



August 23, 2010

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

RE: RIN 2502-A183 On-Site Completion of Construction of Manufactured Homes

Dear General Counsel:

The Manufactured Housing Institute (MHI), a trade association representing all segments of the factory-built housing industry including manufacturers, lenders, community owners, retailers, and state associations appreciates the opportunity to comment on the Department of Housing and Urban Development's (HUD's) proposed rule establishing a new procedure for the on-site completion of construction of manufactured homes.

BACKGROUND

On June 23, 2010, HUD published a proposed rule in the Federal Register (75 FR, No. 120 at 35902-35918) to establish a procedure allowing manufacturers to deviate from the existing alternative construction (AC) requirement to conduct on-site completion of aspects of construction that cannot reasonably be completed in the factory.

The proposed rule incorporates the majority of the recommendations submitted to HUD in 2007 by the Manufactured Housing Consensus Committee (MHCC). MHI has been a strong supporter of changing the current AC regulations (24 CFR 3282.14) which allows HUD to approve, on a case by case basis, the shipment of a manufactured home from the factory which is not in compliance with the Manufactured Home Construction and Safety Standards (MHCSS) but once completed on-site, does ultimately conform to the MHCSS. The current AC process is cumbersome, discourages innovation, and requires time consuming approvals by HUD. When HUD first adopted this regulation, it did not envision the sophisticated and modern construction techniques utilized by the industry today which include home design features that cannot reasonably be completed in the factory and which are currently being completed on-site under the AC process.

While MHI is pleased that HUD has now issued a proposed rule to amend the current AC process, we strongly believe that a number of changes are necessary to ensure this new process will achieve the results that HUD intends by the proposed rule. HUD, in its preamble, states that the proposed rule will "simplify the process and obviate the need for HUD approval" and will "expand regulatory flexibility and facilitate the timely completion of manufactured homes on-site." We believe that this goal will be met if HUD adopts the following recommendations from MHI in the final rule.

GENERAL COMMENTS TO PROPOSED RULE

1) THE FINAL RULE SHOULD INCORPORATE THE EXISTING PROCEDURAL AND ENFORCEMENT REGULATIONS FOR ON-SITE INSPECTIONS

The proposed rule would require an on-site inspection to be completed by the Production Inspection Primary Inspection Agency (IPIA) prior to occupancy {24 CR, §3282.605(d)(3) and §3282.607(c) (4)}. MHI believes the on-site process should be considered an extension of the factory inspection process, thus the site work should be treated as yet another “stage of production” whereby each unit is inspected in at least one stage of its production. The proposed rule should be changed to reflect current inspection practices and extend flexibility for additional home inspections as may be required by the IPIA or at the discretion of the manufacturer.

MHI is concerned that requiring every home be inspected on-site will result in lengthy delays in the construction process, add unnecessary costs for the homebuyer, and reduce consumer satisfaction. For example, we are particularly concerned about the proposed requirement to subject the proposed on-site completion procedures to certain types of hinged roofs. HUD has already recognized that “peak cap” roofs may qualify under the existing AC process and do not require each and every home to be inspected, (October 5, 2007, HUD Memorandum to Primary Inspection Agencies and State Administrative Agencies). This type of construction is increasingly common and necessary to meet consumer demand and local zoning requirements. Extending the factory inspection process to the on-site work, as outlined above, combined with the proposed DAPIA approved design requirements, is a more cost effective and appropriate method of ensuring compliance.

In addition, MHI supports provisions in the proposed rule prohibiting non-IPIA inspections of on-site work. This issue was the subject of considerable debate during consideration of this proposed rule by the MHCC and it was not included in the MHCC recommendation to HUD. Allowing non-IPIA inspections of the on-site work would dramatically erode HUD’s authority and is contrary to the existing and effective inspection process in the current regulations. Additionally, it would be a disincentive for states to become HUD-approved state IPIAs under the current regulations, and would complicate the current inspection process. If State Administrative Agencies (SAAs) wish to become IPIAs as provided under the current procedural and enforcement regulations, they have every opportunity to do so through the appropriate approval process. HUD states in the preamble of the rule, “it remains highly interested in the topic...” and based on comments will “consider the appropriateness of its possible inclusion...” MHI strongly opposes any inspections which are outside the current procedural and enforcement regulations for HUD approved IPIAs (§3282.352 and §3282.607).

2) THE FINAL RULE SHOULD ADOPT A MORE STREAMLINED AND LESS REDUNDANT LABELING AND REPORTING METHOD

Serial Numbers: Under the proposed rule, the serial number of each home completed on site must include the prefix “SC” {§3282.605(a)}. While MHI does believe that a method of designating these homes is a prudent and necessary requirement, manufacturers should have the flexibility of including the “SC” designation either as a prefix or a suffix, or in the middle of the serial number. Many manufacturers use the serial number for various types of recordkeeping and invoicing, thus the requirement to use the “SC” designation as a prefix is unnecessarily restrictive and will necessitate cumbersome and extensive changes to current database programs and record keeping practices.

Labeling: The proposed rule will require the home to be labeled with a green on-site completion certification label {§3282.605(b)}. MHI strongly opposes the use of a different color permanent label for a home completed on-site. Another label will lead to significant disorder in the market which already suffers from confusion between manufactured homes, modular homes and park models. The label is utilized by consumers, code inspectors, zoning officials, lenders and appraisers as the primary distinguishing feature to differentiate between these different types of factory-built housing. MHI believes the proposal to require a data plate with a “SC” designation, combined with a notice to the consumer, is sufficient to meet the objectives of this proposal. Furthermore, MHI believes the consumer notice should be provided at the time the buyer enters into a contract to purchase the home rather than requiring it to be posted in the home. This will ensure that the buyer has complete knowledge of the status of the home and knows that it will not be complete until a certificate of occupancy is provided.

Site Inspection Reporting Requirements: The reporting requirements in the proposed rule are redundant and have the potential to cause unnecessary, costly delays in loan closings and settlements and reduce consumer satisfaction. For example, it is unnecessary to require both the IPIA and the manufacturer to prepare a site inspection report. MHI believes the required DAPIA approved “on-site” inspection checklist can be used by all parties to provide the necessary information and assurances that the on-site work was completed in accordance with the DAPIA approved design. The checklist can be expanded to include the necessary manufacturers’ certification, and the identifying items specified in §3282.605(d) (2) of the proposed rule, i.e. serial numbers, names and addresses, etc. This expanded inspection checklist can be used for the necessary reporting requirements. This document can be used to obtain the certificate of occupancy and can serve as the necessary documentation for lenders, settlement agents, SAA’s and HUD. In addition, the proposed rule allows 10 days after IPIA approval for the manufacturer to provide the report to the consumer. This is unrealistic and contrary to a number of state laws defining completion of sale.

Notification of Add-Ons: The proposed rule requires the manufacturer to notify the appropriate state or local jurisdiction of any add-on to the home that has not or will not be inspected by the manufacturer or it’s IPIA {§3282.608(n)}. MHI believes that this

requirement is unnecessary and inappropriately places responsibility on the manufacturer for construction it is not responsible for. This proposed requirement raises liability issues by extending the responsibility for non-MHCSS construction issues to the manufacturer.

RESPONSES TO SPECIFIC QUESTIONS POSED IN THE PROPOSED RULE

MHI has the following responses to the questions posed in the proposed rule:

1. *“How should the rule define the limits of construction work that may be completed on-site?”*

MHI supports HUD’s intention to exempt certain aspects of “close-up” and related routine installation work. However, HUD should clarify what it means by “close-up.”

Section 3282.602 of the proposed rule provides examples of construction that qualify for the on-site completion procedures. These examples include exterior siding such as brick and stucco that cannot be completed in the factory; dormers; open floor sections for basement stairs; bay windows; windows in roofs; two-story homes; and certain types of roof trusses that are not exempt under §3285.801(f). This provides sufficient guidance for manufacturers and DAPIAs to determine when the on-site procedures provided by this rule should apply.

HUD’s final rule should provide maximum flexibility and rely on the DAPIA process to set the limits of construction work that may be completed on site in accordance with the new on-site completion procedures.

Also, as we stated in our comments above, HUD should allow continued exemption of specific hinged roof designs from the on-site completion process.

2. *“Should the proposed requirements applicable to on-site completion...be extended to repairs of homes in the hands of retailers or distributors or to work proposed to be defined as installation, especially “close-up” details for multiple and single sections?”*

Repairs should be left to arrangements between the manufacturers and retailers, recognizing that the manufacturer has the ultimate compliance responsibility. This is a long standing practice, and has served the customer well. The alternative has the potential to cause administrative delays and lead to consumer dissatisfaction.

3. *Has HUD drawn the proper lines between aspects of work on the home to be finalized as a part of installation...and those aspects that would be considered completion of construction under a special approval for either on-site or AC?*

As stated in our general comments, MHI believes that HUD should provide more specifics as to what installation is covered by 24 CFR Part 3285 and what is construction covered by the proposed rule, under 24CFR Part 3282.

4. *“What is the best method for assuring that the on-site construction work is inspected for compliance with the construction and safety standards prior to occupancy?”*

See discussion in our general comments. The current procedural and enforcement regulations specify the inspection process in the factory should be extended to the site. Additionally, the certificate of occupancy required by local jurisdictions or state building code departments certifying a building's compliance with applicable building codes and other laws ensures that the on-site construction work complies with the construction and safety standards.

5. *“Should the IPIA be the only entity permitted to conduct the on-site inspections required by this rule, or should the rule be amended to permit a state to conduct the on-site inspections?”*

Only HUD approved IPIAs should be permitted to conduct on-site inspections.

6. *“Should the IPIA inspect all homes completed on-site or should the IPIA undertake inspections for only a certain number or percentage of homes completed on-site?”*

The current procedural and enforcement regulations that specify the inspection process in the factory should be extended to the site.

7. *“Should authorized inspectors be limited to state and local inspection officials rather than permitting IPIAs to choose some other qualified independent inspector?”*

Only HUD approved IPIAs should be permitted to conduct on-site inspections.

8. *“Does HUD need to identify those aspects of completion of the home that are not subject to federal construction and safety standards and inform local inspectors that they may inspect those aspects?”*

No. This is not a responsibility of the manufacturers under the MHCSS.

9. *“...In addition to determining if there is complex work involved requiring special instructions, should the DAPIA be permitted to determine whether the complex work also requires special criteria or qualification for the IPIA inspector in order to perform the on-site inspections?”*

The proposed rule is intended to extend the requirements of the HUD procedural and enforcement regulations to on-site completions. Therefore, the manufacturer and the IPIA should determine the appropriate qualifications for the on-site inspector(s) in a given situation.

10. *“Should the rule establish, or provide that the DAPIA may establish in its approval a deadline for completion of the work on-site and final inspection?”*

Completion time deadlines are inappropriate for inclusion in a construction standard. Unforeseen circumstances arise that would unnecessarily subject the manufacturer and the IPIA to unnecessary regulatory scrutiny.

11. *“Should HUD specify requirements for the retailer to notify the manufacturer that a home subject to the on-site completion process is ready for the manufacturer’s final inspection, or should the requirements be left to private arrangements?”*

This should be left to private arrangements.

12. *“Should the regulations in 24 CFR 3282 Subpart F be extended to provide that some or all of the procedures for manufacturer and IPIA inspection of the work on-site also apply to repairs, on-site or in retailer lots, of manufactured homes that are completed and labeled in the factory, but that are substantially damaged before being sold by a retailer?”*

Repairs should be left to the private arrangements between the manufacturer and the retailer.

13. *“Should the rule address more explicitly what happens if the manufactured home does not pass the on-site inspection?”*

This should be left to private arrangements. The rule is clear that the home cannot be occupied until the manufacturer certifies that the home meets the standards.

14. *“Is the proposed labeling procedure workable?”*

The proposed labeling procedure is not workable. See general comments.

15. *“What mechanism can be used to ensure that the prospective purchaser is provided with the Consumer Information Notice?”*

The Consumer Information Notice should be provided to the consumer at the time the contract is signed. The home buyer should be required to sign the notice. There is no need for notice to be posted in the home because this does not ensure that the consumer has read or will read the notice.

16. *“Should the rule clarify what is the ‘date of manufacture’ for units completed under this procedure, for purposes of the information required to be included on the data plate?”*

The “date of manufacture” should be the date the label is affixed at the factory in order to complete necessary paperwork that goes with the home such as invoices, the data plate, etc. This will eliminate the need for additional paperwork, avoid miscommunications between the factory and the site, and ensure uniformity.

17. *“Can monthly reporting to HUD of on-site production be achieved better, such as through the use of individual reports, rather than combining the required extra information with the existing production report (Form 302) information?”*

The current AC reporting process should be applied to this rule. The preamble to the rule states that much of the reporting currently required would be minimized by the proposed rule. (FR 75 p. 35905). While we are not certain the procedures proposed by this rule will achieve this goal, there is little evidence that a new form should be required.

18. *“Are there special concerns about the ability of a state PIA to conduct out-of-state inspections and about the costs for these state PIA inspections that should be addressed in the rule?”*

Inspection requirements should be left up to the manufacturer and the IPIA. The IPIA, whether a state IPIA or a private IPIA, should have the option to select qualified third party inspectors for any on-site inspections, out-of-state or otherwise.

19. *“If the inspection requirements for on-site approvals are changed from the levels proposed, should the inspection requirements vary according to the kind of work involved?”*

Inspection requirements should be decided by the manufacturer and the DAPIA who are the most qualified to determine the appropriate inspections on-site. The proposed rule establishes an inspection checklist, and it is the manufacturer who is ultimately responsible for meeting the requirements of the MHCSS. This is enough of an incentive to ensure the homes are inspected properly.

20. *“Are there any special processing or inspection requirements that should be included in a final rule if HUD permits completion on-site of multi-story and high slope roof style homes designed to be located in Wind Zones II and III?”*

It is not appropriate to have special inspection requirements in the standards. There is no evidence that this is an issue that would require special inspections.

21. *“Are there other jurisdictional concerns about the monitoring of the work completed on-site being the continuing responsibility of the manufacturer’s IPIA?”*

MHI members have not found this to be of concern.

22. *“What procedures should be established if an exclusive state IPIA is unable to conduct out-of-state inspections on homes approved for completion under this new process?”*

This should be decided by the manufacturer and the PIA. See answer to question 18.

23. *“Should the manufacturer...be required to provide a copy of the final site inspection report, or any other information about the on-site approval, to the SAA of the state in which the home is sited?”*

Additional paperwork and reporting requirements are contrary to what HUD is intending by this proposed rule. (See page 35904, Vol.75, No. 120). SAAs have the opportunity to request service records from the manufacturer when they receive a complaint. It is not necessary to submit related paperwork prior to a consumer complaint.

24. *“Should the rule extend authority to revoke or amend an approval to the SAA in the state where the factory is located, the SAA in the state where the home is sited, both, or neither?”*

Neither. SAAs (other than state IPIAs) should not be involved in the on-site construction approval process. Their appropriate role is to address consumer complaints and conduct monitoring as per the current procedural enforcement regulations.

25. *“Should the final rule limit the on-site installation of all appliances except furnaces and water heaters due to problems experienced with improper venting and installation of these appliances...?”*

The final rule should apply only to fuel-burning, built-in-appliances, and should limit the requirement only to those appliances provided by the manufacturer. Homebuyers who purchase their own appliances should be responsible for the installation.

26. *“Are the manufacturer’s inspection responsibilities as outlined in 3282.605(c) sufficiently clear?”*

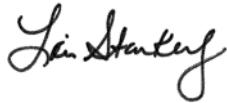
Yes, subject to the general comments detailed above.

CONCLUSION

MHI supports new regulations for the on-site completion of construction for manufactured homes and we support procedures, as envisioned by this proposed rule, to extend the DAPIA and IPIA responsibilities to the on-site completion process.

However, the proposed rule has some serious flaws, and it should be amended as MHI suggested in the above comments. Absent significant changes and clarifications, MHI opposes adoption of the proposed rule.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lois Starkey". The signature is written in a cursive, flowing style.

Lois Starkey,
Vice President for Regulatory Affairs
Manufactured Housing Institute