

responsibilities away from manufacturers. The MHCC has not established that HUD has authority to hold these newly identified parties responsible for correction and notification of defects in manufactured homes.

The MHCC proposal adds significantly to the administrative responsibilities of HUD and the states, by making HUD and the State Administrative Agencies (SAA's) the initial arbiters of responsibility on all complaints and information about problems in manufactured homes. The proposal does not take into account the self-policing responsibilities of the manufacturers set out in section 615 of the Act (42 U.S.C. 5414). The concern about additional administrative burdens also applies to the provisions that make SAA's responsible for assuring that all notifications are sent and all corrections are made. In addition, the MHCC proposal may define roles for HUD and the SAAs that require them to interfere in matters that are traditionally settled through private contracts. Further, HUD cannot permit voluntary undertakings by private parties to constitute governmental action for purposes of judicial review.

The MHCC proposal would, in effect, create a warranty for products found in the home, and would then limit the applicable time of the warranty. There is no authority in the Act to create a warranty. In fact, during consideration of the most recent amendments to the Act, Congress heard testimony suggesting a statutory warranty, but declined to adopt this approach. Instead, the Act was amended in section 623 (42 U.S.C. 5422) to establish an additional protection for consumers through a dispute resolution program that covers problems reported in the 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 manufacturers 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 consumer 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 responsibility 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 time 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 as 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, corrections shall be required to the single home it's reported in.

(c) This subpart 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