

## **Manufactured Housing Consensus Committee**

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**TO:** William Matchneer, DFO  
**FROM:** Robert E. Solomon   
**DATE:** 4 February 2003  
**SUBJECT:** MHCC Consumer Assistance Proposal Final Ballot Results

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The final ballot results for the Consumer Assistance Proposal has yielded the following vote:

Eligible Votes:	21	
Affirmative:	13	(Ms. Brenton, Messrs. Gilson, Roberts, Youse and Zieman with comments)
Negative:	6	(Messrs. Gorman, Lagano, Leven, Vogt, Walter and Weinert)
Abstain:	2	(Messrs. Berger and Portz)

Copies of the final Affirmative with comments, Negatives and Abstention votes are enclosed.

The MHCC require a letter ballot or an equivalent formal recorded vote with approval of two-thirds of the *MHCC*. This letter ballot achieves the required affirmative vote to be submitted to HUD as a formal recommendation. The 2/3 vote is based on the total number of eligible votes (21) minus the unreturned votes (0) minus the abstain votes (2). Thus 2/3<sup>rds</sup> of 19 votes was necessary to move forward.

Enclosures

RES/jtm

C: Manufactured Housing Consensus Committee

# **MANUFACTURED HOUSING CONSENSUS COMMITTEE**

**TO:** Manufactured Housing Consensus Committee Members  
**FROM:** Robert E. Solomon *RES*  
**DATE:** December 19, 2002  
**SUBJECT:** Ballots for MHCC - Consumer Assistance Program- Final Proposal  
Accepted by MHCC

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The ballot and ballot material for the subject document is enclosed. Your vote on this document is to be based upon the Committee action for the proposal as shown.

If you wish to vote negative or if you abstain, please indicate your reason for doing so. Do not cast a negative vote for items that are editorial in nature, but do bring any such items to my attention.

The final date for return of this ballot is 17 January 2003. Feel free to call or email me if you have any questions.

By way of a brief explanation, you have 4 voting options on this ballot. If you agree with this proposal as is, you simply vote affirmative. If you agree with the proposal, but have a minor concern with one or two items, or if you see some editorial glitch, you may want to vote affirmative with comment. If you disagree with a substantial part of the proposal, you would vote in the negative. Abstain votes are normally only reserved if you believe there is some conflict of interest, or if you do not feel qualified to pass judgment on an issue. I do not believe any one on the MHCC has any reason to abstain.

Once the 17 January 2003 date has passed we will tabulate the results, recirculate any affirmative with comment, negative, or abstain votes with the requisite reasons, and give you a chance to review those and change your vote. Between now and that date, you will receive one or two reminders on the impending ballot due date.

When you vote, you need only return the one page ballot. Please feel free to attach additional pages if you need to provide more information on your reasons.

### § 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.

*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 IJ-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 the installation of the manufactured home for the first purchaser. Any home over five (5) years in age from such date 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 Administrative Agency or the Secretary, the SAA or the Secretary shall forward the complaint or other information to the responsible party. The responsibility to assure proper investigation and assignment of responsible party belongs to the SAA in the state in which the home is located. The SAA or the Secretary may, when it appears from the complaint or other information that more than one manufactured home may be involved, simultaneously send a copy of the complaint or other information to the SAA of the State where the manufactured home was manufactured or to the Secretary if there is no such SAA. When it appears that an imminent safety hazard or serious defect may be involved, the SAA shall send a copy to the Secretary. The SAA in the state of production of the manufactured home shall assist the SAA in the state in possession of the manufactured home as needed. The SAA in the state of production shall be responsible to assure the manufacturer's records reflect the proper investigation, record keeping, corrective action, and responses of manufacturer actions.

**§ 3282.405 Investigation, Determination, Repair and Notification by Responsible Parties.**

- (a) The manufacturer shall review its records to determine whether or not a defect, serious defect, or imminent safety hazard is indicated as set out in this subpart with respect to all manufactured homes produced by the manufacturer within five (5) years of the date of sale to the first purchaser, in which there likely exists an imminent safety hazard, serious defect, or defect.
- (b) Whenever a responsible party receives from any source information that indicates the

- (c) likely existence of a defect, serious defect, or imminent safety hazard in a manufactured home for which they are responsible for repair, the responsible party shall, as soon as possible, but not later than 20 days after receipt of the information, carry out any necessary investigations or inspections to determine and shall determine whether they are responsible for correction and/or notification. They shall report the results of the initial investigation to the SAA as required.
- (d) Determinations and investigations must be completed within 20 days of the date of notification. These determinations may be initial determinations with more thorough investigation to follow. The original assessment and determination is required within the 20-day period and may be followed up as more information is gathered during the process of investigation. The responsible party shall maintain complete records of all such information and determinations in a form that will allow the Secretary or an SAA to determine the severity of the defect serious defect, or imminent safety hazard.
- (e) The responsible party for the violation shall be required to determine the severity of the problem reported. The severity shall be determined as identified in the definitions as imminent safety hazard, serious defect, defect, or non-compliance. Such records shall be kept for a minimum of five (5) years from the date of completion of the investigation.
- (e) If the determination is a serious defect or an imminent safety hazard, the responsible party that caused the serious defect or imminent safety hazard shall be required to determine and identify how many homes have the same serious defect or imminent safety hazard. All homes with the same serious defect or imminent safety hazard must be corrected by the responsible party or their agent in accordance with the DAPIA design, regulation, or prevailing code, subject to the limitations in § 3282.403.
- (f) If the determination is a defect that affects the performance of the home, the party responsible for the defect shall be required to make a good faith determination as to the likely cause of the defect and a good faith determination as to whether a class is identifiable because the cause of the defect, actually known to the responsible party, is such that the same defect would probably have been systematically introduced by the responsible party into more than one home during the construction process at the manufacturer's plant, or the same defect would probably have been systematically introduced into more than one home by a non-manufacturer responsible party after the home was sold or otherwise released by the manufacturer. If the responsible party determines that a class exists, the responsible party shall provide notification of the defect to all affected homeowners as set out in this subpart. Such notice shall include a description of the defect and the possible solution or repair. If the SAA chooses to have the item repaired, the responsible party shall be required to make the repair in accordance with the DAPIA design, or the federal standards in effect at the date of manufacture of such home, or prevailing code for items not governed by the federal standards, whichever is applicable, subject to the limitations in § 3282.403. Reporting to the appropriate SAA or Secretary is required as requested.
- (g) If the determination is a non-compliance, repair is required, by the responsible party, of only the home involved in a complaint, but only if such a non-compliance affects the performance of the home.
- (h) For an individual complaint on a single home, upon discovery, all non-compliances, defects, serious defects, and imminent safety

hazards introduced during construction of the home in the manufacturer's construction facility that affects the performance of the home shall be corrected by the manufacturer, and those created as a result of work another responsible party, such as retailer, distributor, installer, contractor, product supplier, product distributor, transporter, developer, or landscaper completed on the home shall be corrected by the party responsible when the performance of the home is affected, subject to the limitations in § 3282.403.

- (i) All required work shall be completed within sixty (60) days of the required determination. Providing for the 20 day investigation period and adding the 60 day repair period, there is an 80 day period of time to complete investigation and corrective action. Extensions may be granted by the responsible SAA or the Secretary. Reporting to the appropriate SAA or Secretary is required as requested.
- (j) Damages that take the home out of compliance, resulting from any defect, serious defect, or imminent safety hazard are required to be repaired by the responsible party. Damage to the home as a result of the neglect or an intentional act or omission of the consumer is not required to be repaired. Such conduct may include, but is not limited to a failure of the consumer to report failures to the responsible party in a timely manner and failure to take steps to protect their home and property while awaiting repair.
- (k) Listed appliances, materials, fixtures, equipment, and similar items used in the assembly of the home shall be considered a defect if they fail prior to the home manufacturer's warranty, the product warranty, or a period of two years, whichever is greater and affects the performance of the home. Product warranties that extend beyond a period of two years or beyond the manufactured home

warranty shall be the sole responsibility of the appliance or product supplier.

- (l) Product suppliers who are required to repair or replace products shall be held to the same repair requirements, time requirements, and reporting requirements as the manufacturers and retailers.
- (m) The determinations of severity and of the number of homes involved shall be recorded in the home record of each home involved. The determinations for severity are required to be identified for each item listed in the complaint. The identification of the determination may be either individual line entries, full page entries, or a combination thereof. The record must also show if the issue involves more than one home.
- (n) All home records shall be kept by the manufacturer and retailer for five (5) years from the date the home was sold to the first purchaser or for a period of five (5) years from the date of completion of an investigation and/or repair campaign.

#### **§ 3282.406 SAA Authority and Responsibilities**

- (a) As set out at § 3282.302(b)(5), each SAA is the authority to and is responsible for, overseeing the handling of consumer complaints within their state. As part of that authority and responsibility, including assignment of responsible party after proper investigation, the SAA is required to monitor manufacturer compliance with this subpart, and particularly with § 3282.405. This monitoring will be done primarily by periodically checking the records that manufacturers are required to keep under 3282.405.
- (b) The SAA shall utilize the authority granted by Federal and State laws and regulations to assure the requirements of this consumer assistance subpart are accomplished.

**§ 3282.407 Required responsible party correction.**

A responsible party shall correct, at its expense, any imminent safety hazard, serious defect or defect that can be related to an error in design, construction, assembly, modification, addition, or alteration of, or to, the manufactured home which would include errors in design, workmanship or assembly of any component or system incorporated in the manufactured home that is discovered, subject to and within the limitations in § 3282.403.

**§ 3282.408 Reimbursement for prior correction by owner.**

A responsible party that is required to correct, shall provide reimbursement for reasonable cost of correction to any owner of an affected manufactured home who chose to make the correction before the responsible party did so, providing the responsible party was notified prior to the repair being performed.

**§ 3282.409 Plan for notification and correction.**

- (a) This section sets out the requirements that shall be met by responsible parties in preparing plans they are required to submit under § 3282.405. The underlying requirement is that the plan shows how the responsible party will fulfil its responsibilities with respect to notification and correction that arise under this subpart.
- (b) The plan shall identify, by serial number and other appropriate identifying criteria, all manufactured homes with respect to which correction and/or notification is required to be provided. Homes identified in the plan shall be those identified in accordance with the criteria set forth in sections 405 (e) and 405 (f) of this subpart. Methods that may be used in determining the extent of the class,

once the existence of a class on manufactured homes has been determined, includes for all responsible parties, but are not limited to:

- (1) Inspection of the design of the manufactured home, alteration, or addition in question to determine whether the failure resulted from the design itself;
- (2) Identification of the cause as relating to a particular employee, or process that was employed for a known period of time in producing or altering or adding to or affecting the manufactured home;
- (3) Inspection of records relating to components supplied by other parties and known to contain or suspected of containing imminent safety hazards, serious defects or defects. The class of manufactured homes identified by these methods may include only manufactured homes actually affected. If it is not possible to identify the precise manufactured homes, the class shall include manufactured homes suspected of containing the failure because the evidence shows that they may have been affected.

For manufactured home manufacturers the methods may also include:

- (1) Inspection of manufactured homes produced before and after the manufactured homes known to be affected;
- (2) Inspection of manufacturer quality control records to determine whether quality control procedures were followed;
- (3) Inspection of IPIA records to determine whether the imminent safety hazard or failure to conform was either detected or specifically found not to exist in some manufactured homes;

- (4) The plan shall include a statement by the IPIA operating in each plant in which manufactured homes in question were produced if requested by the SAA. In this statement, the IPIA shall concur in the methods used by the manufacturer to determine the class of potentially affected manufactured homes or state why it believes the methods to have been inappropriate, inadequate, or incorrect.
- (c) The plan shall include a deadline for completion of all notifications and corrections subject to 3282.405(j).
- (d) If the responsible party disputes a finding, ruling, or determination of the SAA, the responsible party may, within ten days of notice of any such finding, ruling, or determination, appeal such action to the Secretary.
- (e) The responsible party may propose a settlement offer that is acceptable to the SAA or Secretary for any situation involving non-compliances, defects, serious defects, or imminent safety hazards. Acceptance of a settlement offer by the SAA or the Secretary shall be binding and may supersede portions of this subpart specifically identified in the agreement.
- (f) Compliance with the steps and the methods outlined in this section shall constitute "good faith" efforts on the part of the responsible party or parties, and shall be prima facie evidence of compliance with this subpart.

**§ 3282.410 Completion of remedial actions and report.**

- (a) Where the responsible party is required to provide notification under this subpart, the responsible party shall maintain in its files for five (5) years from the date notification is completed, a copy of the notice sent and a complete list of the people and their

addresses. The files referred to in this section shall be organized such that each notification and/or correction can be readily identified and reviewed by an SAA or the Secretary.

- (b) Where a responsible party is required to provide correction under §3282.407 or where the responsible party otherwise corrects under §3282.405, the responsible party shall maintain in its files, for five (5) years from the date the correction work is completed, one of the following, as appropriate, for each manufactured home involved.
  - (1) Where the correction is made, a certification that the repair was made to satisfy completely the standards in effect at the time the manufactured home was manufactured and that the failure has been eliminated, or
  - (2) Where the owner refuses to allow repair to the home, a certification by the responsible party that the owner has been informed of the violation and that the owner has refused repair must be placed in the home file and made available upon request.
- (c) The responsible party shall, within 30 days after the deadline for completing any notifications and, where required, corrections, under an approved plan or under an order of an SAA or the Secretary, or any accepted settlement, provide a complete report of the action taken to the SAA or the Secretary, whoever approved the plan.

**§ 3282.411 Replacement or repurchase of manufactured home from purchaser.**

- (a) Whenever an imminent safety hazard or serious defect, which must be corrected by the responsible party at their expense under §3282.407, cannot be repaired within 60 days in accordance with section 615(i) of the Act, the Secretary may require:

- (1) That the manufactured home be replaced by the responsible party with a manufactured home substantially equal in size, equipment, and quality, and either new or in the same condition the defective manufactured home would have been in at the time of discovery of the imminent safety hazard or serious defect had the imminent safety hazard or serious defect not existed; or
  - (2) That the responsible party take possession of the manufactured home and refund the purchase price in full, less a reasonable allowance for depreciation based on actual use if the home has been in the possession of the owner for more than one year. Such depreciation shall be based upon an appraisal system approved by the Secretary, and shall not take into account damage or deterioration resulting from the imminent safety hazard or serious defect.
- (b) In determining whether to order replacement or refund by the responsible party, the Secretary shall consider:
- (1) The threat of injury or death to manufactured home occupants;
  - (2) Any costs and inconvenience to manufactured home owners which will result from the lack of adequate repair within the specified period;
  - (3) The expense to the responsible party;
  - (4) Any obligations imposed on the responsible party under contract or other applicable law of which the Secretary has knowledge; and
  - (5) Any other relevant factors which may be brought to the attention of the Secretary.
- (c) In those situations where, under contract or other applicable law, the owner has the right of election between replacement and refund, the manufacturer shall inform the owner of

such right of election and shall inform the Secretary of the election, if any, by the owner.

- (f) This section applies where an attempted correction of an imminent safety hazard or serious defect relieves the safety problem but does not bring the home in conformity to the standards.
- (g) Where replacement or refund by the responsible party is ordered under this section, It shall be carried out within 30 days of the Secretary's order to replace the manufactured home or refund the purchase price unless the Secretary, for good cause shown, grants an extension of time for implementation of such order.

**§3282.412 Manufactured homes in the hands of retailers and distributors.**

- (a) The responsible party shall correct any failures to conform and imminent safety hazards that exist in manufactured home which have been sold or otherwise released to a distributor or retailer but which have not yet been sold to a purchaser. This responsibility does not extend to failures to conform or imminent safety hazards that result from transit damage or alteration by others to the manufactured home after it leaves the control of the manufacturer. This section sets out the procedures to be followed by retailers and distributors for handling manufactured homes in such cases. Regardless of whether the responsible party is responsible for repairing a manufactured home, no retailer or distributor may sell a manufactured home if it contains a failure to conform which affects the performance of the home.
- (b) Whenever a retailer or distributor finds a problem in a manufactured home which a responsible party is responsible for correcting under paragraph (a) of this section, the retailer or distributor shall

contact the responsible party, provide full information concerning the problem, and request appropriate action by the responsible party in accord with paragraph (c) of this section. Where the responsible party agrees to correct, the responsible party shall maintain a complete record of its actions. Where the responsible party authorizes the retailer to make the necessary corrections on a reimbursable basis, the retailer or distributor shall maintain a complete record of its actions. Agreement by the responsible party to correct or to authorize corrections on a reimbursable basis under this paragraph constitutes a determination of the Secretary for purposes of section 613(b) of the Act with respect to judicial review of the amount which the responsible party agrees to reimburse the retailer or distributor for corrections.

(c) Upon a final determination by the Secretary or a State Administration Agency under §3282.409, or upon a determination by a court of competent jurisdiction that a manufactured home fails to conform to the standard after such manufactured home is sold or otherwise released by a manufacturer to a distributor or retailer and prior to the sale of such manufactured home by such distributor or retailer to a purchaser, the responsible party shall have the option to either:

(1) Immediately furnish, at the responsible party's expense, to the purchasing distributor or retailer the required conforming part or parts or equipment for installation by the distributor or retailer on or in such manufactured home, and the responsible party shall reimburse such distributor or retailer for the reasonable value of such installation plus a reasonable reimbursement of not less than one per centum per month of the manufacturer's or distributor's

selling price, prorated from the date of receipt by certified mail of notice of non-compliance to the date such manufactured home is brought into compliance with the standards, so long as the distributor or retailer proceeds with reasonable diligence with the installation after the part or component is received; or

(2) Immediately repurchase, at the responsible party's expense, such manufactured home from such distributor or retailer at the price paid by such distributor or retailer, plus all transportation charges involved and a reasonable reimbursement of not less than one per centum per month of such price paid prorated from the date of receipt by certified mail of notice of the imminent safety hazard, serious defect, defect or non-compliance to the distributor. The value of such reasonable reimbursements as specified in this paragraph shall be fixed by mutual agreement of the parties or by a court in an action brought under section 613(b) of the Act.

(d) This section shall not apply to any manufactured home purchased by a retailer or distributor, which has been leased by such retailer or distributor to a tenant for purposes other than resale. In that instance the retailer or distributor has the remedies available to a purchaser under this subpart.

**§ 3282.413 Notices, bulletins and other communications.**

Each responsible party shall, at the time of dispatch, furnish to the SAA or the Secretary a true or representative copy of all notices, bulletins, and other written communications to the retailers or distributors of such responsible party or purchasers or owners of manufactured homes of such responsible parties regarding any serious defect or

imminent safety hazard which may exist in any such manufactured homes produced by such manufacturer. Manufacturers shall keep complete records of all communications regarding imminent safety hazards, serious defects, defects, and non-compliances.

**§ 3282.414 Supervision of notification and correction actions.**

- (a) The SAA shall be responsible for assuring that notifications are sent to all owners, purchasers, retailers, or distributors of whom the responsible party has knowledge under §3282.211 or otherwise as required by these regulations, and the SAA shall be responsible for assuring that the required corrections are carried out by auditing the records required by §3282.410.
- (b) The SAA or Secretary to which the report required by § 3282.410(c) is sent shall be responsible for assuring through oversight that remedial actions described in the report have been carried out as described in the report.
- (c) The SAA of the state in which an affected manufactured home is located may inspect that manufactured home to determine whether any required correction is carried out to the approved plan or, if there is no plan, to the standards or other approval obtained by the responsible party.

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

REC'D JAN 16 2003

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AFFIRMATIVE	AFFIRMATIVE WITH COMMENT	NEGATIVE	ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

I question the enforceability of this proposal due to the definition of "Responsible Party" in Section 3282.7. Neither HUD nor most SAA's have jurisdiction over several of the entities which could be found to be a "Responsible Party" under this proposal.

Susan Brenton  
Print Name

Susan Brenton  
Signature

1/15/03  
Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

REC'D JAN 7 2003 ✓

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

AFFIRMATIVE

AFFIRMATIVE  
WITH COMMENT

NEGATIVE

ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

3282.403 (c) there is a shift (numerical) from singular  
(home owner) to plural (their ... home-

3282.405 (c) same as above. (... party ... they

3282.411 (a) same as above. (party at their expense

EARL GILSON

Print Name

Earl Gilson

Signature

31 Dec, 2002

Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

REC'D JAN 15 2003

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

LETTER BALLOT for MHCC

Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02



AFFIRMATIVE



AFFIRMATIVE  
WITH COMMENT



NEGATIVE



ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

see attached vote:

Dana C Roberts

Print Name

Dana C Roberts

Signature

JAN. 15, 2002

Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

**Comments on Affirmation**

There are two editorial corrections that are needed for the proposal:

- 1) On page 3 under 3282.405 ( c ) needs to be moved down 1 paragraph to replace (d) and (d) needs to replace the first of two (e)'s
- 2) On page 1 under 3282.7 Definitions in (j) Defect second to last line the definition q should be definition p

From: Dana Roberts

To: Manufactured Housing Consensus Committee Members

Re: Consumer Assistance Program Proposal

While everyone is considering the comments accompanying our initial votes; I thought I would share my perspectives with you. First and foremost, I want each of you to understand this proposal is not a subpart I proposal; it is adoption of a consumer assistance proposal.

In my opinion, for the first time consumers would have some means to get problems found in their home fixed. Today, manufacturer's are only required to fix: imminent safety hazards ( "presents an imminent and unreasonable risk of death or severe personable injury") or a serious defect ("renders the manufactured home or any part thereof not fit for ordinary use for which it was intended and which results in unreasonable risk of injury or death to occupants") See: 3282.406. For everything else the manufacturer at best is only required to notify the homeowner they have a problem.

Consequently, when I hear statements "we hold manufacturers responsible to purchasers for notification and correction of all defects in homes they produce, including defects in components"; that is not the federal program Oregon has been asked to administer. However, as required by Section 623 and the subsequent state plan we adopted in Oregon state laws to carry-out federal law and then have adopted Oregon regulations to interpret our State laws that supports the program we have in place. This includes authority to administer an installation program which until the MHIA act of 2000, was an optional service States were allowed to include in their State plan.

By 2005, the Secretary will be required to "establish an installation program that meets the requirements of paragraph (3)" (See 605 ( c) (2) (A). The act does not limit what an installation program should be but does indicate at a minimum what it should include See 605 ( c) (3).

Also when I hear statements we hold manufacturers accountable, I go to the law and look at the definition of manufacturer. (See 603 (5). "means any person engaged in manufacturing or assembling manufactured homes" Many of the responsible persons identified in the consumer assistance proposal are engaged in assembling a home on site. As States we have been asking the Department to provide us with regulations for several years to hold these persons accountable for the work they do.

Also the statement that "a manufacturer is free to maintain indemnity agreements with all parties engaged in transportation" seems to run counter to the regulation that manufacturer's "responsibility generally does not extend to failures to conform or imminent safety hazards that result solely from transit damage" (See 3282.414)

Further, the Department has already by regulation indicated that the home needs to stay in conformance with the standards “until completion of the entire sales transaction” including completion of set-up if dealer arranged. (See 3282.252 (b)). This proposal takes this into account and holds the persons outside the factory that causes problems accountable.

As you can see, I have as many questions about the Department’s unofficial analysis as they seem to allude to about this proposal. Is this a difficult proposal for the Department to consider and analyze? Would this proposal create dilemmas for the Department? You bet. It would hold more states accountable and States would need the financing to do the job. The Department would have to consider holding more than just manufacturers accountable for problems .The Department would also have to take the time to officially legally analyze this proposal and to respond in writing as to what is lacking in the law, if anything to prohibit implementing this proposal or why they believe this proposal from a policy view point should not be adopted.

I believe this committee officially needs this information if we are truly going to be able to do our job of providing meaningful recommendations to the Department to improve manufactured homes for the consumer.

Am I a lawyer? No. However, I have spent 27+ years drafting legislation, testifying on legislation, implementing legislation, adopting rules to carry-out legislation and in some cases starting new programs from scratch based on new legislation. I would not have presented this proposal to the committee if I did not believe the federal law gave the Department authority to implement such a proposal. If I am wrong I would like to know the specific statute or statutes that need to be fixed so they can be brought to the attention of Congress because homeowners deserve a consumer assistance program.

This program has languished for too long nationally. Together we can make a difference.

If you have any questions about the proposal or my comments in this memo, please contact me. Thanks

REC'D JAN 13 2003

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

LETTER BALLOT for MHCC

Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

AFFIRMATIVE

AFFIRMATIVE  
WITH COMMENT

NEGATIVE

ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

Responsible party appears at least 59 times throughout the nine page document. Suggest rewording. Responsible party (herein referred to as RP) or something similar.

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---

---

Alan J. Youse

Print Name

*Alan J. Youse*  
Signature

1/11/2003

Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

REC'D JAN 16 2003

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

AFFIRMATIVE

AFFIRMATIVE  
WITH COMMENT

NEGATIVE

ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

**3282.408 Reimbursement for prior corrections by owner.**

The proposed section as written does not specify a reasonable time period (or any time period for that matter) for the Responsible Party (RP) to make correction(s) after being notified by the owner. As proposed an owner could contact the RP then immediately have corrections made and demand reimbursement from the RP.

MICHAEL L. ZIEMAN

Print Name



Signature

1/15/03

Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

REC'D JAN 17 2003

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
AFFIRMATIVE	AFFIRMATIVE WITH COMMENT	NEGATIVE	ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

Exceeds legislative  
authority.

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Douglas F. Gorman  
Print Name

*Douglas F. Gorman*  
Signature

1/17/03  
Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

REC'D JAN 31 2003

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

*Circulation*

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
AFFIRMATIVE	AFFIRMATIVE WITH COMMENT	NEGATIVE	ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

*Changed Vote - Outside the  
scope*

*W. J. LAGANO*  
Print Name

*W. J. Lagano*  
Signature

*1/31/03*  
Date

*Jan. 31, 2003 (Circulation)*

Please return by ~~17 January 2003~~ to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmccgovern@nfpa.org](mailto:jmccgovern@nfpa.org)

REC'D JAN 10 2003

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

AFFIRMATIVE

AFFIRMATIVE  
WITH COMMENT

NEGATIVE

ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

See Attached Page

Chuck Leven

Print Name

*Chuck Leven*

Signature

1/9/03

Date

Please return by 17 January 2003 to:

Fax: 617-984-7110

Phone: 617-984-7404

Jill McGovern

National Fire Protection Association

1 Batterymarch Park - P.O. Box 9101

Quincy, MA 02269-9101

[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

Re:Reasons for a negative vote –Consumer Assistance proposal

I have a number of questions that I feel require answers before a vote should be taken on this matter.

1-How was the five year statute of limitations arrived at, which also covers latent defects and (by itself) is an excessively pro- manufacturer provision that I believe consumer groups should vigorously oppose?

2-Why are members being asked to vote on the revision of a decades- old regulatory framework before HUD experts are able to put together a presentation of the proposals effect upon current law and policy?

3-Why should consumer representatives participate if all they can do is “rubber stamp” or object to proposals that may or may not be in our best interests

4-Has anyone considered the possibility that the proposal asks HUD to do something beyond its legal authority?

5-What ,if any thought has been given to the challenge against three committee members? If the challenge is successful, will the vote of these members be counted?

6-What will result if this becomes another unfunded mandate ? If the responsible authority has no funds with which to proceed how will this issue be resolved for the consumer?

In summary I am Voting against this proposal and the whole issue of a “rush to judgment” without sufficient analysis of the legal and policy implications. I afraid that this approach will be used for a number of issues and I for one will not support this process.

Chuck Leven  


REC'D JAN 09 2002 ✓

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
AFFIRMATIVE	AFFIRMATIVE WITH COMMENT	NEGATIVE	ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

SEE ATTACHED REASONS FOR NEGATIVE VOTES

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Randy E. Vogt  
Print Name

RJ EV  
Signature

1/6/03  
Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

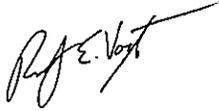
**Reasons for Negative vote on  
Consumer Assistance Program Ballot  
Sections 3282.401 – 3282.414**

- By enjoining the “Responsible Party” into the cause/effect/correction for consumer protection, where is the authority coming from for current SAA’s or non-SAA states and HUD to enforce actions against all of these Responsible Parties they have named? For example, where are the Federal preemption laws allowing HUD to enforce actions against a developer, product suppliers, product distributors, or landscapers in a non-SAA state? Section 3282.406 gives authority for SAA’s to oversee the program, but gives no authority for enforcement of the program over all responsible parties listed.
- If SAA states need to develop laws and rules (if they do not currently have them) or if HUD needs to help develop them in non-SAA states, what will the cost impact be to the SAA states and to the HUD program in non-SAA states.
- The rights to develop rules and laws and enforcement of the rules and laws over certain responsible parties (landscapers, engineers, contractors, etc.) in each state is part of the state’s rights and usually jurisdiction of these laws and rules is under different state agencies. If HUD develops laws for enforcement over all responsible parties they will be preempting states rights on some issues.
- The proposed language will almost require on-site inspection of all consumer complaints. If the SAA or HUD in non-SAA states does not inspect each complaint at the site of installation, then each determination as to who is the responsible party will be challenged. If each complaint requires on-site inspection then HUD must include provisions for each SAA or HUD in non-SAA states to collect fees for complaint inspections because current label fees will not cover the cost, and the cost impact to consumers for these inspections must be determined.
- By enjoining product manufacturers/suppliers in the responsible party for consumer assistance leaves an open area for problems. DAPIA’s approve products for use in manufactured homes in direct conflict with the product manufacturers listing for use of that product. Should the DAPIA then also be listed as a responsible party, and if so then since DAPIA’s are HUD approved should not HUD become a responsible party?
- In specific sections the following items were found requiring correction or change or deletion from proposed language.
  - 3282.7 (j) added language to definition “Defect” that is different from the definition for “Defect” in THE ACT 603(6).
  - 3282.7 (j) the wording, “*any part thereof not fit for the ordinary use for which it was intended*”, this appears to need a separate definition for ordinary use.
  - 3282.402 (d) the wording, “*providing notification and/or correction depends upon the seriousness of problems*”, who has final say for defining seriousness of problems?

- 3282.405, subsection (c) is in the middle of a sentence and there are two subsections (e) in the same section.
- 3282.405 (g) requires non-compliance (i.e. Code/standards violation) to be corrected only if such non-compliance affects the performance of the home. This indicates that a safety issue may not be required to be corrected, even though it is a code/standards violation, it does not affect how the home performs. This same type of wording is used in section 3282.405 (k).
- 3282.405 (c) (d) (f) sections do not include the definition non-compliance. By not including non-compliance in this section, no investigations need to be conducted because of code/standards violations. Section 3282.407 also requires the definition non-compliance be added to it.
- 3282.405 (l) product suppliers are "*held to the same repair requirements*", as manufacturers and retailers. Who holds them to the same requirements and under what authority and from where?
- 3282.405 (m) states that determinations may be individual line entries, full-page entries or combination thereof. What is the meaning of this language and what are these entries?
- 3282.408 What if the repair to the manufactured home requires DAPIA repair approval or IPIA repair inspection? Will the homeowner still be reimbursed for the repairs? Does this now void the HUD certification label if the DAPIA or IPIA procedures for the repair are not followed?
- 3282.409 (b) there are subsections 1 through 3 and then subsections 1 through 4 again under the same section 3282.409 (b). Number or subsections need to be changed.
- 3282.409 (e) refers to acceptance of settlements by the Secretary or SAA as binding. If a manufacturer proposes a settlement that isn't acceptable to the SAA, can that manufacturer then go to HUD, have the proposal approved, and over-ride the SAA's rejection of the settlement?
- 3282.411 skips from subsection (c) to (f). Needs to be re-lettered.
- 3282.411 gives the Secretary the authority to order the replacement of a home but does not give that authority to an SAA. Where does HUD get the authority to order a developer or landscaper or transporter to replace a home?
- 3282.413 requires that the responsible party submit copies of notices, bulletins, and etc. Who's going to enforce this requirement for developers, landscapers, and other responsible parties beyond manufacturer's and retailer's?
- 3282.414 spells out the responsibility of the SAA to assure the notification by responsible parties is done by auditing the records of the responsible party. As an example, a manufactured home is built in Minnesota and is located/installed in South Dakota. The SAAL receives the complaint and determines that the responsible party is a product supplier in Iowa. Who will audit the product supplier's records and under what authority?

In general, there may have been good intentions in establishing the responsible party concept. However, it appears that it will not be enforceable, not an effective tool for consumer protection, imposes additional burdens on SAA's without additional funding, and possibly outside the legal authority of THE ACT.

Respectfully,

A handwritten signature in black ink, appearing to read "Randy E. Vogt". The signature is stylized and written in a cursive-like font.

Randy E. Vogt  
Minnesota Building Codes Representative

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

REC'D JAN 27 2003

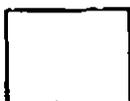
*Revised*

LETTER BALLOT for MHCC

Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02



AFFIRMATIVE



AFFIRMATIVE  
WITH COMMENT



NEGATIVE



ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

*See attached sheet*

FRANK WALTER

Print Name

*Frank Walter*

Signature

01-27-03

Date

Please return by 31 January 2003 to:

Fax: 617-984-7110

Phone: 617-984-7404

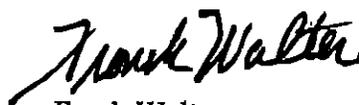
Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

**REASONS FOR SUBMITTING A REVISED VOTE ON THE BALLOT FOR THE  
CONSUMER ASSISTANCE PROGRAM**

1. In light of the two recent memoranda from William Matchneer, the non-voting representative of the HUD Secretary on the MHCC, I am convinced that the proposal could not be implemented by the Department, because it exceeds the legislative authority of the Secretary.
2. Since I cast my original vote on January 7, I have further studied the proposal, and there appear to be a number of technical shortcomings in the document, as well as a need to reorganize the sequence of the paragraphs.
3. The document attempts to reform Subpart I and impose a "dispute resolution program," within the same document but lacks the details spelled out in the MHIA-2000, subsections 623(c)(12) and (g)(1).

I have also reviewed the recent memorandum to the MHCC from its chair, Dana Roberts, the author of the proposal, in apparent response to Mr. Matchneer's memoranda. Mr. Roberts makes a strong argument that the Secretary should explain why the document exceeds HUD's legislative authority. I fully agree that Mr. Matchneer's recent memoranda are but an outline of a very much needed legal opinion that should be issued by the Department. This additional information would greatly assist the MHCC in revising its future submission to the Department.

Therefore, I am changing my vote from affirmative to negative, because I firmly believe that the MHCC can substantially improve its submittal to HUD on Subpart I reform which might also include comprehensive recommendations on the dispute resolution program as defined in the MHIA-2000, subsections 623(c)(12) and (g)(1).



Frank Walter

01-27-03

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

REC'D JAN 16 2003

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

AFFIRMATIVE

AFFIRMATIVE  
WITH COMMENT

NEGATIVE

ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

+ See attached comments +

RICHARD WEINERT

Print Name

*Richard Weinert*

Signature

1-16-03

Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park -- P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

**NEGATIVE BALLOT COMMENTS:  
CONSUMER ASSISTANCE PROGRAM PROPOSAL**

R Weinert 1/16/02

The following are reasons for my negative vote on the Consumer Assistance Program proposal submitted to the MHCC:

1. This proposal attempts to eliminate the existing Subpart I sections from the federal regulations, replacing it with a program to provide a remedial action campaign for construction defects and consumer protection and/or dispute resolution program in the same program. These two functions need to be separate in the federal regulations to clarify manufacturer responsibilities for construction defects released from the manufacturing facility and their (Manufacturer, retailer, installer) consumer protection responsibilities.
2. Although the proposal 'replaces' the existing Subpart I, eliminating the need for strikeout and underline formatting, the new proposal copies much of the same section numbers, headings and language as the old Subpart I, making the new proposal difficult to analyze. If a fair and accurate analysis is desired by the committee, please provide the format conducive to such a review.
3. The proposal adds a long list of responsible parties, including the manufacturer & retailers along with installers, various contractors and sub-contractors, transporters etc.. When an SAA is attempting to quickly & efficiently determine a manufacturer's responsibility for remedial action, adding these responsible parties severely reduces the likelihood of reaching a conclusion in a reasonable amount of time, and increases the chance of leaving the consumer hanging for longer periods. The Manufacturer's (& SAA's) prime responsibility should be to; 1) reduce the possibility that construction defects are mass-produced, and 2) resolve consumer complaints in accordance with fair and reasonable guidelines. These two activities should be maintained as separate from each other in the regulations.
4. States (or HUD) do not have resources available to pursue improper activity of the "responsible parties" beyond the scope of their jurisdiction, which is normally their licensees: manufacturers, retailers/dealers.
5. Section 3282.403 allows the manufacturers to defer formal notification/correction of defects or safety hazards to the responsible parties such as product/equipment suppliers. The SAA would then be responsible to provide lists of consumer names & addresses, and supervision of the corrections, format of the notice, etc., to a responsible party of which the SAA has no enforcement authority,

and has to review letters by parties who have no experience in federal regulations. Manufacturers/retailers need to be the ones held responsible because they have all homeowner/retailer names & address records, and are familiar with the procedures, construction methods, etc.

6. The proposal requires that states investigate complaints only for those manufactured homes in the state which the home is located; however the SAA state where the manufacturer's facility is located has significantly greater leverage with the manufacturer, and the records are more readily accessible.
7. The proposal requires correction of construction defects only if they affect home performance. Consumers are also very concerned with the appearance & durability of their new homes which substantially affects the resale value and livability. Examples of frequent complaints that would not (directly) affect the homes performance and therefore be excluded under the terms of this proposal are: Squeaking floors, floor deflection, wall/panel/sheetrock bowing, exterior siding bowing & delamination, improper fastening of shingles or exterior siding, insulation voids, improper plumbing vents/grade of drain, plumbing leaks, electrical grounding, broken or improper spacing of pier-blocks, improper site-grading, or improper installation of valley shingles that hasn't leaked because it hasn't rained.

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

REC'D JAN 27 2003

*Circulation*

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

AFFIRMATIVE

AFFIRMATIVE  
WITH COMMENT

NEGATIVE

ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

I hereby change my vote from "Affirmative with Comment" to "Abstain" on  
the above MHCC Consumer Assistance Final Proposal. My reasons for this abstention  
are explained on the page accompanying this revised ballot.

Jack Berger

Print Name



Signature

January 26, 2003

Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

**Comments associated with *Affirmative With Comment* vote on MHCC Letter Ballot for the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal**

Submitted By MHCC Member:

  
Jack Berger

Date: January 26, 2003

I have reluctantly changed my vote to an abstention, as I am truly uncertain as to how to vote on this ballot. If, as our MHCC chairman alleges, this consumer assistance proposal is within the legislative authority of our committee, I wish to support the proposed Subpart I proposal. The entire manufactured housing industry is in a slump. One of the reasons for this slump is the public's perception that the product is inferior to site built construction. When a consumer is unable to have a complaint adequately addressed in a timely fashion it fuels this perception, placing the product in question as a potential investment, and the entire manufactured housing industry in jeopardy. The proposed Subpart I proposal appears to make great strides in assessing responsibility and mandating timely response.

On the other hand, if, as our DFO indicates, this proposal goes beyond our legislative authority, then we have no business submitting such a proposal to HUD. Submission of a proposal that is not within our boundary as a committee would be irresponsible and reflect negatively on our committee as a whole as well as the individual members of our committee. If that is the case, I do not wish to support the proposed Subpart I proposal, even though I believe in what the proposal is attempting to achieve.

I am frustrated with feeling the necessity to register an abstention vote. I take my position on the committee seriously, and invest a great deal of time and energy in reading the plethora of material we receive and researching the items on the ballot(s). I attempt to cast informed, thoroughly-contemplated votes on the issues. To vote in abstentia in my mind is shirking my responsibilities as a committee member. The fact that a proposal that exceeds our authority appears to have made it to ballot at the full Committee level baffles me.

REC'D JAN 31 2003

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

*Circulation*

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AFFIRMATIVE	AFFIRMATIVE WITH COMMENT	NEGATIVE	ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

*I am changing my abstain as the  
confusion on information on both  
sides has created a reason for me  
to step back and need more  
clarification. I am very disappointed.*

*BRYAN R. PORTY*

Print Name

*Bryan R. Porty*

Signature

*1-31-03*

Date

Please return by <sup>31</sup> 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfsa.org](mailto:jmcgovern@nfsa.org)

REC'D JAN 31 2003

**McGovern, Jill**

---

**From:** Bryan.Portz@chase.com  
**Sent:** Friday, January 31, 2003 2:32 PM  
**To:** jmcgovern@nfpa.org  
**Cc:** MHARRDG@aol.com; nadertomasbi@libertyhomesinc.com; randy.vogt@state.mn.us; MZieman@RADCOInc.com; KBKARLSRSANDY@cs.com; fwalter@mfghome.org; jdberger@comcast.net; ajyouse@attbi.com; doug@homemart.us; bill.farish@fleetwood.com; ebryant@championhomes.net; WJLAGANO@aol.com; SueBrenton@aol.com; rweinert@hcd.ca.gov; jlm@nut-n-but.net; Dana.C.Roberts@state.or.us; christine.walsh.rogers@wamu.net; CLeven3585@aol.com; RLamont@www2.alpeng.com; earlgilson@yahoo.com; rsolomon@NFPA.org; Stinebert, Chris; Nunn, Mark; William\_W.\_Matchneer@hud.gov  
**Subject:** Re: Manufactured Housing Consensus Committee Consumer Assistance Proposal

Jill,

I have changed my vote to **Abstain** and sent a fax of the form to you. I am quite confused and disappointed on how this has transpired and while Robert said that there should be no reason to abstain I see many. I for one think we need to reflect why we wanted to be on this committee and ensure that what started out as a positive Consensus Committee all working to the common goal for providing recommend standards for an affordable quality product for a meaningful segment of our country, not deteriorate into what crossed the e-mail wires.

While I heard many logical pros and cons and while consensus is our goal I would hope going forward that we handle all these conversations (which I thought we had done) during our face to face meetings and not in the string of communication that ensued.

I respect you all for your views and your passions, but I think we need to review what the MHIA of 2000 and the requirements of the MHCC are, not only in legal sense, but in the idealistic human sense of doing the right thing for the industry and the people.

I hope we return to the former manner we conducted business, it is the only way, in my opinion, we will succeed and I still believe we can succeed.

Bryan

REC'D JAN 10 2003

# MANUFACTURED HOUSING CONSENSUS COMMITTEE

LETTER BALLOT for MHCC  
Vote on the Release of Proposed Draft of MHCC Consumer Assistance Final Proposal  
Accepted by MHCC 12-05-02

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
AFFIRMATIVE	AFFIRMATIVE WITH COMMENT	NEGATIVE	ABSTAIN

Reasons for Affirmative with Comment, Negative or Abstaining Votes:

I am submitting this abstaining ballot in order to circulate the attached memo to the members. ~~Our parliamentary expert Robert Solomon assures me that ANSI procedures do not preclude nonvoting members from weighing in by the submission of such abstaining votes. Robert further assures me that since I am official member of the MHCC under bylaw A.2, and since the responsibilities outlined in bylaw A 3.1 apply to the entire MHCC and not just the voting members, that this abstaining ballot is a proper way to circulate the memo.~~

William W. Matchneer III

\_\_\_\_\_  
Print Name

*William W. Matchneer III*  
\_\_\_\_\_  
Signature

JAN 10 2003  
\_\_\_\_\_  
Date

Please return by 17 January 2003 to:

Fax: 617-984-7110  
Phone: 617-984-7404

Jill McGovern  
National Fire Protection Association  
1 Batterymarch Park - P.O. Box 9101  
Quincy, MA 02269-9101  
[jmcgovern@nfpa.org](mailto:jmcgovern@nfpa.org)

JAN 10 2003

**From: Bill Matchneer**

**To: Consensus Committee Members**

**Re: Consumer Assistance Program Proposal**

The Department has conducted an initial review of the Consumer Assistance Program proposal that is the subject of this first ballot vote of Consensus Committee. While the idea of replacing the current Subpart I with an enforcement scheme based upon direct assistance to consumers may have genuine policy appeal, the proposal raises serious legal questions that were not addressed at the Consensus Committee meeting in December. In particular, the proposal appears to be in direct conflict with parts of the National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act), most specifically Section 615 (42 U.S.C. § 5414). In that section, Congress placed responsibility for the correction and notification of defects in manufactured homes on manufacturers, and set the guidelines by which manufacturers are to meet these responsibilities. Further, Section 613 of the Act (42 U.S.C. § 5412) imposes additional repair and repurchase requirements on manufacturers. Subpart I is the regulation by which the Department has implemented the intent of Congress in this regard.

Again, Congress has specifically made manufacturers responsible to purchasers for notification and correction of all defects in homes they produce, including defects in components. As we read it, the Consumer Assistance Program would limit the statutory responsibilities of manufacturers while imposing similar duties on new parties such as landscapers that Congress did not include in the Act. Without new legislation, however, the Department does not have the statutory authority to shift these responsibilities away from manufacturers, and we further doubt that the current Act gives the Department jurisdiction to hold these newly identified parties responsible for correction and notification of defects in manufactured homes. Of course, a manufacturer is free to maintain indemnity agreements with all parties engaged in the transportation, distribution and installation of its homes in order to recover for damages caused by those parties.

In addition, the Consumer Assistance Program would effectively create a warranty for products found in the home, when there is no authority in the statute for such a warranty. In fact, during the consideration of the most recent amendments to the Act, Congress heard testimony in support of a statutory warranty, but declined to adopt this approach. Instead, the legislation included Section 623, which requires the Department to establish a separate dispute resolution program.

The proposal also conflicts with Section 615(h) of the Act, which requires manufacturers to submit a notification and correction plan to the Secretary or SAA for approval before the plan is implemented. In our opinion, the Consumer Assistance Program does not adequately account for this statutory requirement. It appears to permit a party to correct a home without having a correction plan approved by the Department or SAA.

Further, unlike the Consumer Assistance Program, the Act sets no time limits for a manufacturer's responsibilities under Section 615. Section 615 clearly contemplates enforcement authority over latent defects in a home design or construction that the consumer would not have knowledge of unless notified or until his or her safety is compromised. The proposal would limit

a manufacturer's responsibility to act until after a consumer complains, whereas 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. Further, the proposal would limit the responsibility of manufacturers and retailers to those defects that are discovered five years from the date of the first sale, though, as mentioned above, Section 615 sets no such limits. Other parties identified under the proposal's coverage would only be responsible for defects discovered during the first two years.

The Consumer Assistance Program raises further questions under Section 623, which mandates that the Department implement a dispute resolution program by December 27, 2005. By its terms, Section 623 gives the Department jurisdiction to resolve disputes involving manufacturers, retailers and installers. With the addition of installers, these are the same parties that Congress specifically granted the Department jurisdiction in other parts of the Act. Further, Section 623 is limited to disputes involving defects reported during the one-year period that begins after the date of installation. If the Consumer Assistance Program is intended to satisfy Section 623, then it would confuse this process by adding many more potentially responsible parties, and creating time limits that are inconsistent with this section. Moreover, the proposal does not provide for the establishment of a forum in which the disputes are to be resolved.

The Department is willing to entertain proposals to revise or replace any of its procedural and enforcement regulations, including those found in Subpart I. But the Department must enforce its enabling legislation as written. As clearly expressed in section 615 of the Act, Congress intended for manufacturers to bear the primary responsibility for the correction and notification of defects in manufactured homes. In our opinion, the Consumer Assistance Program would impermissibly restrict the Department from enforcing the stated intent of Congress while directing the Department enforce obligations on parties not contemplated by Congress. The sort of fundamental change that this proposal represents goes well beyond the Department's discretion to enact new policy. We therefore believe that Congress would have to order these changes through new legislation before the Department could replace the current Subpart I with this proposal.