

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3286

[Docket No. FR-4813-A-01]

RIN 2502-AH98

Manufactured Housing Dispute Resolution Program; Advance Notice of Proposed Rulemaking

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document requests comments on issues related to the development of the manufactured housing dispute resolution program. Under the Manufactured Housing Improvement Act, HUD is required to establish a program for the timely resolution of disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility for defects in manufactured homes; and the issuance of appropriate orders for the correction or repair of defects in manufactured homes.

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 comments are not accepted. A copy of each communication submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above referenced 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 on December 27, 2000, by Public Law 106-569, 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 dispute resolution 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 installation 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.

Dispute Resolution Program

Section 623(c)(12) of the Act (42 U.S.C. 5422(c)(12)) provides for "a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility, and for the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation." Any states submitting a state plan after December 26, 2005, must provide for such a dispute resolution program as part of the state plan. Additionally, section 623(g) of the Act (42 U.S.C. 5422 (g)) calls for HUD to implement, beginning in December 2005, a dispute resolution program that meets the above requirements in any state that does not establish a program that complies with the Act.

Dispute Resolution Background

In preparation for designing its dispute resolution program, HUD has examined manufactured housing dispute resolution programs established in various states. HUD has also examined a wide variety of dispute resolution models. A brief description of a few of the models examined follows below:

1. Arbitration—An adjudicative process in which a decisionmaker or a panel of decisionmakers makes a ruling after hearing arguments. In this process, the parties are usually represented by attorneys.

2. Mediation—A process that uses a neutral, or mediator, to facilitate discussion between the disputing parties. The primary goal of mediation is to have the parties reach a mutually agreeable solution to their dispute. The mediator acts as a guide through the process and helps the parties focus on the issues, but has no final decisionmaking authority.

3. Mediation-Arbitration (Med-Arb)—A process that combines elements of mediation and arbitration. In this process, the parties attempt to reach resolution through mediation. However, if mediation fails, the parties must submit the remaining issues to arbitration.

4. Mediation-then-Arbitration (Med-then-Arb)—A process similar to Med-Arb, however, in this process a different neutral party is used during the mediation and arbitration phases.

5. Neutral Evaluation—A process that allows a neutral to assess the merits of a case and recommend settlement options.

6. Minitrial—A process designed for business disputes. In a minitrial, attorneys argue their clients' cases before a panel of business officials from the respective organizations involved in the disputes. The business officials must have settlement authority so that they can negotiate a settlement after the case presentations.

7. Negotiation—A process by which parties work out an agreement without any third party intervention.

Request for Comments

There are a number of issues that arise in connection with the creation and implementation of the mandated federal and state dispute resolution programs. The purpose of this Advance Notice Proposed Rulemaking is to allow HUD to gather ideas concerning how the federal dispute resolution program should be structured and how HUD should approve the state programs for operation. Even though HUD requests comments and suggestions on all issues related to the establishment and creation of the federal and state dispute resolution programs, the following issues are of particular interest:

State Program Standards

1. What process should be used to determine whether the proposed state programs meet the Act's requirements? Is proof of adequate funding of a state's program necessary for approval?

2. How will the state programs be funded? Is there a difference for funding purposes between a dispute resolution program that is a part of an approved state plan and a program that is not?

Can accepted states establish additional fees to cover the cost of their programs?

3. What type of oversight should HUD exercise over the state programs to ensure that the programs continue to meet statutory requirements? Should HUD conduct periodic reviews of the state programs to ensure that their programs still meet the Act's standards? If so, how often?

4. If HUD determines that state programs meet statutory requirements, how long should that determination be in effect? How should HUD provide notice that a state's program will be acceptable and HUD's program will not be used in the state?

Federal Program Structure

5. What type of dispute resolution program should be instituted in order to achieve the Act's goal of protecting the quality, durability, safety, and affordability of manufactured homes? Should HUD model its program after one of the widely recognized dispute resolution programs *e.g.* arbitration, mediation, a hybrid of the two, or some other method? Please articulate your reasons.

6. Should HUD's dispute resolution program be modeled after a preexisting state run dispute resolution program? If so, identify the state model that should be followed and indicate the reasons why. What changes would be needed to make the state program fully compliant with the purposes and requirements of the Act?

7. Should HUD incorporate an adversarial component (*e.g.*, parties are represented by attorneys) into its dispute resolution program?

Federal Program Complaint Process

8. Who should be permitted to lodge a complaint? Who are the parties eligible to participate in the dispute resolution process? How can a consumer initiate the dispute resolution process? Who should incur the costs associated with filing and addressing a complaint? How should the dispute resolution initiation process be structured? What type of information and documentation should the complainant provide in order to initiate an action?

9. Should HUD involve consumers in a process that involves manufacturers, retailers, and installers?

10. Should time limits be established for presenting evidence or reaching a decision or resolution? If so, how long?

11. Should the decisionmaker or any other authority be permitted to dismiss a complaint if it is deemed not credible, or frivolous? What criteria or filtering

process should be established to eliminate complaints that lack merit?

12. Once a complaint has been reported, what process should be used if a complainant elects to withdraw the complaint? If the complainant withdraws the complaint, may the decisionmaker still issue a corrective order?

13. How will the parties be notified that a complaint has been reported (such as by registered letter, etc.)? How much advance notice will be given to the parties before they must appear before the decisionmaker? What kinds of information should HUD provide to the parties in a notice?

14. Should any persons, decisionmakers, or HUD be permitted to join together several complaints involving common issues?

Federal Program Mechanics

15. Should the decisionmaker's corrective orders be final or should there be an appellate process? If there is an appellate process, how should it be structured?

16. If one party does not wish to participate in the resolution of a dispute through the program, should there be a default decision? If so, is there a need to provide protections against nuisance filings?

17. Should the decisionmaker be required to have knowledge of the manufactured housing industry? How much experience, if any, should the decisionmaker be required to have and what type? If the decisionmaker is required to have experience, how will this experience be measured? If no prior industry experience is necessary, should the decisionmaker be given training related to the industry? If yes, who should provide the training and how should it be funded?

18. Under what circumstances and how should a decisionmaker be removed from a case?

19. Who should be approved to serve as a decisionmaker? Should anyone be disqualified from serving as a decisionmaker based on conflicts of interest or other concerns? Should complaints and corrective orders be made public?

Federal Program Evidence Standards

20. What kinds of evidence should be accepted during the dispute resolution process? Should the presentation of evidence be conducted via oral testimony or in writing? If evidence is presented in writing, should there still be an opportunity for oral testimony? If there is an oral hearing, how much time should each party be given to present its

evidence? Should cross-examination be permitted if there is an oral hearing?

21. Should the decisionmaker be permitted to conduct outside investigations or be limited to the specific facts of the complaint? Should the decisionmaker be permitted to consider extraneous information, such as the past behaviors of the parties? Should the decisionmaker be permitted to conduct on-site visits?

22. Should the decisionmaker have the authority to compel testimony?

23. Should the contents of the hearing be recorded or transcribed? If so, who should be responsible for verifying the accuracy of the records or transcripts? Who should incur the cost of reporting and/or transcription? Where should the records from a proceeding be kept? If there is a record-retention requirement, how long should the records be maintained?

Defects

24. What types of events constitute the reporting of a defect within the 1-year period for initiating a dispute resolution process?

25. What will define the date of installation as prescribed by the Act? Should there be any limit on the kinds of defects subject to resolution through such procedure?

26. What should the decisionmaker do if she or he deems a situation is likely to cause imminent peril to the public health, safety, or welfare? Should the decisionmaker be permitted to issue an interim order to provide temporary relief pending a final decision? Should the decisionmaker be required to report the defect immediately to HUD?

Federal Program Corrective Action Process

27. How long will a party subject to an order have to take corrective measures? Should the decisionmaker have the authority to grant additional time to make corrections?

28. Who should determine whether the corrections are acceptable? If the decisionmaker has to conduct a final review to ensure that the corrections have been made, which party should incur the cost? Should the decisionmaker notify the parties after corrections have been found to be acceptable?

29. What should the penalty be if a party fails to comply with a corrective order?

30. What should be the scope of the corrective orders? Should a corrective order be limited to the affected home? Should parties be allowed to make corrections to a home involved in a

dispute before the decisionmaker issues an order?

General Questions

31. How should consumers be made aware of the existence of the federal and state programs (*e.g.*, by use of consumer manuals, posting a notice in each home, etc.)?

32. Are consumers and other parties limited in the types of disputes that can be raised? If so, how are they limited?

33. Should contractors be used to assist HUD in carrying out its new responsibilities for dispute resolution under the Manufactured Housing Improvement Act?

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

Dated: February 25, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

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