

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 3284

[Docket No. FR-4665-P-01]

RIN 2502-AH62

### Manufactured Housing Program Fee

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

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with recent statutory direction, the Department is publishing this proposed rule to modify the amount of the fee that is collected from manufacturers of manufactured homes to fund HUD's responsibilities under the National Manufactured Housing and Safety Standards Act of 1974 and to set minimum payments to the States.

**DATES:** *Comment Due Date:* May 15, 2002.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule 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:** Elizabeth Cocke, Acting Director, Office of Consumer and Regulatory Affairs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-8000; telephone (202) 708-6401 (this is not a toll-free number). Hearing-or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Department is initiating this rulemaking to modify the amount of the fee that will be collected from manufactured home manufacturers in accordance with section 620(d) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act). These fees are used to offset HUD's expenses for carrying out its responsibilities under the Act and have not been increased for twelve

years. Section 620(d) of the Act, added by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106-569, 114 Stat. 2944, approved December 27, 2000) (the MHI Act) provides that the amount of any fee "may only be modified: (1) As specifically authorized in advance in an annual appropriations Act; and (2) pursuant to rulemaking in accordance with section 553 of title 5, United States Code." (Section 553 of title 5, United States Code contains the "informal" rulemaking requirements of the Administrative Procedure Act.) Section 620(e) of the Act (unless otherwise noted in this preamble, references to a section of the Act include the amendments made to that section by the MHI Act) further provides that amounts from any fee shall be available for expenditure only to the extent approved in advance in an annual appropriations Act.

The fee that HUD collects under the Act is levied upon the transportable sections of each new manufactured housing unit, and the total amount of the fees that HUD collects annually is dependent upon the number of transportable sections produced per year. The amendments made by the MHI Act in section 620(d) of the Act, which make the modification of the amount of the fee subject to implementation only pursuant to rulemaking in accordance with section 553 of title 5, United States Code, prompt this rulemaking.

This rule would establish a new part 3284, under which the amount of the fee would be codified. The amount proposed in this rule would be determined by dividing the annual projected number of manufactured housing transportable units into the amount appropriated for the Federal Fiscal Year (FFY) to establish the amount of the fee per transportable section. The amount appropriated for FFY 2002 by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, (Pub. L. 107-73, 115 Stat. 651, approved November 27, 2001) (FFY 2002 Appropriations Act) is \$13,566,000. The projected number of transportable sections for the fiscal year is 350,000. This number was determined by using production figures compiled over the last three years, projections of production from manufactured housing trade associations, and projections offered by manufacturers. HUD is specifically inviting comment on the projected number of transportable sections. The use of this number would result in a revised fee of \$39.

In accordance with section 620(e)(3) of the Act, which was also added by the

MHI Act, this rule also provides that HUD will continue to fund States having approved State plans in amounts not less than the allocated amounts, based on the fee distribution system in effect on December 26, 2000. The yearly payment to a State would be set by this rule as not less than the amount paid to that State for the 12 months ending on December 26, 2000.

##### II. Findings and Certifications

###### *Justification for 30-Day Comment Period*

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, the Department is shortening its usual 60-day public comment period to 30 days to make the amount of the fee effective as soon as possible so that funds will be available to offset the expenses incurred by HUD in connection with the manufactured housing program authorized by the Act.

###### *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.

###### *Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. This rule will have a total economic impact this Federal Fiscal Year of no more than \$13,566,000, the amount approved by Congress in HUD's FY 2002 Appropriations Act. Congress further requires HUD to collect this amount in fees from manufacturers of manufactured housing, and the rule would implement this mandate by establishing a per unit fee on transportable sections of manufactured

housing that would be proportional in its impact, with a greater impact on larger manufacturers and a lesser impact on smaller manufacturers.

Notwithstanding HUD's determination that this rule will not 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 as described in this preamble.

#### *Federalism Impact*

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.

#### *Executive Order 12866, Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review").

OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410-0500.

#### **List of Subjects in 24 CFR Part 3284**

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD proposes to add 24 CFR part 3284, as follows:

#### **PART 3284—MANUFACTURED HOUSING PROGRAM FEE**

Sec.

3284.1 Applicability.

3284.5 Amount of fee.

3284.10 Payment to States.

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

##### **§ 3284.1. Applicability.**

This part applies to manufacturers that are subject to the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act). The amounts

established under this part for any fee collected from manufacturers will be used, to the extent approved in advance in an annual appropriations Act, to offset the expenses incurred by HUD in connection with the manufactured housing program authorized by the Act.

##### **§ 3284.5 Amount of fee.**

Each manufacturer must pay a fee of \$39 (the amount resulting from dividing \$13,566,000, the amount appropriated for this purpose by Congress for Federal Fiscal Year (FFY) 2002, by 350,000, the projected total number of transportable sections that will be produced in FFY 2002, based on industry production figures) per transportable section of manufactured housing unit that it manufactures under the requirements of part 3280 of this title.

##### **§ 3284.10 Payment to States.**

Each calendar year, HUD will pay each State that, on December 27, 2000, had a State plan approved pursuant to subpart G of part 3282 of this title, a total amount that is not less than the amount paid to that State for the 12 months ending at the close of business on December 26, 2000.

Dated: March 14, 2002.

**John C. Weicher,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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