



May 2, 2011

Regulations Division
Office of the General Counsel
451 7th Street SW, Room 10276
Department of Housing and Urban Development
Washington, D.C. 20410-0001

RE: Docket No. FR-5506-N-01 Reducing Regulatory Burden: Retrospective Review Under E.O. 13563

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's (HUD's) March 2, 2011, request for information regarding Executive Order (E.O.) 13563. The E.O. requires federal agencies to seek more affordable, less intrusive ways to achieve policy goals and give careful consideration to the benefits and costs of those regulations. The E.O. requires agencies to "coordinate, simplify and harmonize regulations to reduce costs and promote certainty for business and the public."

In publishing this request for information, HUD states its mission is to "create strong, sustainable, inclusive communities and quality affordable homes for all." Consistent with this mission are HUD regulatory programs that "help create suitable living environments, and help to ensure that all citizens have access to decent, safe, and sanitary housing."

MHI certainly supports HUD's mission and we applaud HUD's initiative to undertake a thorough review of its regulations and its regulatory planning process in accordance with E.O. 13563. We are pleased to comment on E.O. 13563 as it relates to HUD's regulations under the Manufactured Housing program.

Background

HUD has regulated manufactured housing since 1976 in accordance with the Manufactured Housing Construction and Safety Standards (MHCSS) Act of 1974 (42 U.S.C. 5401 et seq.). The MHCSS law directed HUD to establish uniform, preemptive, construction and safety standards and regulations for manufactured housing.

In 2000 Congress amended the MHCSS to establish a balanced consensus process for the development, revision and interpretation of the construction standards; to establish model manufactured home installation standards; and to establish a program to enforce those standards in states that chose not to implement their own programs. The 2000 amendments also enhanced the federal preemption of the MHCSS.

Manufactured housing plays a crucial role in providing affordable housing to Americans.

- Nearly nine million American families rely on manufactured housing as a safe, reliable and affordable housing option.
- Roughly 60 percent of all manufactured homes are located in rural areas.
- Since 1989, manufactured housing has comprised about 20 percent of the new housing market and nearly 8 percent of the nation's overall housing stock.
- The average cost of a new manufactured home is roughly \$65,000 vs. over \$200,000 for a site-built home.
- The median household income of a manufactured home buyer is \$30,000 vs. \$47,000 for the overall housing market.

A major reason that manufactured housing has been able to meet this affordable housing need, is because of its uniform, preemptive building code and efficient procedural and enforcement regulations. The program can benefit from implementation of objectives set forth in E.O. 13563.

MHI Comments

- 1. HUD's rulemaking process under the Administrative Procedures Act (APA), must be streamlined to ensure that the consensus process for the development, revision and interpretation of the standards and its enforcement regulations can function as envisioned by Congress.**

A properly functioning Manufactured Housing Consensus Committee (MHCC) is a key element of an effective HUD manufactured housing program. HUD now operates with the belief that all MHCC recommendations are subject to processes under the APA. However, we believe that HUD should carefully examine its authority under the APA as it relates to the consensus process and should develop rulemaking procedures that take into consideration the unique tasks of the MHCC. The MHCC was established to provide for more regular and timely updates and revisions to the MHCSS consistent with other building codes. Yet, once recommendations are provided to HUD it takes months and often years for the recommendations to be finalized, and rarely can HUD provide manufacturers with a date as to when and what changes will be forthcoming. In the past year HUD has made a significant effort to reduce its backlog of MHCC recommendations and has published several proposed rules in the Federal Register, however, current rulemaking procedures, time consuming internal reviews, and the Department's

unwillingness to fill vacancies within the program have caused frustrating and potentially costly delays in finalizing MHCC recommendations.

In addition, HUD must give the MHCC more autonomy in setting its agenda and priorities and selecting its members and its chairman. While we understand that the MHCC is now operating as a Federal Advisory Committee and must adhere to the requirements of the Federal Advisory Committee Act (FACA), we believe there is enough discretion within FACA and within the MHCSS law to give MHCC these responsibilities

2. HUD should abandon efforts to finalize its proposed rule to revise test procedures for roof trusses in the MHCSS (24 CFR 3280.402).

On June 16, 2010, HUD issued a Notice of Proposed Rulemaking to revise its roof truss test procedures (Docket No. FR-522-P-01, RIN 2502-A172). MHI and other commenters have provided ample evidence that HUD's proposal is unnecessary. There is no evidence that current testing procedures have resulted in inadequate roof truss designs and roof truss failures. The retesting of hundreds of roof truss designs will add time consuming and costly delays to manufactured home construction with no benefit to consumers.

3. HUD must take an active and aggressive role to work with the Department of Energy (DOE) to ensure HUD's authority over the enforcement and compliance of new energy efficiency standards under consideration at the DOE.

The Energy Independence and Security Act of 2007 (EISA; P.L. 110-140) contains provisions requiring the Department of Energy (DOE) to establish and implement energy efficiency standards for manufactured housing (Sec. 413). The legislation moves HUD's statutory responsibility for manufactured home energy standards to DOE and will significantly impact a number of existing provision in the HUD code, specifically Subparts D, F and H of 24 CFR Part 3280.

For nearly 35 years, the manufactured housing industry has constructed homes to a federal building code that has been administered and enforced by one federal agency. During this time, the agency has served as the industry's primary regulatory body. The code is uniquely designed to specifically address construction and design standards for manufactured homes. Placing the development and enforcement of energy standards within DOE establishes a burdensome dual regulatory system on the manufactured housing industry.

The Administration, and particularly HUD, has been successful in working with other federal agencies where there is dual responsibility and interest. HUD has worked with the Department of Treasury to establish and improve programs for troubled home owners and with the

Department of Veterans Affairs on programs to reduce chronic homelessness among Veterans. MHI urges the Administration to develop a Memorandum of Understanding or some other mechanism so that HUD can assume its rightful role as the primary regulator of the manufactured housing code, including energy standards.

4. HUD must consider the cumulative effect of the various proposed changes to the code that it has initiated since January 2010, including changes to the energy standards under consideration by DOE.

Last year HUD proposed three rules to make changes to the MHCSS: 1) June 16, 2010, RIN 2502-A172 Manufactured Home Construction and Safety Standards, Test Procedures for Roof Trusses; 2) June 23, 2010, RIN 2502-A183, On Site Construction of Manufactured Homes; and 3) July 13, 2010, RIN 2502-A171 Manufactured Home Construction and Safety Standards. On February 15, 2011 HUD issued a proposed rule to revise its Procedural and Enforcement Regulations regarding Consumer Complaint Handling under Subpart I of 24 CFR Part 3282 (RIN 2502-A-184).

MHI urges HUD to consider the cumulative as well as the individual costs associated with all the these rules, and finalize only what it deems essential to update the standards to meet its statutory requirements to provide safe, decent and affordable housing. These proposed HUD changes and those that will be proposed by DOE will add thousands of dollars for our customers.

5. HUD should implement MHI's recommendations for changes to its quality assurance regulations under §3282.203 of the HUD Procedural and Enforcement Regulations (24 CFR Part 3282).

Two years ago, HUD began a process intended for manufacturers to improve their quality assessment programs and quality control manuals in accordance with §3282.203(c) and (d) of the Procedural and Enforcement regulations. In a November 8, 2010 letter to HUD, MHI, after conducting a comprehensive survey of its manufacturers, made seven recommendations for improvements to HUD's quality assurance initiative. Many of these recommendations are consistent with the Administration's and HUD's objective regarding regulatory reform under EO 13563. Unfortunately we have not received a response from HUD nor have any of our recommendations been implemented.

6. HUD should completely revise its 1997 Policy Statement on zoning for manufactured housing to reflect changes to the "supremacy" provisions of the Manufactured Home Improvements Act (MHIA) of 2000.

The 2000 amendments significantly expanded the preemption language from the original 1974 MHCSS Act.. Federal supremacy is now to be "broadly and liberally construed" (by HUD and

the Courts) in order to maintain “federal superintendence”, and state and local standards “shall be consistent with the purposes of this title.” Congress linked the “Federal Supremacy” section with the “Findings and Purpose” section of 2000 law, which was greatly expanded as well. The new law added two new important findings: (1) manufactured housing plays a vital role in meeting the housing needs of the Nation and (2) manufactured housing provides a significant resource for affordable homeownership and rental housing.”

These changes go far beyond the singular “consumer protection” goal of the 1974 MHCSS Act and are not reflected in the 1997 HUD Policy Statement on Zoning. HUD must revoke this policy guidance and issue new guidance using the 2000 law and vigorously assert the enhanced preemption now established to ensure the uniformity of the federal regulations. State and local governments, through the regulation of building codes in zoning ordinance, continue to limit affordable housing choices for homebuyers.

7. HUD must consider manufactured housing when it proposes new rules or changes to existing program regulations that impact other HUD programs.

HUD administers a variety of programs that could and should include manufactured housing. For example, the HUD Emergency Homeowner Relief program initiated last year, excludes homeowners who live in land-lease communities. The Section 8 homeownership voucher program excludes manufactured housing. The new pilot program authorizing FHA Title I Home Improvement Loan Insurance for energy retrofits excludes manufactured housing. This is inexcusable. When HUD considers affordable housing it must not ignore manufactured housing, a program that itself has regulated for nearly 35 years.

MHI appreciates the opportunity to comment on HUD’s Request for Information regarding the President’s E.O. 13563.

We urge you to seriously consider our recommendations to the regulatory procedures and programs for manufactured housing.

If you have any questions, please do not hesitate to contact me at lstarkey@mfgghome.org or by calling (703) 558-0654,

Sincerely,



Lois Starkey,
Vice President for Regulatory Affairs