



This document is scheduled to be published in the Federal Register on 12/16/2016 and available online at <https://federalregister.gov/d/2016-30153>, and on [FDsys.gov](https://fdsys.gov)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3282 and 3284

[Docket No. FR-5848-P-01]
RIN 2502-AJ37

Manufactured Housing Program: Minimum Payments to the States

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

ACTION: Proposed Rule.

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

DATES: Comment Due Date: [Insert 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. **Submission of Comments by Mail.** Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

2. **Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available 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) 402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at (800) 877-8339. Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9168, Washington, DC 20410; telephone 202-708-6423. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling the toll free Federal Information Relay Service at 1-800-877-8389.

SUPPLEMENTARY INFORMATION:

I. Background

On August 13, 2002 (67 FR 52832), HUD published a final rule that, among other things, established minimum payments to the states participating in the Manufactured Housing Program as an SAA. HUD's August 13, 2002, final rule was issued in accordance with section 620(e)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) (the Act), as amended.¹ In that rule, HUD determined to pay each state that, on December 27, 2000, had a fully approved state plan an amount not less than the amount paid to that state for the 12 months ending on December 26, 2000. HUD codified this rule at 24 CFR § 3284.10.

On March 1, 2004 (69 FR 9740), HUD published a proposed rule to revise the minimum payments to SAAs in order to provide for a more equitable guarantee of minimum funding from HUD's appropriation for this program. Specifically, HUD proposed basing minimum payment to states on their participation in the production or siting of new manufactured homes. In explaining the reasons for its March 2004, rule, HUD stated that the August 13, 2002, rule resulted in inequitable payments between states fully approved as of December 27, 2000, and

¹ Section 620(e)(3) of the Act provides, "On or after the effective date of the Manufactured Housing Improvement Act of 2000 (December 27, 2000), the Secretary shall continue to fund the States having approved State plans in the amounts which are not less than the allocated amounts, based on the fee distribution system in effect on the day before such effective date."

states that were not fully approved (including conditionally approved states) as of that date, and resulted in some states receiving more funding than other states for each unit of manufactured housing produced or sited in the state. In this regard, HUD explained that State A, a fully approved state in which the production and siting level had decreased by 30 percent since the rule's base year of 2000, would effectively receive a total of \$16.50 (1,000 units received in 2000 x \$11.50 divided by 700 units based on 30 percent reduction) per unit sited and produced in the state because that payment represented a pro rata portion of the inflated base year amount. State B, on the other hand, in which production and siting had remained steady or had increased, but which was not a fully approved state, would only be paid a total of \$11.50 per unit sited and produced in State B (with no adjustment for reduced production levels) as provided by § 3282.307. HUD concluded that while it expected some inequity in payments under the August 2002 rule, it believed that the minimum fee was based on production levels that were low enough to establish a reasonable minimum payment to each approved state. HUD was not expecting, however, the extent of the imbalances that resulted from the rule. Nevertheless, HUD did not finalize the March 2004 proposed rule.

On May 2, 2014 (79 FR 25035), HUD published a proposed rule to revise the amount of the fee collected from manufacturers in accordance with section 620 of the Act. In response to HUD's proposed rule, several commenters stated that the fees paid to SAAs are not reflective of current production and shipment levels. HUD responded to these comments by stating that it would review revisions to the current fee distribution formula to ensure that states are provided with adequate funding to perform the required SAA function. (See, 79 FR 47373, August 13, 2014).

HUD agrees that it should establish a more equitable distribution of funds. As a result, HUD is proposing to implement section 620 of the Act by establishing a formula that bases the amount paid to a state on the state's participation in the production or siting of new manufactured homes while ensuring a cumulative payment based on the amount a state received in Fiscal Year (FY) 2014, which is at least the same amount that each fully approved state received as of December 27, 2000, the date of enactment of the statute.

II. HUD Consultation with SAAs and Manufactured Housing Consensus Committee (MHCC)

HUD has worked with its partner SAAs and the MHCC to develop this proposal. In 2015, HUD elicited comments from both its partner SAAs and the MHCC on how to more equitably distribute fees among the states. At its August 2015 meeting, the MHCC considered a formula of \$9.00 per transportable section located in a state, and \$14.00 per transportable section manufactured in a state. Under this formula, whether a state was fully or conditionally approved would cease to affect funding. Additionally, the formula would provide that amounts states receive would not decrease below that received during FY 2014.

The MHCC unanimously referred that proposal to its Regulatory Subcommittee. At the January 2016 MHCC meeting, the Regulatory Subcommittee recommended approval of this proposal to the full MHCC. Subsequently, the entire MHCC recommended adoption of the above mentioned proposal. As a result, HUD proposes revising payments to states consistent with that proposal through this rule.

III. This Proposed Rule

HUD proposes to amend § 3282.307(b) to increase the amount paid to both fully approved and conditionally approved states for each transportable section of new manufactured

housing that is produced in that state. Under HUD's proposal, § 3282.307(b) would be revised to allow for payments to states of (1) \$9.00 for each transportable section of new manufactured housing that is located in that state, and (2) \$14.00 for each transportable section of new manufactured housing that is produced in that state. These increased levels reflect the respective levels of responsibility of states.

HUD is also proposing to revise § 3284.10 to ensure participating states (regardless of approval status before December 27, 2000) receive a funding level no less than the cumulative amount that state received in FY 2014. HUD's approach in revising § 3284.10 builds on § 3282.307(b) which provides for distribution of a portion of the monitoring inspection fees among both fully approved and conditionally approved states. These payments have been in effect for over 20 years and are currently paid to all participating states. As a result, under HUD's proposed rule, all states receiving amounts allocated from the fees collected from manufacturers will continue to be paid amounts at least equivalent to those received in FY 2014. These proposed funding levels would also meet or exceed the allocated amounts, paid to fully approved states, based on the fee distribution system in effect on December 27, 2000, in accordance with 620(e)(3) of the Act.

In addition to being more equitable for the participating states, HUD believes that this proposed method of implementing the statutory requirement concerning minimum payments to the states would simplify the related administrative burdens of HUD and the states. For many years, HUD and the states have been making and receiving payments based on whether that state's program was fully or conditionally approved on December 27, 2000. Under this proposal, payments would continue to be made to all participating states, regardless of whether they are fully or conditionally approved, using a similar system under which HUD and the states have

been operating for years. The proposed revised implementation of the statutory provision on minimum payments is similar to the same methodology used for compliance with § 3282.307. As a result, the revised approach should not require any new payment or accounting structures and states should be able to seamlessly implement the statutory requirement.

This new method of determining state payments would also largely eliminate the need for a year-end supplemental payment to states. Based on current production levels, most states would meet or exceed their FY 14 manufacturing and location levels. As a result, HUD believes that funding to states under this proposal would be more consistent, and more closely linked to their production and location levels.

As stated in this preamble, whether a state was fully or conditionally approved on December 27, 2000 would cease to be a factor in determining SAA funding. Rather, all states, including states with fully approved state plans as of December 27, 2000, would continue to receive at least the same cumulative payment they received for FY 2014. That cumulative payment is at least the same amount that each fully approved state received as of December 27, 2000, the date of enactment of the statute.

HUD developed this proposal while conservatively estimating manufactured housing production growth of 5 percent per annum. In recent years, manufactured housing growth has exceeded this 5 percent threshold.² Based on these projections, HUD estimates that states that have levels of production above their 2000 levels will receive more funding reflecting both their higher production and the greater responsibilities of SAAs in manufacturing states. However, based on the fee distribution formula being proposed in this rulemaking, no state which was approved prior to December 27, 2000, will see a decrease in funding, even if production levels

² More information on Manufactured Housing production levels may be obtained via the website of the Manufactured Housing Institute, available at <http://www.manufacturedhousing.org/reports/>.

remain below those from 2000. Based on a conservative estimate of 5 percent annual growth, and given this rule's guarantee of FY14 funding levels, no state, even those not fully approved prior to December 27, 2000, would see a decrease in funding.

IV. Specific Issues for Comment

To assist in HUD's development of this proposed rule, HUD is soliciting comments on certain features of its proposed rule. Therefore, in addition to commenting on the specific provisions of this proposed rule, HUD invites comment on the following questions and any other related matters or suggestions:

1. In determining a revised equitable fee distribution formula, what methods and data should HUD consider to increase the amounts paid to the states? For example, should HUD rely on the past three years or more of fee income data received by both fully approved and conditionally approved states in assessing the amount of the increase of the payment to each SAA?

2. Should fully approved states be entitled to higher levels of payments than conditionally approved SAAs? In addition to the number of home placements and production levels in each state, should the increase in payment consider the number of complaints handled by each SAA for the past three years in determining the amount of the increase (HUD would need each SAA to provide a list of all complaints handled over the past three years)?

3. Should HUD revise 24 CFR § 3282.307(b) to allow the amount of the distribution of fees among the states to be established by Notice in order to more timely address changes or fluctuations in production levels, in order to assure that the states are adequately funded for the inspections and work they perform?

V. Findings and Certifications

Executive Order 12866 and Executive Order 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.

Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This proposed rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by OMB.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule will affect only states that participate in the manufactured housing program, and will have a negligible economic impact. Notwithstanding HUD’s determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s program responsibilities.

Unfunded Mandates Reform Act

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

Environmental Impact

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

Federalism Impact

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

List of Subjects

24 CFR Part 3282

Manufactured home procedural and enforcement regulations, Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 3284

Consumer protection, Intergovernmental relations, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR parts 3282 and 3284 as follows:

**PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT
REGULATIONS**

1. The authority citation for part 3282 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 5424.

2. Revise § 3282.307(b) to read as follows:

§ 3282.307 Monitoring inspection fee establishment and distribution.

* * * * *

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary or to the Secretary's Agent, who shall distribute a portion of the fees collected from all manufactured home manufacturers among the approved and conditionally-approved States in accordance with an agreement between the Secretary and the States and based upon the following formula:

(1) \$9.00 of the monitoring inspection fee collected for each transportable section of each new manufactured housing unit that, after leaving the manufacturing plant in another State, is first located on the premises of a retailer, distributor, or purchaser in that state; plus

(2) \$14.00 of the monitoring inspection fee collected for each transportable section of each new manufactured housing unit produced in a manufacturing plant in that State.

* * * * *

PART 3284—MANUFACTURED HOUSING PROGRAM FEE

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

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

4. Revise § 3284.10 to read as follows:

§ 3284.10 Minimum payments to states.

For every State that has a State plan fully or conditionally approved pursuant to § 3282.302 of this chapter, HUD will pay such State annually a total amount that is the greater of either the amount of cumulative payments that State received between October 1, 2013 and September 30, 2014; or the total amount determined by adding:

(a) \$9.00, if after leaving the manufacturing plant, for every transportable section that is first located on the premises of a retailer, distributor, or purchaser in that State after leaving the manufacturing plant (or \$0, if it is not) during the year for which payment is received; and

(b) 14.00 for every transportable section that is produced in a manufacturing plant in that State (or \$0, if it is not) during the year for which payment is received.

Dated: November 17, 2016

Edward L. Golding, Principal Deputy
Assistant Secretary for Housing

[FR-5848-P-01]

[FR Doc. 2016-30153 Filed: 12/15/2016 8:45 am; Publication Date: 12/16/2016]