



Manufactured Housing Association for Regulatory Reform

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VIA FED-EX

March 4, 2010

Mr. William W. Matchneer, III
Associate Deputy Assistant Secretary
Office of Regulatory Affairs and Manufactured Housing
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W.
Room 9162
Washington, D.C. 20410

Re: March 3, 2010 Draft Memorandum Entitled "Field Guidance --
Certification Reports and Updating Certification Reports"

Dear Mr. Matchneer:

Thank you for your March 3, 2010 memorandum to third-party Primary inspection Agencies (PIAs) entitled "Field Guidance -- Compliance with 24 C.F.R. 3282.203(c) and (d) Not Voluntary" -- the second "Field Guidance" memorandum issued by HUD within three days.

We agree with you that compliance with the Part 3282 Procedural and Enforcement Regulations, including 24 C.F.R. 3282.203(c) and (d), is mandatory and not "voluntary." That is not, and never has been, the issue.

Instead, the issue is whether compliance, by manufacturers, with the processes set out in the "Standard Operating Procedure" memorandum distributed by HUD at the July 21-22, 2009 "Technical Information Exchange" meeting in Herndon, Virginia (and/or subsequent iterations) as well as the "Enhanced" Quality Assurance Manual "Checklist" issued by HUD prior to that meeting are mandatory. Both of these documents, on their face, contain procedures and criteria that are not set forth in 24 C.F.R. 3282.203 (c) and (d), or anywhere else in the regulations.

Neither document has been subject to notice and comment rulemaking procedures to establish their "enhanced" criteria and processes as binding rules. Neither document been issued as an "interpretative bulletin" under the regulations, and subject to the notice and comment procedures required for interpretative bulletins, even though both clearly purport to interpret the regulations. Nor has either document been submitted to the MHCC for review and consensus input, even though both purport to change existing program practices. Indeed, an SAA at the July 2009 meeting pointed out that elements of the SOP process were "180 degrees different than what we're doing now."

Moreover, any existing confusion on whether compliance with the procedures and criteria set forth in these documents is "voluntary" or not, can be traced directly to statements made by

you and others at HUD (as well as the monitoring contractor and third-party PIAs), in your effort of the past two years, to peddle these costly, never-justified changes to the industry. At the July 2009 meeting, you stated that the SOP is not a "one-size-fits-all regulatory thing -- these are not hard and fast rules, they are not regulations." The SOP document itself repeatedly refers to the process as "cooperative" and "consensus"-based.

Now, though, it appears that it's "either my way or the highway," as manufacturers are threatened with selective enforcement if they refuse to knuckle-under and take advantage of the generous offer of HUD and its monitoring contractor to provide "assistance" in complying with the process of the SOP and the criteria of the "enhanced checklist."

So which is it? HUD cannot have it both ways. Is the SOP process mandatory? If so, by what authority -- and why hasn't it been promulgated as a rule? Same questions for the "enhanced checklist." Manufacturers subject to civil and criminal penalties under federal law have a right to know exactly what is required of them and why.

The manufactured housing industry is struggling to survive. Lower and moderate-income consumers who rely on our homes are suffering too. The industry has no further appetite for word-play.

MHARR will also be taking further steps, if you contend this is mandatory, to address the conflict of interest that we believe is inherent in your monitoring contractor helping to develop in-plant procedures that it is later charged with evaluating as HUD's agent. We plan to address, as well, HUD's failure to comply with an October 2009 FOIA request from MHARR designed to get to the roots of the SOP "process," beginning with all documents related to the September 11, 2008 "rump" meeting where HUD personnel first addressed this "enhanced" process with PIA personnel.

Once again, we urge Secretary Donovan and Assistant Secretary Stevens to step forward and put an end to this costly abuse of power, but more importantly, comply with the Manufactured Housing improvement Act of 2000 and appoint a non-career Administrator to restore and advance the legitimate priorities of the program pursuant to that law.

Sincerely,



Danny D. Ghorbani
President

cc: Hon. Shaun Donovan
Hon. David Stevens
HUD Code Manufacturers and Retailers



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

March 3, 2010

MEMORANDUM FOR: Primary Inspection Agencies

FROM:

A handwritten signature in black ink, appearing to read "W. Matchneer III", written over a horizontal line.

William W. Matchneer III, Associate Deputy Assistant Secretary
for Regulatory Affairs and Manufactured Housing

SUBJECT:

**Field Guidance – Compliance with 24 CFR 3282.203(c)
and (d) Not Voluntary**

It has come to our attention that certain manufacturers have received some remarkably bad advice regarding the Department's quality assurance regulations at 24 CFR 3282.203(c) and (d): that they are voluntary. Compliance with these sections is the primary condition on which every plant certification is based. As such, compliance with these sections is the lynchpin for the entire HUD process.

The manufacturers that have repeated this advice to us have also resisted, at least initially, the Department's offer to update their compliance with these regulations through a process of cooperative assistance. As you all know, the Department has been concentrating on enforcement of the quality assurance regulations for the past two years. In our judgment, effective quality assurance is the best way to assure the public that the homes produced under your supervision comply with HUD's construction and safety standards. And because the Department had not previously been emphasizing compliance with these regulations, we have chosen to do so through a process of cooperative assistance to manufacturers rather than traditional enforcement. Many manufacturers have found HUD's emphasis on the quality assurance regulations to be helpful and have thanked us for helping to improve their production processes and finish quality while reducing warranty costs.

Thus far, our cooperative assistance process has served all parties well. At HUD's request, the quality assurance experts at IBTS have been assisting both the PIAs and the manufacturers in updating quality assurance manuals and quality assurance practices. If necessary, however, we can do this the hard way through traditional compliance audits and enforcement actions. The choice is entirely up to your manufacturer clients.

You should provide your manufacturer clients with a copy of this guidance.