



Manufactured Housing Association for Regulatory Reform

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VIA FEDERAL EXPRESS

Hon. Ben Carson
Secretary
U.S. Department of Housing and
Urban Development
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Hon. Brian Montgomery
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U.S. Department of Housing and
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Re: Petition for Rulemaking – Subpart C – 24 C.F.R. Part 3282
HUD Manufactured Housing Procedural and Enforcement Regulations

Dear Sirs:

This Petition for Rulemaking is filed on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR or Petitioner). MHARR is a national trade association representing the views and interests of producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (1974 Act)¹ as amended by the Manufactured Housing Improvement Act of 2000 (2000 reform law). MHARR was founded in 1985. Its members include independent smaller and medium-sized manufactured housing producers from all regions of the United States.

MHARR and the manufactured housing industry as a whole, appreciate, commend and value the outstanding work that Secretary Carson has done at HUD, and beyond, to promote and

¹ 42 U.S.C. 5401, et seq.

advance federally-regulated manufactured housing as an affordable housing resource for all American families. Indeed, no HUD Secretary, since the inception of federal manufactured housing regulation in 1976, has done more to encourage the utilization of affordable manufactured homes.

MHARR, however, is filing this Petition because the HUD Office of Manufactured Housing Programs (OMHP), after three years, and with just over five months remaining in President Trump’s current term in office, have taken no concrete action to fulfill – with respect to the federal manufactured housing program – the regulatory reform mandates set down by President Trump in Executive Orders (EO) 13771 (“Reducing Regulation and Controlling Regulatory Costs”), 13777 (“Enforcing the Regulatory Reform Agenda”) and 13878 (“Establishing a White House Council on Eliminating Regulatory Barriers to Affordable Housing”). Indeed, other than removing and re-assigning (at the request of MHARR) a prior OMHP administrator in late-2017 who had abused her authority both procedurally and substantively to the detriment of regulated parties and consumers of manufactured housing, the sum total of HUD/OMHP “reform” activity under all of these regulatory reform EOs, has been the withdrawal of a handful of OMHP newsletters, which arguably do not even meet the definition of a regulatory action. Rather, it is glaringly apparent that OMHP regulators, rather than acting expeditiously and legitimately to comply with the regulatory reform mandates of these EOs, are simply attempting to stall their implementation and “run out the clock” in the hope that a new administration will be in place as of January 2021. Rather than accept such a transparent corruption of the policy goals, objectives and mandates of President Trump, MHARR, through this Petition, and pursuant to the rights accorded to it by relevant law, seeks direct relief to eliminate the abusive OMHP actions and practices set forth herein.

I. SUMMARY OF THE PETITION

The Administrative Procedure Act (APA) affords any “interested person” the right to petition a federal agency for the “issuance ... of a rule.”² Similarly, the Procedural and Enforcement Regulations (PER)³ promulgated by HUD pursuant to the 1974 Act, as amended, state that “procedures that apply to the formulation, issuance, amendment and revocation of rules pursuant to the [1974] Act [as amended] are governed by the [1974] Act [as amended], the Administrative Procedure Act, 5 U.S.C. 551, et seq., and Part 10 of this title....”⁴

In accordance with this authority, MHARR hereby petitions the HUD Office of Manufactured Housing Programs and the HUD Manufactured Housing Consensus Committee (MHCC)⁵ to initiate a rulemaking proceeding to promulgate regulations prohibiting OMHP from

² See, 5 U.S.C. 553(e).

³ 24 C.F.R. 3282.1, et seq.

⁴ 24 C.F.R. 10.20, in turn, requires that any such petition for rulemaking, “(2) set forth the text or substance of the rule or amendment proposed ...; (3) explain the interest of the petitioner in the action sought; [and] (4) set forth all data and arguments available to the petitioner in support of the action sought....”

⁵ The MHCC, pursuant to section 604(b) of the 2000 reform law has authority, independent of HUD/OMHP, to consider and submit to the Secretary, proposed PER regulations. Section 604 (b)(1), accordingly, states, in relevant

issuing, relying upon, or defending any sub-regulatory “guidance,” as defined by and in Executive Order (EO) 13891 (“Promoting the Rule of Law Through Improved Agency Guidance Documents”) issued by President Trump,⁶ regardless of the form or medium of communication of such “guidance,” which has not been subjected to: (1) the specific procedures detailed in President Trump’s EO 13891; (2) prior review by the MHCC in accordance with the 1974 Act, as amended;⁷ (3) notice and comment rulemaking in accordance with both the APA and the 1974 Act, as amended;⁸ and (4) full compliance with the Congressional Review Act⁹ as applicable. In addition, and as ancillary relief, MHARR hereby petitions for the withdrawal and revocation of an “Interpretive Rule” issued by OMHP on February 5, 2010,¹⁰ which unlawfully invalidates section 604 (b)(6) of the 2000 reform law.¹¹ Petitioner’s interest in this matter, is based upon its representation of producers of manufactured homes subject to federal regulation by HUD/OMHP pursuant to the 1974 Act, as amended.

The specific grounds for this petition, as well as a draft proposed regulation designed to fully effectuate applicable law and the purposes of this petition, are set forth below. In general, MHARR, in prior regulatory reform comments submitted to both HUD and the MHCC pursuant to EOs 13771 and 13777 issued by President Trump,¹² and to the White House Council on Eliminating Regulatory Barriers to Affordable Housing, pursuant to EO 13878 issued by President Trump,¹³ has called on HUD to retract and withdraw certain so-called “guidance” documents issued by OMHP subsequent the effective date of the 2000 reform law¹⁴ which effectively impose new or additional regulatory mandates and associated regulatory compliance cost burdens on manufacturers,¹⁵ but were adopted without the prior MHCC review or notice and comment rulemaking procedures required by applicable law. While HUD and the White House Council have yet to take action on the status of such pre-existing “guidance” documents,¹⁶ MHARR -- consistent

part: “The consensus committee may submit to the Secretary proposed procedural and enforcement regulations and recommendations for the revision of such regulations.”

⁶ See, 84 Federal Register, No. 199, October 15, 2019, at p. 55235, *et seq.* EO 13891 defines a “guidance document” as “an agency statement of general applicability, intended to have future effect on the behavior of regulated parties that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation....”

⁷ See, 42 U.S.C. 5403 (b)(6).

⁸ *Id.*

⁹ See, 5 U.S.C. 801, *et seq.*

¹⁰ See, note 24, *infra.*

¹¹ See, 42 U.S.C. 5403 (b)(6).

¹² See, MHARR June 7, 2017 Comments to HUD (“Reducing Regulatory Burdens; Enforcing the Regulatory Reform Agenda under Executive Order No. 13777 – Docket No. FR-6030-N-01”) (Attachment 1, hereto); MHARR February 20, 2018 Comments to HUD (“Regulatory Review of Manufactured Housing Rules – Docket No. FR-6075-N-01”) (Attachment 2, hereto); MHARR April 25, 2018 Comments to HUD (“Repeal of HUD February 5, 2010 ‘Interpretive Rule’ and Related HUD Manufactured Housing Sub-Regulatory ‘Guidance’ Documents”) (Attachment 3, hereto); and MHARR October 21, 2019 Comments to the MHCC (“MHARR Regulatory Reform Comments”) (Attachment 4, hereto).

¹³ See, MHARR Comments to the White House Council on Eliminating Regulatory Barriers to Affordable Housing dated January 9, 2020, at pp. 17-19.

¹⁴ *I.e.*, December 31, 2000.

¹⁵ See, in particular, Attachment 3, hereto.

¹⁶ Although such documents arguably are automatically invalidated *sub silentio* by EO 13891, HUD’s failure to take a specific position or issue a concrete statement on their current status operates as a *de facto in terrorem* threat against regulated parties.

“establish internal requirements for the contents of guidance documents and procedures for providing notice of, and soliciting public comment on, certain guidance documents.” In addition, the DOE proposed rule would establish procedures for the public to petition DOE to modify or withdraw guidance documents.”²¹

The instant Petition seeks a rule for OMHP similar to that proposed by DOE and substantially in the form set forth herein, to be included in Subpart C of HUD’s PER regulations at 24 C.F.R. Part 3282, for all sub-regulatory “guidance” issued by OMHP under authority of the 1974 Act as amended. The grounds and bases for such a rule are substantially the same as stated in both the NCLA petition²² and EO 13891,²³ which are expressly incorporated herein by reference. Further, and in addition to the grounds set forth in the NCLA petition and EO 13891, such a rule is authorized by -- and would specifically effectuate the requirements and express mandate of -- section 604 (b)(6) of the 2000 law as expressly stated in that section. MHARR, moreover, seeks ancillary rulemaking by HUD/OMHP, to withdraw and revoke HUD’s 2010 “Interpretative Rule,” which unlawfully, and without any legitimate or valid basis, distorted and emasculated section 604 (b)(6), contrary to its express terms.

Section 604 (b)(6) was included in the 2000 reform law in order to address and remedy the pre-existing ubiquitous practice of OMHP (and predecessor HUD offices), in conjunction with the federal program’s entrenched 40-year “monitoring” contractor, to engage in “closed-door” de facto rulemaking -- bypassing and evading the notice and comment requirements set forth in the 1974 Act -- through the simple expedient of issuing mandatory “field guidance” to regulated parties in order to impose new, additional or modified de facto regulatory strictures. Such “guidance” -- as listed in previous MHARR comments²⁴-- has typically imposed substantial new regulatory burdens and related compliance costs on regulated parties, as well as consumers of manufactured housing, while skirting the due process procedures designed to safeguard the rights and interests of those regulated parties and manufactured homebuyers.

Section 604 (b)(6) is thus designed to ensure that all such sub-regulatory pronouncements regarding the MHCCS standards, the PER regulations and related enforcement activities, would be subjected to prior MHCC consensus review and notice and comment rulemaking. That section, accordingly, provides, in relevant part, that: “any statement of policies, practices, or procedures relating to construction and safety standards, regulations, inspections, monitoring or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject to subsection (a) or this subsection. Any change adopted in violation of subsection (a) or this subsection is void.” (Emphasis added). Subsection (a) of section 604 prescribes prior MHCC review and notice and comment rulemaking for all proposed Manufactured Housing Construction and Safety Standards and revisions thereof. Subsection (b) of section 604 of the 2000 reform law, similarly requires prior MHCC review and notice and comment procedures for all PER regulations, OMHP “Interpretive Bulletins” and the sub-regulatory pronouncements described in section 604(b)(6).

²¹ See, 85 Federal Register, supra at p. 39495, col. 1.

²² See, in particular, 84 Federal Register, supra, at pp. 50794-50798.

²³ EO 13891 sets forth and encapsulates existing binding law which should properly be memorialized in the PER regulations in order to ensure that its mandates are not ignored or unlawfully rejected by HUD in the future.

²⁴ See, MHARR comments listed in note 12, supra.

Consequently, pursuant to section 604 (b)(6) of the 2000 reform law, Congress explicitly required HUD, after the effective date of the law, to present any and all sub-regulatory guidance pronouncements (specifically including alleged “interpretations”) related to the MHCSS standards, the PER regulations and all other enforcement aspects of the federal manufactured housing program to the MHCC for prior review and recommendations to the Secretary, and to engage in notice and comment rulemaking prior to the final adoption and implementation of any such “guidance.”

HUD, however, rather than comply with the unequivocal language of section 604 (b)(6), as written, instead chose to distort and subvert the plain meaning of that section through an “Interpretive Rule” issued without notice and comment itself on February 5, 2010.²⁵ Through that “rule,” HUD “interpreted” the MHCC review and rulemaking mandate of section 604 (b)(6) to apply only to actions that “meet the definition of a ‘rule’ under the [federal Administrative Procedure Act]”....²⁶ Actions that “meet the definition of a ‘rule’” under the APA, however, are already required by section 553 of the APA to be adopted via prior notice and comment rulemaking. Moreover, section 604 (a)(4)(A) of the 2000 reform law already requires proposed manufactured housing standards be considered by the MHCC and published for notice and comment, while section 604(b)(4)(A) requires that all proposed enforcement regulations and “Interpretive Bulletins” be considered by the MHCC and published for notice and comment.

Consequently, as wrongly and unlawfully “interpreted” by the February 5, 2010, HUD “Interpretive Rule,” section 604 (b)(6) adds nothing to the law that is not already included in either the APA or other sections of the 2000 reform law. The Interpretive Rule, accordingly, would render section 604 (b)(6) meaningless and of no effect. This construction, however, violates the most fundamental rules of statutory construction as established by the courts, which require that every part of a statute be given full and complete effect if possible.

Moreover, the lack of any valid legal basis for the 2010 Interpretive Rule is confirmed by opinions issued by the U.S. Department of Justice on November 16, 2017²⁷ and January 25, 2018,²⁸ and EO 13891 itself. In relevant part, the November 16, 2017 memorandum from the Attorney General states: “[G]uidance may not be used as a substitute for rulemaking and may not be used to impose new requirements on entities outside the Executive Branch.” (Emphasis added). This is entirely consistent with the original intent, purpose and language of section 604 (b)(6) as enacted by Congress. Similarly, the January 25, 2018 Justice Department memorandum states, in relevant part: “Guidance documents cannot create binding requirements that do not already exist by statute or regulation. Accordingly, effective immediately for ACE cases,²⁹ the [Justice]

²⁵ See, Attachment 7 hereto, 75 Federal Register No. 24 (February 5, 2010), p. 5888, et seq. “Federal Manufactured Home Construction and Safety Standards and other Orders: HUD Statements that are Subject to Consensus Committee Processes.”

²⁶ Id. at p. 5889, col. 3.

²⁷ See, United States Attorney General Memorandum entitled “Prohibition on Improper Guidance Documents.”

²⁸ See, United States Justice Department Memorandum entitled “Limiting Use of Agency Guidance Documents in Affirmative Civil Enforcement Cases.”

²⁹ The January 25, 2018 memorandum defines “ACE,” or “Affirmative Civil Enforcement” cases, as follows: “‘Affirmative civil enforcement’ refers to the Department’s filing of civil lawsuits on behalf of the United States to

Department may not use its enforcement authority to effectively convert agency guidance documents into binding rules.”

These same principles, in turn, are incorporated and expanded in EO 13891, which specifically provides that “agencies may impose legally binding requirements on the public only through regulations ... and only after appropriate process...” and that guidance documents which are not promulgated through such “appropriate processes” are “non-binding both in law and in practice.” Similarly, Executive Order 13892 (“Promoting the Rule of Law through Transparency and Fairness in Civil Administrative Enforcement and Adjudication”)³⁰ provides, in relevant part:

“Guidance documents may not be used to impose new standards of conduct on persons ... except as expressly authorized by law.... “When an agency takes an administrative enforcement action ... or otherwise makes a determination that has legal consequence for a person, it must establish a violation of law by applying statutes and regulations. The agency may not treat noncompliance with a standard of conduct announced solely in a guidance document as itself a violation of applicable statutes and regulations.”

(Emphasis added).

The effect of these EOs and related Justice Department memoranda, is to confirm that the 2010 HUD “Interpretive Rule,” is substantively incorrect, invalid and a misstatement of applicable law. The APA, by its express terms, already requires notice and comment rulemaking for “rules.” Sections 604(a) and 604(b) of the 2000 reform law, expand and clarify this mandate in the specific context of federal manufactured housing regulation, by requiring notice and comment rulemaking, as well as prior MHCC consensus review, for proposed manufactured housing standards, PER regulations and Interpretative Bulletins. Section 604(b)(6), then, expands this mandate even further, by separately requiring both rulemaking and prior MHCC consensus review for all changes to HUD “policies, practices, or procedures” – as well as new “policies practices or procedures” – “relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy,” regardless of how any such change is denominated, characterized, depicted, or presented by HUD.

To construe section 604 (b)(6) to apply only to “rules” that would be subject to notice and comment rulemaking in any event under section 553 of the APA – as the 2010 “Interpretive Rule” purports to do -- is to render section 604 (b)(6) and its mandate devoid of any meaning and effectively strip it out of the 2000 reform law despite Congress’ clear intent to require both consensus procedures and rulemaking for changes that alter the burdens imposed by HUD on regulated parties pursuant to federal manufactured housing law, whether characterized as “rules” or not. Any such construction would flagrantly exceed HUD’s authority, would unlawfully supplant the lawmaking authority of Congress, would violate the letter and purpose of the 2000 reform law, and would constitute a blatant and unacceptable abuse of HUD’s authority, which

... impose penalties for violations of federal health, safety, civil rights or environmental laws.” Insofar as the federal manufactured housing law is manifestly a federal “safety” law, an action to enforce the federal manufactured housing standards or regulations would clearly be an “ACE” action within the meaning of the January 25, 2018 memorandum.

³⁰ See, 84 Federal Register, No. 199, October 15, 2019 at p. 55239, et seq.

would allow HUD – in collusion with its entrenched 40-year contractor – to continue imposing baseless de facto regulatory mandates and related regulatory compliance costs on both manufactured housing producers and consumers in direct violation of federal law and the regulatory reform policies of President Trump. Moreover, as is demonstrated by EOs 13891 and 13892 issued by President Trump, and the November 16, 2017 and January 25, 2018 Justice Department memoranda – all of which show that section 604(b)(6) means what it says, as written -- the Justice Department would quite properly refuse to enforce any such “guidance” documents, issued without rulemaking and prior MHCC consensus review, as binding mandates on regulated parties in any type of enforcement proceeding sought by HUD, in any event.

Accordingly, section 604 (b)(6) of the 2000 reform law, as written, constitutes a further independently sufficient and valid basis – beyond EO 13891 and those set forth in the NCLA petition -- for the promulgation of the rule proposed herein. Further, for the reasons set forth above, and in conjunction with the promulgation of the rule proposed herein, MHARR asks that the February 5, 2010 “Interpretive Rule” be formally withdrawn by HUD as an incorrect, invalid and unlawful construction of section 604 (b)(6).

III. TEXT OF PROPOSED RULE

In accordance with the authorities set forth and incorporated by reference above, MHARR offers the following proposed rule to effectuate this Petition, for inclusion in Subpart C – “Rules and Rulemaking Procedures” – of the PER regulations:

A. Section 24 C.F.R. 3282.102 – Purpose:

This part establishes OMHP procedures for the issuance and review of new or revised guidance documents and procedures for the public to petition for the withdrawal, removal or modification of OMHP guidance documents.

B. Section 24 C.F.R. 3282.103 – Definitions:

For purposes of this Part, the following terms, phrases and words are defined as follows:

- (a) *Administrator* means the Administrator of the Office of Manufactured Housing Programs;
- (b) *Guidance document* means a HUD/OMHP statement of general applicability, intended to have future effect on the behavior of regulated parties, which sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation, or any document described by 42 U.S.C. 5403 (b)(6), but does not include:
 - (1) Rules promulgated pursuant to notice and comment under the Administrative Procedure Act, 5 U.S.C. 553, or similar statutory provisions;

- (2) Rules exempt from rulemaking under 5 U.S.C. 553(a);
- (3) Rules of agency organization;
- (4) Decisions of agency adjudications under 5 U.S.C. 554, or similar statutory provisions;
- (5) Internal executive branch legal advice or opinions addressed to executive branch officials;
- (6) Agency statements of specific, rather than general, applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions, notices regarding particular locations or facilities, and correspondence with individual persons or entities, including notices of alleged violations and warning letters;
- (7) Briefs and other positions taken in litigation and enforcement actions;
- (8) OMHP statements unrelated to any matter or function set forth in 42 U.S.C. 5403(a) or (b); and
- (9) Documents, the release of which is prohibited by law.

(c) *OMHP* means the HUD Office of Manufactured Housing Programs or any successor (or predecessor) office within HUD responsible for compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended by the Manufactured Housing Improvement Act of 2000 (42 U.S.C. 5401, et seq.

(d) *Secretary* means the Secretary of the Housing of Urban Development or his authorized designee.

(e) *Significant guidance document* means a guidance document that may reasonably be anticipated to:

- (1) Lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way, the economy, a sector of the economy, productivity competition, jobs, the environment public health or

- safety, or State, local, tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another federal agency;
 - (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
 - (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

C. Section 24 C.F.R. 3282.104 – Procedures for Issuing Guidance Documents:

(a) *Contents of Guidance Documents.* All new or revised OMHP guidance documents issued pursuant to authority conferred by 42 U.S.C. 5401, et seq., as amended:

- (1) Must include a clear and prominent statement declaring that:
 - (i) The contents of the document do not have the force and effect of law and are not meant to bind the public in any way;
 - (ii) The document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies, except as authorized by law or as incorporated in an agency contract; and
 - (iii) OMHP will not rely upon the document as an independent basis for an enforcement action or other administrative penalty.
- (2) Must avoid using mandatory language such as “shall,” “must,” “required,” or “requirement,” unless the language is describing an established statutory or regulatory requirement;
- (3) Must be written in plain and understandable language; and
- (4) Must include the following attributes: The term “guidance;” a title; identify activities to which and the

persons to whom the document applies; the date of issuance; the relation to any previous guidance (if applicable); a citation to the statutory provision or regulation to which it applies; and a short summary of the subject matter.

(b) *Compliance with 42 U.S.C. 5403 (b)(6)*. For every guidance document issued by OMHP, OMHP shall comply with all requirements of 42 U.S.C. 5403 (b)(6), including but not limited to:

- (1) Each guidance document shall be presented to the Manufactured Housing Consensus Committee for review and recommendation prior to adoption by OMHP;
- (2) Each guidance document recommended by the Manufactured Housing Consensus Committee shall be published in the Federal Register for notice and comment in accordance with 42 U.S.C. 5403 (b) and 5 U.S.C. 553 prior to adoption;
- (3) Guidance documents not recommended by the Manufactured Housing Consensus Committee, or Manufactured Housing Consensus Committee-recommended guidance documents rejected by HUD, or modified by HUD in any way, shall be published in the Federal Register in accordance with 42 U.S.C. 5403 (a) or (b).

(c) *Review and Clearance by Counsel*. All new or revised OMHP guidance documents shall be reviewed by the HUD Office of General Counsel prior to issuance, to:

- (1) Ensure compliance with this part, with 42 U.S.C. 5403 (b)(6) and Executive Order 13891;
- (2) Determine whether the guidance document is “significant” as defined in this Part; and
- (3) If the guidance document is “significant,” coordinate with the Office of Information and Regulatory Affairs within the Office of Management and Budget as prescribed herein.

(d) *Procedures for Significant Guidance Documents*. For any guidance document deemed to be a significant guidance document by the Secretary, OMHP shall, in addition to each of the procedures set forth in subsections (a) through (c) of this section, shall:

- (1) Publish notice of the significant guidance document on HUD's guidance website and provide a public notice and comment period of not less than 60 days prior to the issuance of the final significant guidance document;
- (2) Provide publicly available responses to concerns raised by the aforesaid public comments;
- (3) Obtain approval of the significant guidance document from the Secretary and the Office of Information and Regulatory Affairs prior to issuance of the final significant guidance document; and
- (4) Comply with all applicable requirements of Executive Orders 12866, 13563, 13609, 13771, 13777 and 13891.

(e) *Electronic Availability of Guidance.* HUD shall:

- (1) Ensure that all guidance and significant guidance documents as defined in this Part, are available to the public on the HUD website through a single web page portal; and
- (2) State clearly and prominently on its web page portal that guidance and significant guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract.

(f) *Rescinded Guidance Documents.* All guidance documents, as defined in this Part, that are not posted on HUD's website portal as described in paragraph (a) of this section, shall be deemed rescinded unless and until HUD/OMHP subjects such guidance documents to the procedures of this section and 42 U.S.C. 5403 (b). Except for the purpose of establishing historical facts, HUD/OMHP will not cite, use, or rely on rescinded guidance documents unless and until HUD/OMHP subjects such guidance documents to the procedures of this subsection and 42 U.S.C. 5403 (b).

D. Section 24 C.F.R. 3282.105 – Congressional Review Act Compliance:

- (a) HUD/OMHP will comply with all Congressional Review Act (5 U.S.C. 801-808) (CRA) requirements for review of all proposed regulatory actions, including, but not limited to, legislative rules, regulations, guidance documents, general statement of policy and interpretive rules and all other actions described by 42 U.S.C. 5403(b)(6).

- (b) All proposed regulatory actions that OMHP submits to the Office of Information and Regulatory Affairs (OIRA) pursuant to Executive Order 12866, shall include:
 - (1) A HUD-proposed significance determination;
 - (2) A HUD-proposed determination as to whether the proposed action meets the definition of a “major rule” under 5 U.S.C. 804, or a “significant guidance document” as defined herein.
- (c) Where a proposed regulatory action would not meet Executive Order 12866’s OIRA review requirement, and where the category of regulatory action has not been previously designated as presumptively not-major by OIRS, OMHP will notify OIRA of the proposed regulatory action in writing. The written notification to OIRA will include:
 - (1) OMHP’s summary of the proposed action;
 - (2) HUD’s assessment as to the nature of the proposed regulatory action including, but not limited to, whether the action is legislative or interpretive and whether it is applicable to the Department or to private parties outside of HUD; and
 - (3) HUD’s recommended designation of the proposed regulatory action as a major rule or not, as defined by 5 U.S.C. 804 (2).
- (d) If OIRA designates OMHP’s proposed regulatory action as a possible major rule, HUD shall:
 - (1) Submit the proposed regulatory action to OIRA for CRA review at least 30 days before submitting the proposed action to the MHCC for review and recommendations and publishing the proposed action in the Federal Register, or otherwise publicly releasing the said action;
 - (2) Submit an analysis sufficient to allow OIRA to make its major rule determination. This analysis shall include, but not be limited to, information regarding the degree of uncertainty concerning the regulatory action’s impacts; and
 - (3) Provide all required information, analysis and documentation to OIRA in a manner consistent with the principles and metrics enunciated in OMB Circular 4-A

(September 17, 2003) and Part IV of OMB Memorandum M-19-14 (April 11, 2019).

- (e) If OIRA designates the proposed regulatory action not-major, OMHP may proceed with rulemaking in accordance with 42 U.S.C. 5403 (a) or (b) without submitting a CRA report to Congress.
- (f) If OIRA designates the proposed regulatory action a major rule, HUD shall:
 - (1) Submit a report to Congress and the Comptroller in accordance with the provisions of 5 U.S.C. 801 (a);
 - (2) Comply with all MHCC review and notice and comment rulemaking provisions of 42 U.S.C. 5403 (a) or (b), and all other applicable law.

E. Section 24 C.F.R. 3282.106 – Petition for Withdrawal or Modification:

- (a) *Filing a Petition.* Any person, as well as the Manufactured Housing Consensus Committee, may petition HUD/OMHP to withdraw or modify a guidance document. The Petition must be addressed to the General Counsel of HUD and either:
 - (1) Sent by mail addressed to the U.S. Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410;
 - (2) Sent by email to mhcc@hud.gov and mhcc@homeinnovation.com.
 - (3) Hand delivered to HUD at 451 7th Street, S.W., Washington, D.C. 20410.
- (b) *Content of Petition.* For each petition filed under this section, the petitioner must:
 - (1) Specify the petitioner's:
 - (i) Name, or if the petitioner is an organization, the name of the organization and the name and authority of the individual who signed the petition on behalf of the organization or corporate petitioner;
 - (ii) The petitioner's telephone number;
 - (iii) The petitioner's mailing address; and

- (iv) The petitioner's email address (if available).
 - (2) Identify the guidance document to be withdrawn or modified; and
 - (3) Be signed by the petitioner or the petitioner's authorized representative.
- (c) *Additional Information.* To assist in the resolution of a petition for withdrawal or modification of a guidance document, the petitioner may:
- (1) Present any specific problem or issue that the petitioner believes are associated with the guidance document, including any specific circumstances in which the guidance document is incorrect, incomplete, obsolete, inadequate, or not consistent or compliant with applicable law or other authority;
 - (2) Present any proposed solution to either withdraw or modify the guidance document;
 - (3) In the case of a petition for modification of a guidance document, specify any modifications to the text of the document that the petitioner seeks; and
 - (4) Cite, enclose, or reference any technical, scientific, legal, or other information supporting petitioner's request for withdrawal or modification of the guidance document.
- (d) *Public Comment.* HUD will present any petition for modification or withdrawal of a guidance document and supporting documentation to the Manufactured Housing Consensus Committee for consensus review. Following any recommendation by the Manufactured Housing Consensus Committee with respect thereto, HUD/OMHP shall publish any such petition in the Federal Register and provide opportunity for public comment thereon.
- (e) *Disposition of Petition.* The Secretary shall determine the appropriate disposition of a petition after consideration of the petition and any supporting documents received, as well as the recommendation(s) of the Manufactured Housing Consensus Committee and any public comment(s) received on the petition, within 90 days of publication of the petition in the Federal Register. In responding to any such petition, the Secretary shall either grant the petition and rescind the subject guidance or modify the said guidance and publish such proposed modification in the Federal Register for Notice and Comment, or deny the petition on the basis that the subject guidance does not meet the definition

of a “guidance document,” or “significant guidance document” herein, or does not constitute an action within the express written scope of 42 U.S.C. 5403 (b)(6).

- (f) Any agency determination under subsection (e) must be made in writing and must be promptly made available to the public and include a formal statement of reasons for the said determination.

- (g) If HUD/OMHP fails to respond to a petition for withdrawal or modification within 60 days of the submission thereof, the petition and the specific relief sought therein, the petition shall be deemed to be granted.

F. Section 3282.107 – Judicial Review

Any HUD/OMHP denial or modification of a petition under section 107 of this Part, or any determination by HUD/OMHP that a guidance document referenced by such a petition is not subject to 42 U.S.C. 5403 (a) or (b), specifically including 42 U.S.C. 5403 (b)(6), or 5 U.S.C. 553, or Executive Order 13891, shall constitute final agency action pursuant to 5 U.S.C. 704 and shall be subject to judicial review pursuant to 5 U.S.C. 702

IV. CONCLUSION

For all the foregoing reasons, MHARR requests that its Petition for Rulemaking be granted and that HUD/OMHP issue a proposed rule in the Federal Register corresponding with the draft proposed rule set forth herein and for other ancillary and related relief as requested herein.

Sincerely,

Mark Weiss
President and CEO

cc: Hon. Donald J. Trump
Ms. Dana Wade, HUD Senior Advisor (with attachments)
Administering Organization, Manufactured Housing Consensus Committee (with attachments)
Members, Manufactured Housing Consensus Committee (without attachments)
HUD Code Industry Manufacturers, Retailers and Communities (without attachments)