

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of the Assistant Secretary for Housing-Federal Housing Commissioner****24 CFR Parts 1720, 3282, 3500, and 3800**

[Docket No. FR-4026-F-01]

RIN 2502-AG71

**Streamlining Interstate Land Sales, Manufactured Housing Construction and Safety Standards, and Real Estate Settlement Procedures Act Programs—Investigations****AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations for three consumer protection regulatory programs by consolidating and streamlining the provisions relating to investigations. These programs, over which the Secretary has investigative authority, are Interstate Land Sales, the Real Estate Settlement Procedures Act, and Manufactured Housing Construction and Safety Standards, which are now reorganized under one office, the Office of Consumer and Regulatory Affairs (hereafter collectively referred to as "consumer regulatory programs"). In an effort to comply with the President's regulatory reform initiatives, this rule will streamline the regulations of these consumer regulatory programs by eliminating provisions that are redundant or are otherwise unnecessary. This final rule will make the consumer regulatory program regulations clear and concise.

**EFFECTIVE DATE:** April 12, 1996.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Holtz, Attorney, Room 9253, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-3088 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TDD by calling the Federal Information Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be

eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for three consumer protection regulatory programs—Interstate Land Sales, RESPA, and Manufactured Housing Construction and Safety Standards—can be improved and streamlined by consolidating similar provisions relating to investigations and eliminating unnecessary provisions. This rule includes these streamlined provisions in a new part 3800 of the Department's regulations. The consolidation of these provisions will simplify compliance with and understanding of the requirements and rights in investigations under these programs.

Several provisions in the regulations repeat statutory language from the Interstate Land Sales Full Disclosure Act, the National Manufactured Housing Construction and Safety Standards Act of 1974, and the Real Estate Settlement Procedures Act of 1974. It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule will remove repetitious statutory language and replace it with a citation to the specific statutory section for easy reference.

Other provisions in the regulations apply to more than one program, and HUD repeated these provisions in different subparts. This repetition is unnecessary, and updating these scattered provisions is cumbersome, often creating confusion. Therefore, this final rule consolidates these duplicative provisions, maintaining appropriate cross-references for the reader's convenience. The rule also makes conforming changes in parts 1720, 3282, and 3500 of title 24, to reference the new part 3800.

Lastly, some provisions in the regulations are not regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations. While this information is very helpful to recipients, HUD will appropriately provide this information through handbook guidance or other materials rather than maintain it in the CFR.

**Justification for Final Rulemaking**

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the

agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule consolidates similar requirements and removes unnecessary regulatory provisions; it does not make substantive changes in the program regulations. Therefore, prior public comment is unnecessary.

**Other Matters***Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

*Environmental Impact*

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions and does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of regulations implementing the consumer regulatory programs. That finding remains applicable to this rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various

levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

*Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

The Catalog of Federal Domestic Assistance program numbers are 14.168 and 14.171.

List of Subjects

*24 CFR Part 1720*

Administrative practice and procedure.

*24 CFR Part 3282*

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

*24 CFR Part 3500*

Consumer protection, Condominiums, Housing, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

*24 CFR Part 3800*

Administrative practice and procedure, Consumer protection, Investigations, Manufactured homes, Mortgages, Mortgage servicing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, under the authority of 42 U.S.C. 3535(d), title 24 of the Code of Federal Regulations is amended by adding a new part 3800, and by amending parts 1720, 3282, and 3500, as follows:

1. A new part 3800 is added to read as follows:

**PART 3800—INVESTIGATIONS IN CONSUMER REGULATORY PROGRAMS**

Sec.

3800.10 Scope of rules.

3800.20 Subpoenas in investigations.

3800.30 Subpoena enforcement in district court.

3800.40 Investigational proceedings.

3800.50 Rights of witnesses in investigational proceedings.

3800.60 Settlements.

Authority: 12 U.S.C. 2601 *et seq.*; 15 U.S.C. 1714; 42 U.S.C. 3535(d) and 5413.

**§ 3800.10 Scope of rules.**

This part applies to investigations and investigational proceedings undertaken by the Secretary, or the Secretary's designee, pursuant to the following:

(a) The Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 *et seq.*;

(b) The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.*; and

(c) The Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601 *et seq.*

**§ 3800.20 Subpoenas in investigations.**

(a) The Secretary may issue subpoenas relating to any matter under investigation. A subpoena may:

(1) Require testimony to be taken by interrogatories;

(2) Require the attendance and testimony of witnesses at a specific time and place;

(3) Require access to, examination of, and the right to copy documents; and

(4) Require the production of documents at a specific time and place.

(b) A subpoenaed person may petition the Secretary or the Secretary's designee to modify or withdraw a subpoena by filing the petition within 10 days after service of the subpoena. The petition may be in letter form, but must set forth the facts and law upon which the petition is based.

**§ 3800.30 Subpoena enforcement in district court.**

In the case of contumacy of a witness or a witness's refusal to obey a subpoena or order of the Secretary, the United States district court for the jurisdiction in which an investigation is carried on may issue an order requiring compliance with the subpoena. HUD headquarters in Washington, D.C., is one of the locations in which the Secretary carries on investigations of its consumer regulatory programs.

**§ 3800.40 Investigational proceedings.**

(a) For the purpose of hearing the testimony of witnesses and receiving documents and other data relating to any subject under investigation, the Secretary, or the Secretary's designee, may conduct an investigational proceeding.

(b) The Secretary, or the Secretary's designee, ("presiding official") shall preside over the investigational proceeding. The proceeding shall be stenographically or mechanically

reported. A transcript shall be a part of the record of the investigation.

(c) Unless the presiding official determines otherwise, investigational proceedings shall be public.

(d) The presiding official shall take all necessary action to regulate the course of the proceeding to avoid delay and to maintain order. If necessary to maintain order, the presiding official may exclude a witness or counsel from a proceeding. The Department may also take further action as permitted by statute.

**§ 3800.50 Rights of witnesses in investigational proceedings.**

(a) Any person who testifies at a public investigational proceeding shall be entitled, on payment of costs, to purchase a copy of a transcript of the testimony the person provided.

(b) In a nonpublic investigational proceeding, the presiding official may for good cause limit a witness to an inspection of the official transcript of that witness's testimony.

(c) Any person subpoenaed to appear at an investigational proceeding may be represented by counsel as follows:

(1) With respect to any question asked of a witness, a witness may obtain confidential advice from counsel;

(2) If a witness refuses to answer a question, counsel for the witness may briefly state the legal grounds for the refusal;

(3) Counsel for the witness may object to a question or a request for production of documents that is beyond the scope of the investigation or for which a privilege of the witness to refuse to answer may be invoked. In so doing, counsel for the witness may state briefly the grounds for the objection. Objections will be deemed continuing throughout the course of the proceeding.

Repetitious or cumulative statements of an objection or the grounds for an objection are unnecessary and impermissible; and

(4) After the Department's examination of a witness, counsel for the witness may request that the witness be permitted to clarify any answers to correct any ambiguity, equivocation, or incompleteness in the witness's testimony. The decision to grant or deny this request is within the sole discretion of the presiding official.

**§ 3800.60 Settlements.**

(a) At any time during an investigation, the Department and the parties subject to an investigation may conduct settlement negotiations.

(b) When the Secretary or Secretary's designee deems it appropriate, the Department may enter into a settlement agreement.

**PART 1720—FORMAL PROCEDURES AND RULES OF PRACTICE**

1a. The authority citation for part 1720 is revised to read as follows:

Authority: 15 U.S.C. 1718; 42 U.S.C. 3535(d).

**Subpart A—Rules and Rule Making**

2. Section 1720.10 is revised to read as follows:

**§ 1720.10 Investigations and Conferences.**

(a) In connection with a rulemaking proceeding, the Secretary may conduct such investigations, make such studies, and hold such conferences as are necessary. Investigations in connection with a rulemaking may be conducted in accordance with the general investigatory procedures under part 3800 of this chapter.

(b) At any such conferences, interested persons may appear to express views and suggest amendments relative to proposed rules.

**Subpart C—[Removed and Reserved]**

3. Subpart C, consisting of §§ 1720.45 through 1720.95, is removed and reserved.

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

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

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

**Subpart A—General**

5. Section 3282.1(b) is amended by adding at the end a new sentence, to read as follows:

**§ 3282.1 Scope and purpose.**

\* \* \* \* \*

(b) \* \* \* The procedures for investigations and investigational proceedings are set forth in 24 CFR part 3800.

**Subpart D—Informal and Formal Presentations of Views, Hearings and Investigations**

6. Section 3282.151 is amended by revising paragraph (a); removing paragraph (c), and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively, to read as follows:

**§ 3282.151 Applicability and scope.**

(a) This subpart sets out procedures to be followed when an opportunity to present views provided for in the Act is requested by an appropriate party. Section 3282.152 provides for two types of procedures that may be followed, one informal and nonadversary, and one more formal and adversary. Section 3282.152 also sets out criteria to govern which type of procedure will be followed in particular cases.

\* \* \* \* \*

7. Section 3282.155 is revised to read as follows:

**§ 3282.155 Investigations.**

The procedures for investigations and investigational proceedings are set forth in part 3800 of this chapter.

**PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT**

8. The authority citation for part 3500 is revised to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

9. Section 3500.19 is amended by adding a new paragraph (e) to read as follows:

**§ 3500.19 Enforcement.**

\* \* \* \* \*

(e) *Investigations.* The procedures for investigations and investigational proceedings are set forth in 24 CFR part 3800.

**§ 3500.20 [Removed and Reserved]**

10. Section 3500.20 is removed and reserved.

Dated: February 22, 1996.

Stephanie A. Smith,

*Acting General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.*

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