

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3285

[Docket No. FR-4812-A-01]

RIN 2502-AH97

Manufactured Housing Installation Program: Standards, Training, Licensing, and Inspection; Advance Notice of Proposed Rulemaking

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document requests comments on issues related to the development of a national manufactured housing installation program. By December 2005, HUD is required to establish and implement an installation program that includes installation standards; the training and licensing of manufactured home installers; and inspection of the installation of manufactured homes. HUD's program will be implemented in states that do not have their own qualifying installation program.

DATES: *Comment Due Date:* April 24, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; 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 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

The National Manufactured Housing Construction and Safety Standards Act

of 1974 ("the Act") (42 U.S.C. 5401-5426) is intended to protect the quality, safety, durability, and affordability of manufactured homes. The Act was amended in December 2000 (title VI, Pub. L. 106-659, 114 Stat. 2997, approved December 27, 2000), in part to require the Secretary to establish and implement two new national manufactured housing programs, one for installation and one for dispute resolution.

This notice requests public input on what HUD should consider as it develops a proposed rule to establish the installation program. When the subsequent proposed rule is published, the public will also have an opportunity to comment on the elements of HUD's specific proposals. An advance notice of proposed rulemaking soliciting comments on the dispute resolution program is being published separately in today's **Federal Register**. The public is invited to submit comments separately in response to that notice, and should refer to the docket number and title of that notice in any such response.

Installation Program

Section 605 of the Act (42 U.S.C. 5404) requires the Secretary to establish and implement a manufactured housing installation program by December 27, 2005. The components of the program must include: (1) Installation standards; (2) the training and licensing of manufactured home installers; and (3) inspection of the installation of manufactured homes. HUD's program will be implemented in any state that does not have its own installation program established by state law that includes these three components. Further, a state's installation standards must provide protection that equals or exceeds the protection provided by the standards adopted by HUD for its national program.

HUD's installation standards will be developed and established after it receives draft model standards proposed by the Manufactured Housing Consensus Committee ("the MHCC"). The MHCC is an advisory committee that was also established by the December 2000 amendments to the Act. After HUD receives the MHCC draft installation standards, HUD will publish for public comment proposed model installation standards. Because the MHCC will first address the content of draft installation standards, most of the questions in today's advance notice of proposed rulemaking focus on the other components of HUD's installation program. Comments received that relate to the development of installation

standards will be shared with the MHCC as it works to develop draft installation standards for submittal to HUD.

Request for Comments

Commenters are invited to comment on the specific topics suggested below, or on any other matter or concern relevant to the development of an installation program as described above. HUD requests that comments on the following issues reference the number of the issue described, and that other comments be separately identified in the commenter's response:

General Questions

1. How should consumers be made aware of the existence of, and their rights under, the installation, licensing, training, and inspection program?

2. How will HUD obtain funding for its installation, licensing, training, and inspection program? Should HUD charge licensing, training, and inspection fees in order to support its installation program? If so, how should fees be determined? Who will be required to pay the fees?

3. In situations where one part of a state's program meets the Act's required criteria, but is deemed insufficient in another part (e.g., the state's licensing program meets or exceeds the federal requirements, but its training program lacks certain required elements), could there be a partial acceptance of that state's program, or would HUD's program preempt the entire state program?

4. How should state licensing, training, and inspection programs be funded? Should adequate funding be a criterion for HUD approval?

5. Should it be mandatory for states with approved installation programs to permit installations by HUD-licensed installers?

6. Should HUD consider an approach that both certifies installers and provides for accreditation of trainers?

7. Are there ways in which the licensing and training could be facilitated through electronic means?

8. What factors should the Secretary consider when determining whether to apply the new installation requirements to existing, as well as to new, home installations?

Installation Standards

9. HUD preempts state and local manufactured home construction and safety standards. How should an installation standard be differentiated from a construction and safety standard, so that local, state, and federal enforcement personnel will understand the scope of their jurisdiction? (i.e., how

should "installation" be defined to distinguish installation from "construction"?)

10. Should all Alternative Construction (AC) approvals that affect installations be resubmitted to determine if AC approval is still necessary after new installation standards become effective? Should HUD expand the AC process to permit deviations from the new installation standards?

11. What should be the procedure or mechanism for determining that a state's installation standards provide protection that equals or exceeds the protection provided to residents of manufactured homes by the model installation standards adopted by HUD?

12. Section 605(c)(3)(A)(ii) of the Act (42 U.S.C. 5404(c)(3)(A)(ii)) also permits installation standards that provide protection that equals or exceeds the protection provided to residents of manufactured homes by the installation designs and instructions required to be provided by manufacturers, if HUD determines that such designs and instructions provide protection at least equivalent to the model installation standards adopted by HUD. In addition, section 605(a) of the Act (42 U.S.C. 5404(a)) provides that design approval primary inspection agencies (DAPIAs) will be required to approve all manufacturer designs and instructions, but only if they provide equal or greater protection than the protection provided by the model standards. What should be the procedure or mechanism for a determination by HUD that a manufacturer's installation designs and instructions for any home it produces meets the level of protection provided by the model standards?

13. What factors should HUD take into consideration when reviewing proprietary installation systems under the new installation standards?

Licensing Installers

14. As stated earlier, HUD's program will be implemented in each state that does not have its own qualified installation program. How should HUD determine whether a state licensing program is a bona fide program that meets the requirements of the Act?

15. How much experience installing manufactured homes should installers have before becoming eligible for installation licenses? Should HUD, as do many states, establish a minimum age for installers?

16. Some state programs allow unlicensed personnel working under licensed installers to perform installations, as long as the unlicensed personnel are working under the

licensed installers' direct supervision. Other states require everyone who performs installation work to obtain a license. Should HUD require all individuals who perform installations to obtain a license or should HUD allow unlicensed individuals to perform installation work as long as they work under the direction of licensed installers?

17. Some states provide different levels of licensing. For example, Level One would allow licensees to level ground and place piers to support a manufactured home; Level Two would additionally permit licensees to make structural repairs, alterations, and modifications; Level Three holders would be allowed to perform the functions included in Levels One and Two plus service and repair natural gas piping and appliances, change and adjust orifices, and service and repair plumbing and electrical systems. Should HUD adopt a multilevel licensing system? Or should HUD develop one general license under which licensees may perform any or all of these functions?

18. For what amount of time should licenses be valid? Should all licenses expire on a specific day, e.g., the last day of the month, no matter when they were obtained?

19. Should HUD grant temporary licenses to installers while they await licensing? If so, for how long should temporary licensing be valid? What restrictions should be placed on the scope of a temporary license?

20. How much insurance coverage should HUD require installers to maintain? What should that insurance cover?

21. Should HUD require licensees to be bonded, as well as insured? If so, what would be a reasonable amount of security?

22. Should HUD use contractors to perform licensing functions? If so, what qualifications in terms of background or experience should outside contractors have?

23. What should be the procedures and the grounds for revoking, suspending, or denying licenses?

24. Should HUD differentiate in the installation regulations between independent installers and manufacturers that perform their own installations?

Training Installers

25. As stated earlier, HUD's program will be implemented in each state that does not have its own qualified installation program. How should HUD determine whether a state training

program is a bona fide program that meets the requirements of the Act?

26. In the event that HUD decides that installers may utilize unlicensed installers working under the licensed installers' supervision, should HUD require that the unlicensed workers receive training before being allowed to perform installations? If so, how much training should HUD require that they take?

27. What procedures should HUD establish for approving organizations that provide training or continuing education? Under what circumstances should HUD deny or withdraw approval of courses or their sponsors?

28. For what length of time should HUD's approval of courses and trainers be valid? What process should HUD implement for the renewal of course and trainer approval?

29. How many hours of training should HUD require in order for an individual or installation company to obtain a license? Should installers also take an examination as a condition of obtaining licenses? Should HUD require continuing education in order for installers to maintain or renew their licenses? If so, how many hours?

30. What would be the recommended content, duration, and organization of training and continuing education courses that contribute to the general competence of installers?

31. Should HUD use contractors to perform training functions? If so, what qualifications in terms of background or experience should contractors have?

32. Should HUD approve training programs sponsored by manufactured home manufacturers, retailers, installers, and other firms in the manufactured housing industry? If so, what process and criteria should HUD use in order to approve their programs?

Inspection of Installation

33. Should the installation of every new and used manufactured home be inspected? If not, what process should HUD use in order to determine which installations should be inspected? What should be the scope of an inspection?

34. Who would be responsible for arranging for a required inspection of the installation? When and how would the purchaser be notified of the requirements for an inspection of the installation?

35. Can a purchaser waive the right to an inspection of the installation, given that the statute provides that "rights afforded manufactured home purchasers * * * may not be waived, and any provision of a contract or agreement * * * to the contrary shall be void" (Section 622; 42 U.S.C. 5421.)

36. Who would be qualified to perform installation inspections? Are there any potential conflicts of interest or similar concerns that should disqualify any person or entity from performing installation inspections? If so, please explain.

37. What standards and qualifications should HUD require installation inspectors to meet? How many years of experience should they have in order to perform inspections?

38. What should be the result of a failure to pass the inspection of an installation? How should the consumer's interest in purchasing an acceptable home for timely placement on site be assured? Should retailers be required to disclose clearly any limits

on their responsibility for proper installation? If so, how?

39. In the event that an installation has been improperly performed, should HUD require the original installer to perform the necessary corrective work? If so, within what amount of time should the corrections need to be completed? Within how many days of the correction work should the installation be reinspected?

40. How will HUD ensure that a home has been installed in accordance with the installation standards? Should self-certification and attachment of a certifying label by an installer be required? If so, should certification labels indicate whether the installation

was performed in accordance with federal or state requirements?

41. Should there be increased performance reviews of an installer who has a history of installations that do not meet minimum requirements of the installation program?

42. Should a homeowner be allowed to install his or her own home? If so, what requirements should apply?

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

Dated: March 3, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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