April 18, 2011

Regulations Division
Office of the General Counsel
451 7th Street SW, Room 10276
Department of Housing and Urban Development
Washington, D.C. 20410-0500

RE: Docket FR-5238-P-01 RIN 2502-A184
Manufactured Housing: Notification, Correction, and Procedural Regulations

Dear Office of the General Counsel:

On behalf of the Manufactured Housing Institute (MHI), the national trade association representing all segments of the manufactured housing industry, including manufacturers, lenders, suppliers, retailers and community owners, we appreciate the opportunity to comment on the Department of Housing and Urban Development (HUD's) proposed rule to revise "Subpart I-Consumer Complaint Handling and Remedial Action" in the Manufactured Home Procedural and Enforcement Regulations (24 CFR, Part 3282).

The provisions of Subpart I set forth the policies and procedures to be followed by manufacturers, State Administrative Agencies (SAAs), Primary Inspection Agencies (PIAs), and the Secretary of HUD, to assure that manufacturers provide adequate notification and correction with respect to their manufactured homes as required by the Manufactured Housing Construction and Safety Standards (MHCSS) Act (U.S.C. 5401 et seq).

Background

HUD's February 15, 2011 proposed rule is the result of a long and deliberative process between HUD and the Manufactured Housing Consensus Committee (MHCC) which began in 2003.

The MHCC is comprised of 22 members and includes a balance of users, producers and general interest and public officials. MHI staff as well as several MHI members served on the MHCC and participated in the deliberations to improve the Subpart I regulations. The MHCC held over 20 meetings on the issue and twice submitted its own comprehensive recommendations to HUD for changes to Subpart I. In both cases HUD rejected the MHCC proposals because it concluded that the recommendations were not consistent with the statutory requirements of the MHCSS Act. HUD asserted that the MHCC proposals improperly placed certain notification and correction responsibilities

for pre-sale construction deficiencies in the hands of retailers and distributors and as such were inconsistent with Sections 613 and 623(c)(12) of the MHCSS Act (42 U.S.C. 5412 and 5422 (c)(12).

In 2006 HUD submitted it's own proposal to the MHCC for review and comment in accordance with Section 604(b)(3) of the Manufactured Housing Improvement Act (MHIA) of 2000. On February 23, 2006 the MHCC voted 12 to 1 to reject the HUD proposal. The MHCC rejected HUD's proposal because it did not recognize new program responsibilities under the MHIA regarding responsibilities of retailers and distributors and ignored a very basic concept of fairness by requiring that a manufacturer notify and correct defects that were not caused by the manufacturer.

HUD's February 15, 2011 proposal incorporates the majority of recommendations made by the MHCC with several notable exceptions, including MHCC proposals to transfer certain notification and correction responsibilities related to home construction to retailers, distributors and/or installers.

MHI Comments

In general, MHI supports numerous changes in the proposed rule that are intended to refine, clarify and reorder the existing regulations to clearly identify the respective responsibilities of the manufacturer, the retailers, the SAAs, and the Secretary, under Subpart I. The proposed changes give substantially more guidance to the regulated entities as well as to the regulators, and will help to eliminate confusion and ambiguities in the current regulations.

MHI is pleased that HUD, in its proposed rule, adopted MHCC recommendations that, for the first time, expressly recognize a manufacturers right to seek indemnification from component producers {§3282.406(e)(2)} and other commercial entities such as installers, retailers, distributors and transporters, for the costs of corrections. This provision will protect against loss, should a manufacturer be required under Subpart I to notify or repair problems caused by others.

Under this proposed rule, manufacturers would no longer be required to provide notification of a defect if only one home is involved and the manufacturer corrects the problem (§3282.407). MHI also supports the additional voluntary compliance options for notification and correction in §3282.407, which will eliminate costly notification requirements While the practice of repairing any consumer complaint is simply good business, the right thing to do, and a common practice in our industry, MHI is pleased that the proposed rule provides for voluntary actions in lieu of burdensome paperwork requirements.

A significant difference exists between the MHCC recommendations and the HUD proposal regarding notification and corrections and the repair and repurchase activities. A major premise of the MHCC proposal is that Subpart I accountability should attach to the person or persons responsible for causing a particular defect or imminent safety

hazard. Therefore, the MHCC proposal extended notification and correction responsibilities and repair and repurchase requirements to retailers and distributors when a determination is made that they are the responsible parties. HUD maintains that the MHCSS Act does not provide this authority. According to HUD, Congress placed the notification and correction of defects in manufactured homes on manufacturers (42 U.S.C. 5414) and set guidelines for the repair and or repurchase of homes on retailers lots but not yet sold to purchasers (42 U.S.C. 5411).

MHI believes that the Subpart I regulations should be revised to clarify how problems should be addressed when the manufacturer makes a determination under §3282.404(a) that "no further action under Subpart I is required," yet a problem still exists. The manufacturer is required to notify the responsible party, but the proposed rule is silent on how the problem should be addressed. MHI urges that the proposed rule be revised to require correction of the problem in accordance with the existing regulations in §3282.254 *Distributor and dealer alterations,* and §3286.107 *Installation in accordance with the standards.*

MHI believes that several specific provisions in the proposed rule should be revised to take into consideration a number of significant recommendations of the MHCC that were rejected by HUD in this current proposal. MHI's comments on specific provisions in the proposed rule are below:

§3282.7 Definitions

MHI is concerned that using the word "defect" in the definition of defect, may expand the obligations of manufacturers to provide notice and correction to consumers for defects other than those directly related to construction of the manufactured home as required in 24 CFR Part 3280. Also it does not make sense to use the word you are defining in its own definition. .

§3282.362 Production Inspection Primary Inspection Agencies (IPIA)

The proposed rule requires IPIAs to periodically review the records required under §3282.417(e) to determine whether evidence exists that the manufacturer is ignoring or not performing under its approved quality assurance manual. MHI continues to support the more specific recommendations of the MHCC that required only the service records be reviewed by the IPIA. The proposed rule is overly broad and seems inappropriate to require the IPIA to examine records unrelated to Subpart I problems. The IPIA's responsibilities under the Procedural and Enforcement regulations are clearly spelled out in §3282.351 and include two basic functions: approval of the plant facility; and performance of inspections of the manufacturing process. The comprehensive record keeping and review requirements required by this proposal far exceed the appropriate IPIA functions §3282.351 and will do nothing to ensure that consumers are protected. It will significantly add to the IPIA responsibilities, increase costs, and diminish the primary IPIA responsibility of inspecting homes and ensuring that manufacturers are conducting quality assurance.

§3282.402 General provisions.

MHI recommends that the words "unforeseeable" and "unreasonable" be removed from §3282.402(b), as these words are subjective, and in a court of law consumer abuse and neglect of maintenance are enough on their own to limit responsibility.

§3282.404 Manufacturers determination and related concurrences

MHI is pleased that HUD adopted the MHCC recommendation to extend (from 20 to 30 days) the time required to make an initial determination regarding the possibility of a noncompliance, defect, serious defect or imminent safety hazard. §3282.404(a) also makes it clear that when the manufacturer makes an initial determination that no further action under Subpart I is required but a problem still exists, the manufacturer must forward information in its possession to the appropriate retailer and, if known, the installer, for consideration.

Unfortunately however, the manufacturer's responsibilities outlined in §3282.404 improperly expand the scope of the consumer protection requirements envisioned by Subpart I. For example, a small drywall crack or loose piece of trim could require extensive investigations of designs, homes, service records, audit findings, quality control records, etc., to make a reasonable determination as to whether a problem requiring action under Subpart I exists. The extensive investigations required by §3282.404 to make an initial determination will require extremely time consuming and labor intensive data collection for problems that are not related to any underlying structural or design flaw that would trigger a Subpart I action. Although MHI supports the narrower requirement in the proposed rule, which requires manufacturers to investigate the existence of "likely defects" rather than "possible defects", we recommend that HUD clarify what it means by "reasonable" investigation in §3282.404(a)(3).

MHI supports the inclusion of service records, in addition to actual home inspections, as one method to investigate the existence of a problem with a class of homes, but we are concerned about the subjective wording as to what would or would not be "readily reportable" and whether or not the Secretary or an SAA would agree. We understand HUD's intent, that service records should not be the only source of determining whether a problem exists, however, we believe that speculation and guess work should not be a component of Subpart I.

§3282.404(a)(2) requires the manufacturer to immediately report a serious defect or imminent safety hazard to the Secretary, the manufacturers' IPIA and to the SAA in the state of manufacture. This reporting requirement duplicates the same requirements in §3282.408 which requires this notification as a part of the manufacturer's notification and correction plan. During this first critical 30 day period, the focus should be on finding and determining the scope of the problem, and preparing a plan to fix the problem, not on additional paperwork. MHI recommends adopting the MHCC recommendation to require this notification only once per §3282.408.

§3282.406 Required manufacturer correction.

§3282.406(a)(2) provides warranty protection for one year beginning on the date of installation of the home. The intent is to provide consumers with warranty protection for issues reported during the first year after the sale of the home to the homebuyer. However, as written, the warranty period could go beyond a year. What about those instances whereby the homebuyer purchases a home and leaves it on-site without proper blocking or protection? Between the time of sale and the installation of the home, the home could suffer serious degradation. The proposed rule should be amended to take into consideration this very likely scenario. Manufacturers, installers, and retailers should not be responsible for actions taken by the purchaser, and which are outside their control.

§3282.414 Implementation of final determinations.

MHI recommends removing the word removing the word "fully" from the provisions in 3282.414(a). This word is ambiguous, and open to wide interpretation, and could result in costly legal fees by consumers, manufacturers, and the federal government to determine what the word "fully" actually means.

$3282.415 Correction of homes before sale to purchaser.

MHI suggests that Section 3282.415(a) be amended to more clearly define when the sale of a home to a purchaser is complete. MHI recommends that the existing language in §3282.252, "*Completion of a retail sale will be at the time the dealer completes set-up of the manufactured home…..*" be added to the end of §3282.415(a) of the proposed rule.

§3282.416 Oversight of notification and correction activities

§3282415(a)(4) requires periodic review of the manufacturer's service record by the IPIA, As stated above, MHI believes that this requirement goes beyond the appropriate responsibilities and functions of the IPIA and will diminish the overriding responsibility of the IPIA to ensure that homes are being inspected and that manufacturers are conducting quality assurance.

§3282.417 Recordkeeping requirements

This section sets forth the requirements for keeping records of determinations, notifications and corrections. The proposal gives sufficient flexibility to the manufacturer to determine how to keep such records so as not to repeat the same information in the file associated with every manufactured home that is part of a class determination. It also permits manufacturers to maintain records in a single or central or class determination file, which will reduce paperwork burdens.

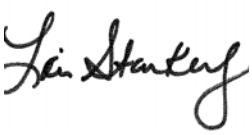
Unfortunately, §3282.417(e) improperly adds requirements under Subpart I for keeping records for determinations, notifications and corrections. This section sets forth detailed and prescriptive recordkeeping requirements for every manufactured home regardless of whether the home is part of a Subpart I action. This proposal will require time consuming and costly overhaul of current recordkeeping systems and provides little or no flexibility to maintain records based on company size, production volume, quality assurance manuals, or other individual administrative practices. MHI recommends that §3282.417(e) be deleted from the proposed rule.

Conclusion

MHI believes the proposed rule is a significant improvement over the existing regulations with respect to providing more clarity and coherence to the Subpart I process. We urge HUD to revise the proposed rule, particularly §3282.404, as we have recommended in the above comments.

We appreciate the opportunity to provide comments on the proposed rule. Please feel free to contact me at 703-558-0654 or lstarkey@mfghome.org if you have any questions or require additional information.

Sincerely,



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