revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPS effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on January 10, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs; identified as follows:

** * * Effective January 30, 1997*

De Queen, AR, J. Lynn Helms Sevier County, NDB or GPS RWY 8, Amdt 4A CANCELLED

De Queen, AR, J. Lynn Helms Sevier County, NDB RWY 8, Amdt 4A

Holdenville, OK, Holdenville Muni, NDB or GPS RWY 17, Amdt 3 CANCELLED

Holdenville, OK, Holdenville Muni, NDB RWY 17, Amdt 3

Houston, TX, Ellington Field, VOR or TACAN or GPS RWY 22, Amdt 2 CANCELLED

Houston, TX, Ellington Field, VOR or TACAN RWY 22, Amdt 2

[FR Doc. 97–1577 Filed 1–22–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–4192–N–01]

Manufactured Housing Construction and Safety Standards: Notice of Internal Guidance on Preemption

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

ACTION: Notice of staff guidance.

SUMMARY: The Office of Consumer and Regulatory Affairs in HUD has developed guidelines to assist its staff in addressing preemption issues concerning the National Manufactured Housing Construction and Safety Standards Act of 1974. Because of the interest of outside persons in the subject generally, HUD has decided to publish these internal guidelines to assist regulated entities and consumers in understanding the guidelines under which HUD will be operating. These guidelines are not binding on either HUD or the public and are published for informational purposes only.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Room 9156, 451 Seventh Street, SW., Washington, DC 20410–0500; telephone (202) 708–6401, or on e-mail through Internet at David__R.__Williamson@hud.gov. For hearing and speech-impaired persons, the telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. (Other than the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The staff guidelines reproduced in this notice are internal guidance to assist the HUD office administering the manufactured housing program in answering questions from the public as to whether particular State or local laws or regulations are preempted by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act). The guidelines are based upon the Act and its implementing regulations in 24 CFR parts 3280, 3282, and 3800 and do not provide new interpretations of the Act

or create new HUD policy. The guidelines were developed to assist HUD staff in giving uniform and timely responses to the public, including consumers and affected industries, and State and local governments on preemption issues.

HUD is publishing these guidelines because of the interest in preemption questions that has been expressed by members of these groups. HUD welcomes comments on these guidelines. Anyone wishing to comment on these guidelines may do so by submitting written comments to the attention of the person listed in the ''For Further Information Contact'' section of this notice.

The internal guidelines that were prepared are as follows:

Guidelines for Analyzing Situations Involving Preemption Under the Manufactured Home Construction and Safety Standards Act

I. Introduction

These guidelines have been prepared to assist in answering questions from the public as to whether particular State or local laws or regulations are preempted by the Act. These guidelines are based upon the National Manufactured Housing Construction and Safety Standards Act and its implementing regulations and are not intended to add new interpretations to the Act or to create new HUD policy.

II. Statutory And Regulatory Background

The Act establishes a national set of construction standards for manufactured housing. To ensure that State or local governments did not enact or allow to continue conflicting construction standards, Congress provided that no State or local government could establish a standard dealing with an aspect of performance that is not identical to those standards established under the Act (section 604(d)). However, where there is no Federal standard, the States are free to act (section 623(a)).

HUD has interpreted these statutory provisions in its regulations implementing the Act (24 CFR 3282.11). In accordance with the Act, the regulation bars States from imposing a manufactured home standard regarding construction and safety that covers the same aspects of performance governed by a Federal standard. More generally, States may not take any action that could interfere with the Federal superintendence of the industry as established by the Act (24 CFR 3282.11).

The Act does not impose a duty on HUD to make any determinations as to the applicability of the preemption provision, to investigate preemption issues, or to render advisory opinions regarding preemption questions. Further, a State is not specifically prohibited under section 610 of the Act from implementing a provision that is preempted, nor is there any requirement under the Act for the Secretary to enforce the preemption provision. Generally, enforcement of preemption requirements is left up to the Courts. Where an issue is unclear, it is appropriate for the Courts to decide whether a State or local requirement is preempted.

To the extent possible, HUD wishes to be responsive to inquiries of consumers, the industry, and State or local governments on the applicability of preemption. These responses should be considered as an effort by HUD to advise the public of its construction of the statute and the rules which it administers, and to give its opinion as to the applicable law and the particular facts.

III. Guidelines for Specific Situations

Most inquiries can be responded to merely by discerning if there is a specific Federal standard which addresses the same aspect of performance as the State standard. If so, the Federal law preempts the State law. In a significant number of cases, however, the determination is not as clear and requires either an engineering or legal analysis, or both. There are four general areas of inquiry which are frequently raised:

A. Installation

There is no specific Federal standard that deals with the installation of manufactured homes. As such, standards as to the installation of manufactured homes can be regulated by local or State governments and are not preempted under the Act.

It is possible, however, that a local installation rule may hinder the implementation of Federal standards. For example, the implementation of a local rule may conflict with a requirement of a Federal construction standard for plumbing or water hookup. In such cases, the local rule is preempted.

B. Zoning

Normally, zoning issues fall outside the scope of the preemption provisions of sections 604 of the Act. There may be limited instances, however, in which the Federal definition of ''manufactured home'' could fall within the broad definitions applied to prefabricated or factory built homes under the local zoning ordinance. Such homes are treated differently depending on the building code under which they are constructed.

Generally, the enforcement of a local ordinance regulating the location of manufactured homes has not been subjected to the regulatory authority of the Act because such enforcement rests on the locality's right to determine proper land use. In addition, a locality is free to adopt and enforce ordinances that regulate the appearance and dimensions of homes so long as the criteria established by such ordinances do not have the effect of excluding manufactured homes based on the construction and safety standards to which they were built. Such regulation of aesthetics protects property values, preserves the character and integrity of communities and neighborhoods, and assures architectural compatibility.

If a locality, however, is attempting to regulate, and even exclude, certain manufactured homes through zoning enforcement that is based solely on a construction and safety code different from that prescribed by the Act, the locality lacks such authority. Thus, a locality cannot accept structures meeting the Federal definition of manufactured homes which comply with different standards, such as the local or State Building Code, and exclude or restrict manufactured homes that are aesthetically the same but only meet the Federal standards. By excluding or restricting only manufactured homes built to the Federal standards, and accepting manufactured homes built to other codes, the locality is establishing standards different than the Federal standards.

A locality is not in conflict with the preemptive provisions of the Act if, without regard to construction standards, it treats all structures that meet the Federal definition of Manufactured Homes the same under local zoning laws.

C. State Enforcement

A number of questions have arisen as to when a State's enforcement of manufactured housing standards are preempted by Federal law. HUD's regulations at 24 CFR 3282.11 (c) and (d) set forth a clear standard as to the appropriateness of State enforcement of its manufactured home standards. The Federal regulations prohibit a State from establishing a code enforcement system for manufactured homes which is outside, or goes beyond, those enforcement procedures specifically set forth in the Federal regulations. ''The test of whether a State rule or action is

valid or must give way is whether the State rule can be enforced, or the action taken, without impairing the Federal superintendence of the manufactured home industry as established by the Act'' (24 CFR 3282.11(d)). There are several specific situations:

1. A State, as a State Administrative Agency (SAA) under section 623 of the Act, can enforce the Federal standards. It may also enforce State standards which are identical to the Federal standards. Such actions would not be preempted. However, the State's system of enforcing these standards must be identical to the enforcement procedures in the Federal regulations. ''No State may establish * * * procedures or requirements * * * which * * * require remedial actions which are not required by the Act and the regulations'' (24 CFR 3282.11(c)).

2. A State may enforce its own consumer protection or warranty laws as to defects in individual homes. As such, a State may require a manufacturer to correct non-compliances and defects in response to individual consumer complaints. Such acts would not be preempted by Federal law (24 CFR 3282.11(d)).

3. Notwithstanding the above, however, there are limitations on a State's actions to correct individual homes. These are situations in which State action would interfere with Federal superintendence of the manufactured home industry.

(a) *Imminent safety hazards or serious defects.* Where it appears that there is an imminent safety hazard or a serious defect, the State is required to refer the matter to HUD for enforcement (24 CFR 3282.405(b) and 3282.407(a)).

(b) *Class of manufactured homes.* Where it appears that the same defect exists in a class of manufactured homes and the State is *not* the State in which the homes were produced, then the State is required to refer the matter to the SAA in the State in which the homes were produced or to HUD (if there is no SAA in the State of production) for enforcement. Further, if a class of defective homes is produced in more than one state, HUD is responsible for the enforcement actions. If the homes were all manufactured in the State, the State may take actions, consistent with the Federal regulations, with regard to the noncompliance and defects (24 CFR 3282.405(b) and 3282.407(a)(3)).

(c) *Prior HUD enforcement.* Where HUD has already taken action to have a class of serious defects corrected, then the State is preempted from taking corrective actions of its own pursuant to the Act (24 CFR 3282.404(e)).

D. Utility Companies

There have been a few utility companies which have attempted to impose their own construction or safety standards on manufactured homes as a requirement for connection to their services. The Act, by its express terms, prohibits only ''State or political subdivisions of a State'' from establishing standards that conflict with the Federal standards (section 604(d)). Accordingly, if the utility company is owned or controlled by a political subdivision, its standards are preempted by the Federal standards. If the utility is privately owned, its standards would not be preempted.

E. State Construction and Safety Standards

1. *Aspects of performance.* Additional questions arise in situations in which the State or locality attempts to apply its own building or safety code to the manufactured home. Under section 604 of the Act, State law is preempted whenever there is a State performance standard regarding construction and safety that is not identical to an established Federal standard. On the other hand, section 623 of the Act provides that Federal law does not preempt State construction or safety standards for which a Federal standard had not been established. Thus, for there to be Federal preemption, there must be a specific aspect of a Federal performance standard which duplicates a local standard.

Federal preemption cannot be based upon a general purpose of the Act, or the need for national uniformity in the manufactured housing industry. The courts have applied this ''aspect of performance'' standard in analogous situations by focusing not on the purpose or scope of the Act, but, rather, on the specific requirements of an established Federal standard. If the Federal standard is encompassed or impacted by the State requirement, the State law is preempted.

2. *Superintendence.* It is also possible that a State or local law may be preempted even though the local rule does not meet the differing aspect of performance standard. As stated above, 24 CFR 3282.11(d) sets forth an additional standard of preemption. A State rule must give way if it impairs the Federal superintendence of the manufactured home industry as established by the Act.

Thus, for example, a local requirement that all homes be constructed on site, while not covering any aspect of performance, would be so fundamentally in conflict with the Federal standards as to impair the Federal superintendence of the manufactured home program. Such a requirement would be preempted under the HUD regulations.

The scope of this regulatory provision is limited by the language ''as established by the Act''. This language limits the Federal superintendence of the industry, since section 604(d) of the Act limits the preemption of standards to only those issues dealing with the same aspects of performance.

Authority: 42 U.S.C. 3535(d) and 5401 et seq.

Dated: January 14, 1997.

Stephanie A. Smith,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–1646 Filed 1–22–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8710]

RIN 1545–A073

Revisions of the Section 338 Consistency Rules With Respect to Target Affiliates That Are Controlled Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the consistency rules under section 338 of the Internal Revenue Code of 1986 that are applicable to certain cases involving controlled foreign corporations. The final regulations substantially revise and simplify the stock and asset consistency rules. The final regulations include the provisions of the consistency rules applicable to controlled foreign corporations contained in recent proposed and temporary regulations. The final regulations would affect taxpayers that own controlled foreign corporations.

EFFECTIVE DATE: These regulations are effective January 20, 1997.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Allison at (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final Income Tax Regulations (26 CFR part 1) under section 338 of the Internal Revenue Code.