons for the rejection. This section does not supercede section 605 of the National Manufactured Housing Construction and Safety Standards Act (42 U.S.C. 5404).

Subpart B—Certification of Installation in HUD-Administered States

§ 3286.101 Purpose.

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

§ 3286.103 DAPIA-approved installation instructions.

(a) *Providing instructions to purchaser.* For each manufactured home sold to a purchaser, the retailer must

ensure that the purchaser is provided with a copy of either:

(1) The manufacturer's DAPIA-approved installation instructions for the home; or

(2) If the installation requires a design that is different from that provided by the manufacturer, an installation design and instructions that do not take the home out of compliance with the construction and safety standards in part 3280 of this chapter and that have been reviewed and certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

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

§ 3286.105 Requirement for installer licensing.

The installer that installs a manufactured home in a state that does not have a qualifying installation program must be certified or licensed, in accordance with the requirements in subpart C of this part.

§ 3286.107 Installation in accordance with standards.

(a) *Compliance with installation standards.* (1) A manufactured home that is subject to the requirements of this subpart B must be installed in accordance with, at a minimum, the installation standards set forth in part 3285 of this chapter. If the manufacturer's installation instructions do not comply with such installation standards, the manufacturer is responsible for any aspect of installation that is completed in accordance with its instructions and that does not comply with the installation standards.

(2) For purposes of determining installer compliance with this paragraph (a), an installer will be deemed to have installed a manufactured home as required if the home is installed in accordance with installation design and instructions that are:

(i) Provided by the manufacturer and are either:

(A) Approved by the DAPIA; or
(B) Determined by the Secretary to provide protection to residents of manufactured homes that equals or

exceeds the protection provided by the HUD federal installation standards in part 3285 of this chapter; or

(ii) Certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

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

(b) *Secretarial approval of manufacturer's designs.* A manufacturer that seeks a Secretarial determination under paragraph (a)(2)(i)(B) of this section that its installation designs and instructions provide protection to residents of manufactured homes that equals or exceeds the protection provided by the HUD federal installation standards in part 3285 of this chapter must send the request for such determination and a copy of the applicable designs and instructions to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW., Room 9164, Washington, DC 20410-8000, or to a fax number or e-mail address obtained by calling the Office of Manufactured Housing Programs.

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

(d) *Homeowner installations.* The purchaser of a home sited in a state in which HUD administers the installation program may perform installation work on the home that is in accordance with paragraph (a) of this section, provided that the work is inspected as required under this part and a licensed installer certifies the installation in accordance with § 3286.111.

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

§ 3286.109 Inspection requirements—generally.

The installer or the retailer must arrange for the inspection of the installation work on any manufactured home that is sited in a state without a

qualifying installation program. Before the sale of the home is considered complete, the installer must certify, and the inspector must verify, the home as having been installed in conformance with the requirements of § 3286.107(a). The requirements for installer certification are set out in subpart E of this part.

§ 3286.111 Installer certification of installation.

(a) *Certification required.* When the installation work is complete, an installer must certify that:

(1) The manufactured home has been installed in compliance with the manufacturer's installation instructions or with an installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter; and

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

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

§ 3286.113 Information provided by retailer.

(a) *Installation information required.* In addition to the information required to be provided by all retailers or distributors by § 3286.13 and upon receiving the installer's original certification of installation pursuant to § 3286.111, the retailer must provide HUD with:

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

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

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

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

(5) The type of support, anchoring, or foundation system that is being used in the installation of the home, if known.

(b) *Method of providing information.*

(1) The retailer or distributor must provide the information set forth in

paragraphs (a) and (b) of this section as soon as practical by either:

(i) Entering the data into an Internet-based tracking system established by HUD; or

(ii) Providing a copy of the information to HUD by facsimile, email, or first-class or overnight delivery.

(2) The information must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW, Room 9164, Washington, DC 20410-8000, or to a fax number or email address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the URL of the website is www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm and the toll-free telephone number to contact the Office of Manufactured Housing Programs is (800) 927-2891, ext. 57.

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

§ 3286.115 Date of installation.

For purposes relating to the HUD dispute resolution program established in part 3288 of this chapter, the date of installation will be 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.

§ 3286.117 Completion of sale date.

(a) *Date of sale defined.* For purposes relating only to determining violations of the procedural and enforcement regulations for the construction and safety standards, the date the sale of a manufactured home will be considered complete will be the later of:

(1) The date of the retailer's concurrence under § 3286.113; or

(2) The date that the purchaser receives a copy of the installer's completed certification, as set forth in § 3286.111.

(b) *Compliance with construction and safety standards.* If an installer installs a home in such a way as to create an imminent safety hazard or cause the home to not comply with the construction and safety standards in part 3280 of this chapter, the sale or

lease of the home may not be completed until the home is corrected.

Subpart C—Installer Licensing in HUD-Administered States

§ 3286.201 Purpose.

The purpose of this subpart C is to establish the requirements for a person to qualify to install a manufactured home in accordance with the HUD-administered installation program.

§ 3286.203 Installation license required.

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

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

(3) A license is not required for individuals working as direct employees of a licensed installer or for the company that employs a licensed installer, provided that those individuals are covered by the licensed installer's or employer's general liability insurance and are supervised by a licensed installer.

(4) The installer must display an original or copy of a valid installation license at the site of the installation at all times until the installer certifies the installation as required in § 3286.411.

(5) The installer is responsible for understanding and following, as applicable, the approved manufacturer installation instructions and any alternative installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter.

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

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

(2) Connection of utilities to the manufactured home;

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

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

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

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

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

§ 3286.205 Prerequisites for installation license.

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

- (i) 1,800 hours of experience installing manufactured homes;
- (ii) 3,600 hours of experience in the construction of manufactured homes;
- (iii) 3,600 hours of experience as a building construction supervisor;
- (iv) 1,800 hours as an active manufactured home installation inspector;

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

(vi) Any combination of experience or education from paragraphs (a)(1)(i) through (a)(5)(v) that totals 3,600 hours.

(2) An installer who is certified or licensed to perform manufactured home installations in a state with a qualifying installation program may be exempted by the Secretary from complying with these experience requirements, if the Secretary determines that the state requirements are substantially equal to the HUD experience requirements.

(b) *Required training—(1) Initial applicant.* An applicant for an installation license must complete 12 hours of training, at least 4 hours of which must consist of training on the federal installation standards in part 3285 of this chapter and the installation

program regulations in this part. An installer who is licensed to perform installations in a state with a qualified installation program may postpone the training requirements of this section for a period of one year from the effective date of this rule.

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

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

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

(d) *Liability insurance.* An applicant for an installation license must provide evidence of, and must maintain, general liability insurance in the amount of at least \$1 million. HUD may require the licensed installer to provide proof of insurance at any time. The licensed installer must notify HUD of any changes or cancellations in liability insurance coverage.

§ 3286.207 Process for obtaining installation license.

(a) *Where to apply.* An applicant for an initial or renewed installation license must provide the applicant's legal name, address, and telephone number to HUD. The application, with all required information, must be sent to: Administrator, Office of Manufactured Housing Programs, HUD, 451 Seventh Street, SW, Room 9164, Washington, DC 20410-8000, or to a fax number or email address obtained by calling the Office of Manufactured Housing Programs. For convenience only, the current URL of the website is www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm, and the current toll-free telephone number to contact the Office of Manufactured Housing Programs is (800) 927-2891, ext. 57.

(b) *Proof of experience.* Every applicant for an initial installation license must submit verification of the experience required in § 3286.205(a). This verification may be in the form of statements by past or present employers or a self-certification that the applicant

meets those experience requirements, but HUD may contact the applicant for additional verification at any time. The applicant must also provide to HUD employment information relevant to the applicant's experience as an installer, including the dates and type of such employment. An installer who is certified or licensed to perform manufactured home installations in a state with a qualifying installation program may seek an exemption from the experience requirement by submitting proof of such certification or license.

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

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

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

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

(f) *Issuance or denial of an installation license.* (1) When HUD confirms that an applicant has met the requirements in this subpart C, HUD will either:

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

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

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

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

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

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

(b) *Denial, suspension, or revocation.*

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

- (1) Providing false records or information to HUD;
- (2) Refusing to submit information that the Secretary requires to be submitted;
- (3) Failure to comply with applicable requirements of parts 3285, 3286, or 3288 of this chapter;
- (4) Failure to take appropriate actions upon a failed inspection, as provided in § 3286.509;
- (5) Fraudulently obtaining or attempting to obtain an installation license, or fraudulently or deceptively using an installation license;
- (6) Using or attempting to use an expired, suspended, or revoked installation license;
- (7) Violating state or federal laws that relate to the fitness and qualification or ability of the applicant to install homes; or
- (8) Engaging in poor conduct or workmanship as evidenced by one or more of the following:
 - (i) Installing one or more homes that fail to meet the requirements of § 3286.107;
 - (ii) An unsatisfied judgment in favor of a consumer;
 - (iii) Repeatedly engaging in fraud, deception, misrepresentation, or knowing omissions of material facts relating to installation contracts;
 - (iv) Having a similar state installation license or certification denied, suspended, or revoked;
 - (v) Having the renewal of a similar state installation license or certification

denied for any cause other than failure to pay a renewal fee;

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

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

(d) *Reinstating an installation license.*

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

§ 3286.211 Expiration and renewal of installation licenses.

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

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

Subpart D—Training of Installers in HUD-Administered States

§ 3286.301 Purpose.

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

§ 3286.303 Responsibilities of qualified trainers.

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

(b) *Attendance records.* Qualified trainers must maintain records of the times, locations, names of attendees at

each session, and content of all courses offered. When an attendee misses a significant portion of any training session, the trainer must assure that the attendee makes up the missed portion of the instruction.

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

(d) *Record retention.* All records maintained by trainers and continuing education providers must be retained for 5 years, and must be made available to HUD upon request.

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

§ 3286.305 Installation trainer criteria.

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

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

(b) *Experience prerequisites.* In order to qualify as a trainer, an individual or other training entity must provide to HUD evidence that each individual who will be responsible for providing training:

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

(i) As a supervisor of manufactured home installations;

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

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

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

(c) *Certification of curriculum.* In order to register as a qualified trainer, an individual or other training entity must submit to HUD certification that training provided in accordance with this

subpart D will meet the curriculum requirements established in § 3286.309.

§ 3286.307 Process for obtaining trainer's qualification.

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

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

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

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

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

(d) *Confirmation or denial of qualification.* (1) When HUD confirms

that an applicant has met the experience and curriculum requirements in this section, HUD will either:

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

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

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

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

§ 3286.308 Training curriculum.

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

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

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

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

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

(4) Licensing requirements applicable to installers;

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

(6) Inspection requirements and procedures;

(7) Problem-reporting mechanisms;

(8) Operational checks and adjustments; and

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

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

§ 3286.309 Continuing education'trainers and curriculum.

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

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

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

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

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

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

§ 3286.311 Suspension or revocation of trainer's qualification.

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

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

(1) Providing false records or information to HUD;

(2) Refusing to submit information required to be submitted by the Secretary in accordance with the Act;

(3) Certifying, or improperly assisting certification of, a person as having met the training requirements established in this part when that person has not completed the required training;

(4) Failing to appropriately supervise installation training that is used to meet the requirements of this part and that is provided by other persons; and

(5) Any other failures to comply with the requirements of this part.

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

(d) *Reinstating qualification.* A trainer whose qualification has been suspended or revoked may submit a new application to be qualified in accordance with this subpart D no sooner than 6 months after the date of suspension or revocation. A trainer whose qualification has been suspended may also reinstate the qualification in any manner provided under the terms of the suspension.

§ 3286.313 Expiration and renewal of trainer qualification.

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

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

subpart D for application for initial qualification as an installation trainer.

Subpart E—Installer Responsibilities of Installation in HUD-Administered States**§ 3286.401 Purpose.**

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

§ 3286.403 Licensing requirements.

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

§ 3286.405 Site suitability.

(a) *Site appropriateness.* Before installing a manufactured home, the installer must:

(1) Verify that the site is accessible;

(2) Verify that the site is appropriate for the foundation or support and stabilization system that is to be used to install the home in accordance with the federal installation standards or alternative requirements in part 3285 of this chapter;

(3) Verify, by checking the data plate required by § 3280.5 of this chapter to be affixed to the home, that the home is designed for the roof load, wind load, and thermal zones that are applicable to the intended site; and

(4) Verify that the installation site is protected from surface run-off and can be graded in accordance with part 3285.

(b) *Notification of inappropriate site.* If the installer determines that the home cannot be installed properly at the site, the installer must:

(1) Notify the purchaser or other person with whom the installer contracted for the installation work;

(2) Notify the retailer that contracted with the purchaser for the sale of the home; and

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

§ 3286.407 Supervising work of crew.

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

§ 3286.409 Obtaining inspection.

(a) *Inspection obligations.* Within 5 business days of the completion of installation work, the installer must arrange for a third-party inspection in

accordance with subpart F of this part, unless the installer and retailer who contracted with the purchaser for the sale of the home agree in writing that during the same time period the retailer will arrange for the inspection. The inspection must be performed by an inspector who meets the qualifications set forth in § 3286.511.

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

(c) *State or local permits.* The licensed installer should obtain all necessary permits required under state or local laws.

(d) *Completion of sale.* For purposes of determining the responsibilities of a manufacturer, retailer, or distributor under subpart I of part 3282 of this chapter, the sale of a manufactured home will not be considered complete until:

(1) Following the procedures established in § 3286.507, a qualified inspector approves the home as having been installed in conformance with part 3285 of this chapter; and

(2) The installer certifies the installation as set forth in § 3286.111.

§ 3286.411 Certifying installation.

(a) *Certification required.* Upon completion of the installation work, a licensed installer must visit the job site and certify that:

(1) It has installed the manufactured home in compliance with the manufacturer's installation instructions or with an installation design and instructions that have been certified by a professional engineer or registered architect as providing a level of protection for occupants of the home that equals or exceeds the protection provided by the federal installation standards in part 3285 of this chapter; and

(2) The installation of the home has been inspected as required by this part.

(b) *Recipients of certification.* The installer must provide its original certification to the retailer, and must provide a copy of the certification to the purchaser.

(c) *Retailer to update records.* Upon receiving the installer's original certification of installation, the retailer must enter the following additional information into the retailer's records on the home:

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

(2) The date a qualified inspector approved the installation as being in

compliance with the requirements of this part; and

(3) The name, address, and telephone number of the qualified inspector who performed the inspection of the installation.

§ 3286.413 Recordkeeping.

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

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

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

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

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

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

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

(b) *Retention requirement.* The records listed in paragraph (a) of this section must be maintained for a period of 5 years after the installer certifies completion of installation.

Subpart F—Inspection of Installations in HUD-Administered States

§ 3286.501 Purpose.

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

§ 3286.503 Inspection required.

(a) *Timing of requirements.* Within 5 business days of the completion of the installation of each manufactured home, the installer must arrange for a third-party inspection of the work performed, unless the installer and retailer who contracted with the purchaser for the sale of the home agree in writing that during the same time period the retailer will arrange for the inspection. Such inspection must be performed as soon as practicable by an inspector that meets the qualifications set out in § 3286.511. The scope of the inspections that are required to be performed is addressed in § 3286.505.

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

§ 3286.505 Minimum elements to be inspected.

The installation of every manufactured home that is subject to the HUD-administered installation program is required to be inspected for each of the installation elements included in a checklist. The checklist must include assurance that all permits needed to place the manufactured home on the site have been obtained, and that each of the following elements complies with the requirements of part 3285 of this chapter:

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

§ 3286.507 Verifying installation.

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

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

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

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

§ 3286.509 Reinspection upon failure to pass.

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

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

§ 3286.511 Inspector qualifications.

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

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

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

(c) *Suspension or revocation of inspection authority.* After notice and an opportunity for a presentation of views in accordance with subpart D of part 3282 of this chapter, the Secretary may suspend or revoke an inspector's authority to inspect manufactured home installations under this part in HUD-administered states. An inspector's authority may be suspended or revoked for cause. In deciding whether to suspend or revoke an inspector's authority to conduct such installation inspections, the Secretary will consider the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and

siting of manufactured homes are not unduly disrupted.

(d) *Reinstating inspection authority.* An inspector whose authority to inspect manufactured home installations in HUD-administered states has been suspended or revoked under this section may apply for reauthorization by contacting the Administrator of HUD's Office of Manufactured Housing Programs.

Subpart G—Retailer Responsibilities in HUD-Administered States

§ 3286.601 Purpose.

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

§ 3286.603 At or before sale.

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

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

(i) Provide the purchaser or lessee with a copy of the consumer disclosure statement required in § 3286.7(b); and

(ii) Verify that the wind, thermal, and roof load zones of the home being purchased or leased are appropriate for the site where the purchaser or lessee plans to install the home for occupancy; and

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

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

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

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

§ 3286.605 After sale.

(a) *Tracking installation information.* The retailer is responsible for providing to HUD the information required pursuant to §§ 3286.13 and 3286.113.

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

§ 3286.607 Recordkeeping.

The retailer is responsible for the reporting and recordkeeping requirements under §§ 3286.13, 3286.113, and 3286.411, as applicable.

Subpart H—Oversight and Enforcement in HUD-Administered States

§ 3286.701 Purpose.

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

§ 3286.703 Failure to comply.

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

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

each request to present views and to each presentation of views authorized in accordance with this section.

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

§ 3286.705 Applicability of dispute resolution program.

(a) *Generally.* Regardless of any action taken under § 3286.703, for any defect in a manufactured home that is reported during the one-year period beginning on the date of installation, any rights and remedies available under the HUD dispute resolution program as implemented in part 3288 of this chapter continue to apply as provided in that part.

(b) *Waiver of rights invalid.* Any provision of a contract or agreement entered into by a manufactured home purchaser that seeks to waive any recourse to either the HUD or a state dispute resolution program is void.

Subpart I—State Programs

§ 3286.801 Purpose.

The purpose of this subpart I is to establish the requirements that must be met by a state to implement and administer its own installation program in such a way that the state would not be covered by the HUD-administered installation program. This subpart I also establishes the procedure for determining whether a state installation program meets the requirements of the Act for a qualifying installation program that will operate in lieu of the HUD-administered installation program.

§ 3286.803 State qualifying installation programs.

(a) *Qualifying installation program supersedes.* The HUD-administered installation program will not be implemented in any state that is identified as fully or conditionally accepted under the requirements and procedures of this subpart I.

(b) *Minimum elements.* To be accepted as a fully qualifying installation program, a state installation program must include the following elements:

(1) Installation standards that meet or exceed the requirements of § 3286.107(a) and that apply to every initial installation of a new manufactured home within the state;

(2) The training of manufactured home installers;

(3) The licensing of, or other method of certifying or approving, manufactured home installers to perform the initial installations of new manufactured homes in the state;

(4) Inspection of the initial installations of new manufactured homes in the state; and

(5) Provision of adequate funding and personnel to administer the state installation program.

(c) *Conditional acceptance.* (1) A state installation program that meets the minimum requirements set forth under paragraphs (b)(1) and (5) of this section may be conditionally accepted by the Secretary if the state provides assurances deemed adequate by the Secretary that the state is moving to meet all of the requirements for full acceptance. If the Secretary conditionally accepts a state's installation program, the Secretary will provide to the state an explanation of what is necessary to obtain full acceptance.

(2) A conditionally accepted state will be permitted to implement its own installation program in lieu of the HUD-administered program for a period of not more than 3 years. The Secretary may for good cause grant an extension of conditional approval upon petition by the state.

(d) *Limited exemptions from requirements.* A state installation program may be accepted by the Secretary as a qualifying installation program if the state can demonstrate that it lacks legal authority, as a matter of federal law, to impose the minimum requirements set forth under paragraph (b) of this section in certain geographic areas of the state, but that the minimum requirements do apply in all other geographic areas of the state.

§ 3286.805 Procedures for identification as qualified installation program.

(a) *Submission of certification.* (1) A state seeking identification as a qualified installation program must submit a completed State Installation Program Certification form to the Secretary for review and acceptance.

(2) On or after December 27, 2006, a state must include a qualified installation program as part of any State Plan Application submitted for approval under § 3282.302 of this chapter, if the state does not have a fully or conditionally approved state plan in effect at the time of submission of the State Plan Application. In all other cases, a qualified installation program is permitted, but is not required, to be submitted as a part of a state plan approved in accordance with § 3282.305 of this chapter.

(b) *HUD review and action.* (1) The Secretary will review the State Installation Program Certification form submitted by a state and may request that the state submit additional

information as necessary. Unless the Secretary has contacted the state for additional information or has conditionally accepted or rejected the state installation program, the state installation program will be considered to have been accepted by the Secretary as a fully qualifying installation program as of the earlier of:

(i) Ninety days after the Secretary receives the state's completed State Installation Program Certification form; or

(ii) The date that the Secretary issues notification to the state of its full acceptance.

(2) A notice of full or conditional acceptance will include the effective date of acceptance.

(c) *Rejection of state installation program.* (1) If the Secretary intends to reject a state's installation program, the Secretary will provide to the state an explanation of what is necessary to obtain full or conditional acceptance. The state will be given 120 days from the date the Secretary provides such explanation to submit a revised State Installation Program Certification form.

(2) If the Secretary decides that any revised State Installation Program Certification form is inadequate, or if the state fails to submit a revised form within the 60-day period or otherwise indicates that it does not intend to change its form, the Secretary will notify the state that its installation program is not accepted.

(3) A state whose State Installation Program Certification form is rejected has a right to a presentation of views on the rejection using the procedures set forth under subpart D of part 3282 of this chapter. The state's request for a presentation of views must be submitted to the Secretary within 60 days after the Secretary has provided notification that the state's installation program has been rejected.

§ 3286.807 Recertification required.

(a) *Recertification.* To maintain its status as a qualified installation program, a state must submit a new State Installation Program Certification form to the Secretary for review and action as follows:

(1) Every 3 years after the state's most recent certification as a qualified installation program; and

(2) Whenever there is a change to the state's installation program or a change in the HUD requirements applicable to qualifying installation programs such that the state's installation program no longer complies with the minimum requirements set forth in § 3286.803(b), regardless of when the state's next

regular recertification of its installation program would be due.

(b) *Due date of recertification.* (1) A state's recertification must be filed within 90 days of, as applicable:

(i) The 3-year anniversary of the effective date of the Secretary's acceptance of the state's most recent certification as a qualified installation program; and

(ii) The effective date of the state or HUD action that makes a significant change to the state's installation program.

(2) Upon petition by the state, the Secretary may for good cause grant an extension of the deadline for recertification.

(c) *Effect of recertification failure.* (1) A state whose certification of its installation program has been accepted by the Secretary is permitted to administer its installation program in lieu of the HUD-administered installation program until the effective date of a notification by the Secretary that the state's certification of its installation program is no longer approved.

(2) A state whose recertification of its installation program is rejected by the Secretary has a right to a presentation of views on the rejection using the procedures set forth under subpart D of part 3282 of this chapter. The state's request for a presentation of views must be submitted to the Secretary within 60 days after the Secretary has provided notification that the state's recertification of its installation program has been rejected.

§ 3286.809 Withdrawal of qualifying installation program status.

(a) *Voluntary withdrawal.* Any state that intends to withdraw from its responsibilities to administer a qualifying installation program should provide the Secretary with a minimum of 90 days notice.

(b) *Involuntary withdrawal.* Whenever the Secretary finds, after affording notice and an opportunity for a hearing in accordance with subpart D of part 3282 of this chapter, that a state installation program fails to comply substantially with any provision of the installation program requirements or that the state program has become inadequate, the Secretary will notify the state of withdrawal of acceptance or conditional acceptance of the state installation program. The HUD-administered installation program will begin to operate in such state at such time as the Secretary establishes in issuing the finding.

§ 3286.811 Effect on other manufactured housing program requirements.

A state with a qualifying installation program will operate in lieu of HUD with respect to only the installation program established under subparts B through H of this part. No state may permit its installation program, even if it is a qualified installation program under this part, to supersede the requirements applicable to any other aspect of HUD's manufactured housing program. Regardless of whether a state has a qualified installation program:

(a) *Construction and safety standards.* Any responsibilities, rights, and

remedies applicable under the Manufactured Home Construction and Safety Standards Act in part 3280 of this chapter and the Manufactured Home Procedural and Enforcement Regulations in part 3282 of this chapter continue to apply as provided in those parts; and

(b) *Dispute resolution.* For any defect in a manufactured home that is reported during the one-year period beginning on the date of installation, any responsibilities, rights, and remedies applicable under the HUD dispute resolution program as implemented in

part 3288 of this chapter continue to apply as provided in that part.

§ 3286.813 Inclusion in state plan.

If a state installation program is included in a state plan approved in accordance with § 3282.302 of this chapter, the state installation program is subject to all of the requirements for such a state plan, including annual review by HUD.

Dated: May 23, 2006.

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

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2. Does the state require that the installation of manufactured homes comply with specific standards? Yes _____ No _____

3. If yes, do these installation standards provide residents protection that, as required by 42 U.S.C. § 5404(c)(3)(A), equals or exceeds the protection provided either: (i) by standards established by HUD; or (ii) by designs and instructions that have been determined by the Secretary of HUD to provide protection to residents that equals or exceeds the protection that would be provided by HUD standards for the applicable installations? Yes _____ No _____

4. Does the state require that at least the installation standards referenced in item 3, above, apply in all areas and jurisdictions within the state?

Yes _____ No _____

If no, please identify each area or jurisdiction in the state to which state law does not apply the installation standards, and explain why, as a matter of federal law, the state believes it should be exempt from applying the installation standards in each of those areas and jurisdictions.

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5. Describe how the state has determined that its installation standards provide protection that equals or exceeds the protection provided by HUD's installation standards, as required by 42 U.S.C. § 5404(c)(3)(A).

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6. Does the state's manufactured home installation standards address the following items (see, e.g., 24 CFR 3286.505):

a. Site location with respect to home design and construction conditions?

Yes _____ No _____

b. Consideration of site-specific conditions? Yes _____ No _____

c. Site preparation? Yes _____ No _____

d. Foundation construction? Yes _____ No _____

e. Anchorage? Yes _____ No _____

f. Installation of optional features, including comfort cooling systems?

Yes _____ No _____

g. Completion of ductwork, plumbing, and fuel supply systems?

Yes _____ No _____

h. Electrical Systems? Yes _____ No _____

i. Exterior and interior close-up? Yes _____ No _____

j. Skirting, if installed? Yes _____ No _____

k. Completion of operational checks and adjustments?

Yes _____ No _____

7. Describe how the state's manufactured home installation program addresses the training of installers in accordance with 42 U.S.C. § 5404(c)(3)(B). [Please provide information on the amount of training required, both initially and on a continuing basis.]

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8. Describe how the state’s manufactured home installation program addresses the licensing of, or other certification process for, installers in accordance with 42 U.S.C. § 5404(c)(3)(B).

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9. Describe how the state’s manufactured home installation program addresses the inspection of initial installations of new manufactured homes in accordance with 42 U.S.C. § 5404(c)(3)(C).

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10. Does the state provide adequate funding and personnel to support its installation program? Yes _____ No _____

Part III – Other Information

11. Does the state apply the same installation standards to both the initial siting of manufactured homes and to each subsequent re-siting of manufactured homes?

Yes _____ No _____

If no, explain in general terms how the state's installation standards vary for different categories of manufactured homes.

12. Does the state require that all manufactured home installations be inspected?

Yes _____ No _____

- a. **If no, what portion or percentage of the installation of initially sited manufactured homes is inspected?** _____
- b. **If no, what sampling plan is used to provide a reasonable likelihood of detecting problems with any installer and to ensure that overall program quality can be assured with statistical confidence?** _____
- c. **What portion or percentage of the installation of re-sited manufactured homes is inspected?** _____

13. Does the state review or track the inspection of manufactured home installations?

Yes _____ No _____

If yes, explain what information the state tracks and how the state uses the information.

14. Does the state have a mechanism for revoking or suspending an installer's license?

Yes _____ No _____

If yes, briefly explain the procedure and when it would be used:

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15. Describe the staff and funding utilized in the state's installation program.

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Part IV – COMPLIANCE CERTIFICATION

I hereby certify that the state certification information above is true and accurate to the best of my knowledge and belief.

Date:

By:

(Signature)

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(Print or type name and official capacity of signatory)

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(Print or type name of state)

[END OF FORM]