

first year after a manufactured home is installed.

The MHCC proposal does not adequately implement the provision in section 615(h) of the Act (43 U.S.C. 5414(h)), which requires manufactures to submit a notification and correction plan to the Secretary for approval before the plan is implemented. Under the MHCC proposal, a party would be permitted to correct a home without first having a plan of correction approved.

The MHCC proposal seeks to establish time limits for a manufacturer's responsibilities under section 615 (42 U.S.C. 5414) that are not consistent with the Act. Section 615 contemplates enforcement authority over certain defects about which the consumer would not have knowledge unless notified or until his or her safety is compromised. While the Act places affirmative notification and correction requirements on manufacturers for defects as a protective measure even if an affected consumers has not yet complained, the MHCC proposal would limit a manufacturer's responsibility to act until after a consumer complains. Further, the MHCC proposal would limit the responsibility of manufacturers and retailers to those defects discovered within 5 years from the date of the first sale. An even shorter period of 2 years would be established for defects that could be attributed to other parties. Section 615 includes no such limits.

The MHCC proposal raises further questions relating to section 623 of the act (42 U.S.C. 5422). Section 623 requires HUD to implement a dispute resolution program by December 2005, which would be used to resolve disputes among manufacturers, retailers, and installers about responsibilities for the correction of defects reported in the first year after a manufactured home is installed. The MHCC proposal is not in agreement with the section 623 process because the proposal; adds potentially responsible parties (e.g., landscapers, contractors, product suppliers); creates the limits that are inconsistent with section 623; and fails to provide for a forum in which the disputes are to be resolved.

Text of MHCC Proposal

The text of the rejected proposal submitted by the MHCC is published as Appendix A.

Dated: July 17, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—Manufactured Housing Consensus Committee Proposal To Amend Manufactured Housing Home Procedural and Enforcement Regulations 24 CFR Part 3282

March 26, 2003.

§ 3282.7 Definitions.

(i) *Dealer*—See *Retailer*.

(j) *Defect* means a failure to comply, or the failure of a component used to comply with an applicable Federal Manufactured home safety and construction standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home. See related definitions of imminent safety hazard (definition q), non-compliance (definition x), and serious defect (definition ff).

(dd) *Retailer* means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons whom in good faith purchase or lease a manufactured home for purposes other than resale.

(ee) *Responsible party* means any of the following: manufactured home manufacturers, retailers, distributors, contractors, product suppliers, product distributors, installers, transporters, developers, landscapers, and/or homeowners.

Subpart—Consumer Complaint Handling and Remedial Actions

§ 3282.401 Purpose and scope.

(a) The purpose of this subpart is to establish a system under which the protections of the Act are provided with a minimum of formality and delay, but in which the rights of all parties are protected.

(b) This subpart sets out the procedures to be followed by responsible parties, State Administrative Agencies, primary inspection agencies, and the Secretary to assure proper notification and/or correction with respect to manufactured homes as required by the Act. Notification and correction may be required to be provided with respect to manufactured homes that have been sold or otherwise released by the manufacturer to another party when the responsible party, an SAA or the Secretary determines that an imminent safety hazard, serious defect, or defect may exist in those manufactured homes as set out herein. For non-compliances, correction shall be required to the single home it's reported in.

(c) This subject sets out the rights of retailers under section 613 of the Act, 42 U.S.C. 5412, to obtain remedies from manufacturers in certain circumstances.

§ 3282.402 General principles.

(a) Nothing in this subpart or in these regulations shall limit the rights of the

purchaser under any contract or applicable law.

(b) The liability of manufactured home manufacturers to provide remedial actions under this subpart is limited by the principle that manufacturers are not responsible for failures that occur in manufactured homes or parts thereof as the result of the actions of other responsible parties, normal wear and aging, gross and unforeseeable consumer abuse, or unforeseeable neglect of maintenance.

(c) Responsibility for remedial actions under this subpart may also be assessed to responsible parties to the extent that they have contributed to or caused the failure.

(d) The extent of a responsible party's responsibility for providing notification and/or correction depends upon the seriousness of problems for which they may be responsible under this subpart.

(e) It is the policy of these regulations that all consumer complaints or other information indicating the possible existence of an imminent safety hazard, serious defect, defect, or non-compliance should be referred to the manufacturer and/or retailer and/or other responsible party of the potentially affected manufactured home as early as possible so that the manufacturer or other responsible party can begin to timely respond to the consumer and take any necessary remedial actions. If the responsible party receiving the notice believes the issue is the responsibility of another responsible party, the information may be forwarded to that party.

§ 3282.403 Limitations

This shall limit the requirements under this subpart for notification or correction to the time frames listed below;

(a) By a manufactured home manufacturer or retailer, to a period of five (5) years from the date of first sale and completion of set-up of the manufactured home to the first purchaser. Any home over five (5) years in age from the date of sale and delivery to the first purchaser is exempt from these regulations or requirements for notification or correction by a manufactured home manufacturer or retailer;

(b) By an installer, contractor, product supplier, product distributor, transporter, developer, or landscaper for work completed and/or product supplied, to a period of two (2) years from the date such work is completed or such product is supplied. Any home over two (2) years after the date of completion of such work is exempt from these regulations by an installer, contractor, product supplier, product distributor, transporter, developer, or landscaper.

(c) The homeowner has a continuing obligation for providing adequate upkeep and maintenance of their manufactured home.

(d) Manufacturers and/or other responsible parties are not liable for the notification and correction of work done by others.

§ 3282.404 Consumer complaint and information referral.

When a consumer complaint or other information indicating the likely existence of a non-compliance, defect, serious defect, or imminent safety hazard is received by a State