

MHCC
Regulatory Enforcement
Subcommittee Meetings
Minutes
10-23-12 to 10-25-12

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Actions and Highlights

- **Motion Regulatory1: Mr. Walter made a motion to reject Log 1. Mr. Rust Seconded.**
 - **Vote: Motion Regulatory1 passes 8-0.**
- **Motion Regulatory2: Mr. Walter made a motion that the Subcommittee recommends that the full Committee advises HUD that if the secretary feels it's necessary to adopt changes to NDS-2001, he should follow section 604(b)(5) (Authority to Act and Emergency) of the Act. Mr. Weinert – seconded.**
 - **Vote: Motion Regulatory2 passes 6-2**
- **Motion Regulatory3: Mr. Santana made a motion for the Subcommittee to recommend that the full Committee recommend to HUD that they delay implementation of the NDS addendum until it's presented to the committee or until it's presented through subpart I or as an emergency rule. Mr. Weinert seconded.**
 - **Vote: Motion Regulatory3 passes 8-1.**

Regulatory Enforcement Subcommittee Meeting 10-23-12

The Regulatory Enforcement Subcommittee was called to order at 4:40 p.m.

Regulatory Subcommittee **Date: 10-23-12**

Roll Call

Member **Attendance**

Ishbel Dickens	N
Timothy Sheahan	Y
Terry Nelson	Y
Manuel Santana	Y
Jeffrey Legault	Y
Michael Wade – Chair	Y
William Freeborne	Y
Adam Rust	Y
Frank Walter	Y
Richard Weinert	Y

AO

Robert Solomon, NFPA	Y
Pat Toner, NFPA	Y
Joe Nebbia, Newport Partners	Y

HUD

Henry Czauski, DFO	Y
Rick Mendlen	Y

Guests

Jim Demitrus	MHCC Member
Mike Lubliner	MHCC Member
Mark Luttich	MHCC Member
Leo Poggione	MHCC Member
Greg Scott	MHCC Member
Lois Starkey	MHI
Dave Tompos	MHCC Member

Discussion

Log 1 (3282)

Several Subcommittee Members commented that this log is outside of the scope of the HUD code as it deals with public roads and infrastructure.

Motion Regulatory1: Mr. Walter made a motion to reject Log 1. Mr. Rust Seconded.

Rationale is that it is outside of the sphere of influence of this standard.

There was a comment that local communities are the more appropriate place to have that discussion.

The DFO expressed agreement.

Vote: Motion Regulatory1 passes 8-0.

The Subcommittee Chair asked for clarification from HUD on several outstanding issues. The Subcommittee Chair asked the status of the PIA rule. HUD staff responded that they are working on the rule, but don't have a full working draft.

A Subcommittee Member in the Producer category stated that the rule came before that Member's time and would like HUD to present the PIA rule to the MHCC before it goes out.

HUD staff responded that the MHCC has had its opportunity to provide feedback and chose not to. HUD is working with the information it has in developing the rule.

A Subcommittee Member in the General Interest category asked what purpose the MHCC reviewing the rule again would serve.

A Subcommittee Member in the Producer category stated that the MHCC could compare how its recommendations were used in the rule.

A Subcommittee Member in the General Interest category responded that the discussion on the rule lasted 2 years and looking at it again would set a bad precedent. Starkey – you could ask (done in subpart I) they will go through item by item and give a rationale as to why they rejected your recommendations.

The Subcommittee Chair asked the status of Subpart I. HUD staff responded that the final rule is in Departmental clearance.

The Subcommittee Chair asked about the status of trust testing. HUD staff responded that it is in Departmental clearance.

The Subcommittee Chair asked about the status of the Onsite Completion rule. HUD staff responded that there is a working draft of the final rule.

The Subcommittee Chair asked the status of ground anchors. HUD staff responded that there is a working draft of ground anchor proposed rule.

The Subcommittee Chair asked the status of DOE changes and whether HUD was still meeting on a monthly basis. HUD staff responded that they are not meeting on a monthly basis.

The Subcommittee Chair introduced the topic of Southern Yellow Pine. Earlier in the year, the Department was looking at the SYP situation. There was dialogue with the industry. HUD agreed to postpone implementation. The Subcommittee Chair asked how this interacts with Section 604 of the Act, which requires the Secretary to seek MHCC advice on issues like this.

The MHCC Chair requested that we have this discussion with the full MHCC present.

The Regulatory Enforcement Subcommittee Adjourned at 5:00 p.m.

Regulatory Enforcement Subcommittee Meeting 10-24-12

The Regulatory Enforcement Subcommittee was called to order at 10:18 a.m.

Regulatory Subcommittee	Date: 10-24-12
Roll Call	
Member	Attendance
Ishbel Dickens	N
Timothy Sheahan	Y
Terry Nelson	Y
Manuel Santana	Y
Jeffrey Legault	Y
Michael Wade – Chair	Y
William Freeborne	Y
Adam Rust	Y
Frank Walter	Y
Richard Weinert	Y
AO	
Robert Solomon, NFPA	Y
Pat Toner, NFPA	Y
Joe Nebbia, Newport Partners	Y
HUD	
Henry Czauski, DFO	Y
Rick Mendlen	Y
Guests	
Steve Anderson	MHCC Member

Jim Demitrus	MHCC Member
Mike Lubliner	MHCC Member
Mark Luttich	MHCC Member
Leo Poggione	MHCC Member
Greg Scott	MHCC Member
Lois Starkey	MHI
Dave Tompos	MHCC Member
Mark Weiss	MHARR

Discussion

The Subcommittee Chair introduced the issue of Southern Yellow Pine. There is new information from secondary testing. Original testing was only 2x4 while secondary also included 2x6 and 2x8. There was further discussion that it logical to wait on all the secondary testing to be completed which would affect all of those dimensions and only has to go through the process one time. It will impact DAPIA designs and submittals. The Subcommittee Chair requested feedback from the Department on this issue.

The DFO did not believe that HUD has the data with regard to secondary testing, but that it could be examined.

There was discussion of the timetable. The Southern Pine Inspection Bureau doesn't meet until January 2013.

A Subcommittee Member in the Producer category expressed concern that the proposal to update the standard was never sent to the MHCC. From the 2000 act, that's within the rights of the MHCC to review. It circumvents Congress's intent for the rights of the MHCC.

HUD Staff stated that they will consider any secondary data that comes in. They further stated that the national design specification for lumber took an unprecedented step by retroactively changing the standard as of June 1. The standard is already referenced now. HUD delayed implementation until January 1. HUD stated that they do not believe the action they took violated the Act.

There was a comment from MHARR that changes to the standard have to come before the MHCC according to the Act. It was a substantive and significant change.

The DFO stated that their delayed implementation was in response to MHI and MHARR requests to delay. MHARR responded that they requested that the automatic adoption and enforcement be withdrawn, not delayed.

MHI also responded that they appreciated the fact that HUD responded. There is a question on whether HUD has the authority to enforce this. MHI asked for HUD's re-interpretation of the regulations. MHI requested that at best, HUD should come before the MHCC with this change, and at worst, communicate the re-interpretation to the MHCC and industry.

A Subcommittee Member in the General Interest Category stated that the Regulatory Subcommittee needs to make a recommendation on what HUD needs to run past the MHCC.

The Subcommittee Chair stated that they don't want to hold up the process, but the MHCC should review the information that the standard developer wants to make retroactive.

The DFO Suggested that the Subcommittee can take up the issue. The DFO further stated that the standard adopted by reference was changed by the standard organization to make it retroactive. They relied on data that should have been considered. The alternative would have been going against the standard that is already in the HUD standard. It was an extraordinary step for the standard organization to change the standard retroactively. The DFO suggested that the Subcommittee could suggest an alternative standard.

It was clarified that the reference standard is in section 304.

A Subcommittee Member in the General Interest category asked if it would have been prudent to notify the committee of the current change but stay on current standard until a meeting.

The DFO stated that the referenced standard changed, HUD didn't change it.

A Subcommittee Member in the General Interest category stated that standards change all the time. The MHCC reviews changes to those standards. What is the trigger that caused this standard to be treated differently?

HUD staff responded that the difference is that the standard organization made the change retroactively.

A Subcommittee Chair in the Producer category stated that they were not arguing the new values in the standard, but expressed concern about circumventing the process.

A Subcommittee Member in the General Interest category stated that the standard is NDS-2001. These changes are an amendment to NDS-2001. If there is an amendment to NDS-2001, it's not in the federal regulations. The wood industry can't force this through on the Manufactured Housing industry without a change to the standards. That's not within the law.

The DFO stated that the standard organization determined that their data was erroneous. That's why they made it retroactive after corrections were made. The alternative is to continue with defective data.

HUD staff discussed the background of the testing and the fact that tests showed current values to be non-conservative due to issues with new growth materials.

The Subcommittee Chair stated that the old data isn't erroneous. It's based on test data. The new data is based on newer tests.

A Subcommittee Member in the General Interest category stated that if the standard organization is saying their tables are defective, which brings into question product that was already built and is in the public. A recall should be issues, and the problem should be discussed immediately.

An MHCC Member in the Producer category asked if the change was needed and if there had been failures.

An MHCC Member in the General Interest category stated that they had not heard of any.

A Subcommittee Member in the General Interest Category asked if there had been a recall.

The Subcommittee Chair stated that safety factors prevent failures due to this issue.

MHARR stated that one of the core responsibilities of the MHCC is to make those evaluations themselves.

There was discussion that this product was used in a significant portion of the market.

A Subcommittee Member in the User category expressed confusion about the change, and stated that it sounds like this should have come before the MHCC.

A Subcommittee Member in the General Interest Category stated that if the Department feels this is an emergency situation they can use Section 605(b)(4) which allows Secretary to issue an emergency order. The Secretary needs to provide a written description, reasons, and all supporting documentation, and needs to publish the order in the federal register. That procedure would probably take a year. This is a year process, and the Secretary has that authority.

An MHCC Member in the User category asked the protocol by which HUD decides something is health and safety and puts it on the fast-track. There are number of recommendations that are health and safety issues that have gone through the MHCC that HUD should have acted on as health and safety.

The DFO stated that HUD did not take an action with regard to the standard. The industry group changed their standard. The standard was adopted and then the industry group retroactively changed it. The MHCC can live with the change, discuss adopting a standard that has been withdrawn, or do independent testing and come up

with another standard. The Department only acted to delay implementation, but can't ignore the new data.

An MHCC Member in the User category expressed agreement with HUD's decision, but asked what process is used to decide when something is important enough to go around the MHCC

A Subcommittee Member in the General Interest Category stated that Subpart I establishes procedures to notify manufacturers so they can determine if a defect is present. That should have been done.

The Subcommittee Chair stated that this is not a safety issue.

A Subcommittee Member in the General Interest category stated that it's non-conformance.

It was clarified that the retroactive change went back at least as far as 2001.

A Subcommittee Member in the Producer category expressed understanding for HUD's difficult position but said they should have followed the emergency order procedures if they felt there was a safety risk. If there is a defective material systematically introduced, subpart I should be invoked. Simply enforcing it is not one of the procedures in place.

Motion Regulatory2: Mr. Walter made a motion that the Subcommittee recommends that the full Committee advises HUD that if the secretary feels it's necessary to adopt changes to NDS-2001, he should follow section 604(b)(5) (Authority to Act and Emergency) of the Act. Mr. Weinert –seconded.

The DFO asked what emergency is being referred to.

A Subcommittee Member in the General Interest category clarified that the section allows the Secretary to issue an order that responds to an emergency that jeopardizes health and safety. The design values need to be changed. This is a separate issue from subpart I.

There was a question as to what the homebuilders done with their implementation of NDS-2001.

The DFO stated that this was a notice by the industry group that established the standard. Every manufacturer that got this notice needed to review it and make that determination on their own and whether or not the product was problematic. This wasn't issued from the Secretary. They are still undergoing tests and making changes. The Secretary is not in a position to change the standard that was issued by the organization that established it.

An MHCC Member in the General Interest category stated that the standard organization put out an addendum to the standard in March 2012. The current HUD standards reference NDS 2001 edition with supplement. It would need to reference NDS 2001 with supplement and 2012 addendum for this change to take effect.

A Subcommittee Member in the General Interest Category agreed. The change can't be forced on the industry. If it's an emergency the information should be made available and an order developed in accordance with 604(b) (5).

The DFO stated that the Secretary did not make a decision. The DFO further encouraged the subcommittee to take up the issue and possibly pursue getting information from the industry. If the new proposal is not acceptable, then the consensus committee should pursue review.

An MHCC Member in the General Interest Category stated that the state building codes have addressed this. There are several states that put out letters that said they would defer this to the next code cycle. The current codes don't reference the March 2012 addendum. The MHCC should address, review, and possibly make a change or update it.

A Subcommittee Member in the Producer category expressed agreement with the DFO's position that the Subcommittee should look at this issue. The Member further expressed that HUD should have applied this approach. There were a lot of "I don't know" expressed. It has a potentially large impact. There was further concern expressed that a quick response from HUD might have been preemptive. The wood council is looking at this again. It seems like a kneejerk reaction.

MHARR stated that the Subcommittee has the authority to consider this and should.

A Subcommittee Member in the User category asked if an event or failure triggered concerns.

An MHCC Member in the General Interest Category stated that the change was from new testing results that came out. This isn't the first time these values have changed.

A Subcommittee Member in the General Interest category stated that this seems like an emergency and industry can't wait, but the procedure must be followed.

HUD staff stated that further research on wider materials is being done. The change is retroactive but only to new construction so it wouldn't impact Subpart I. Staff expressed an opinion that this was not an emergency rule situation.

MHARR stated that, in order to declare an emergency, The Secretary has to make a determination that committee cannot make a timely recommendation.

A Subcommittee Member in the Producer category asked how they can make a value retroactive 10 years but only apply it to new construction. Using current procedures, all the southern pine in the yard was under-designed. You still have designs, houses, and materials. This will be a big impact.

An MHCC Member in the User category asked how the safety factor is impacted by this.

The Subcommittee Chair stated that the safety factor stays the same, but the yield changes.

The DFO stated that good issues had been raised and suggested making a recommendation

Mr. Rust called the question.

Vote to call the question passes 8-1

Vote: Motion Regulatory2 passes 6-2

The DFO asked, if the Secretary does not invoke this power, where the committee stands on next steps. The issue of the MHCC's stance on the issue is still open.

An MHCC Member in the General Interest category recommended that the authority having jurisdiction needs to adopt a new standard. The MHCC needs to look at the standard and decide which version to use.

A Subcommittee Member in the Producer category stated that HUD has an order that these values will take effect at the beginning of the year. Nothing in the act gives the MHCC power above the Secretary, but none of the members on this committee received anything on this. It should have come through the committee in some form. We didn't receive that. It's not a courtesy. It's law.

MHARR encouraged the committee to take up the issue and evaluate it. The committee might decide one way or the other on the update.

A Subcommittee Member in the General Interest category suggested delaying implementation.

It was unclear if an NDS update was already in the 2nd or 3rd set of standards updates.

A Subcommittee Member in the General Interest category stated that something should be submitted in writing if there is a desire for MHCC action. If the Secretary has an emergency they should have put something in writing. It's not just about the NDS-2001 that has been changed.

The DFO stated that the Secretary did not change the standard, but only delayed implementation. It took effect June 1, and was delayed until January 1.

There was discussion that retroactive standard changes never happen.

A Subcommittee Member in the General Interest category stated that when there is a difference between 3280 and a standard, 3280 applies, not the reference standard.

An MHCC member in the General Interest category stated that NDS-2001 does not change retroactively. Effective June 1, there is an addendum. Unless the Department adopts that addendum, the old version is in effect.

MHI stated that there are provisions under the Administrative Procedures Act for the adoption of reference standards that can be adopted in a timely fashion. The Administrative Law Commission has recommended that these standards can be done in a timely manner. Other agencies are doing that.

A Subcommittee Member in the Producer category stated that as a committee right now, we don't matter. The proposals we passed the last few years have not come out. We don't get notified or consulted. If HUD doesn't follow the procedures and protocols to ask the MHCC for comment or even to notify the MHCC we are relegated to be insubstantial. We get circumvented when we have a right to at least be aware of changes that will be implemented. It's not the intent of the law to use tax payer money to get us here to have no impact.

The DFO stated that perhaps the Secretary should have sent a letter, but the Committee is aware now. HUD could send a letter tomorrow but the MHCC has an opportunity to make a recommendation now.

A Subcommittee Member in the Producer category agreed with the DFO's suggestion but stated that it's asking forgiveness instead of permission. Even if we take up the issue, it is effective in 2.5 months. We won't have an input on the enforcement. The new recommendation won't take effect for 4 or 5 years.

The Subcommittee Chair recommended a motion to delay implementation until full test data comes in. HUD should delay based on the code cycle like states have done.

An MHCC member in the Producer category expressed support for this idea.

HUD staff stated that the new tests will not change 2x4 data, but only 2x6 and 2x8. When other changes come through, they can be addressed.

The Subcommittee Chair identified other information that suggested new 2x4 testing was also being performed.

An MHCC Member in the User category stated that they would not vote for a standard just based on trust. It needs to be reviewed.

The DFO clarified that they are not asking for a vote without information and suggested bringing in experts like they did for the sprinkler issue.

An MHCC Member in the User category stated that the sprinkler issue took several months to decide that issue, but the MHCC has had an hour to look at this.

An MHCC Member in the General Interest category apologized for leaving for extended periods. The Member expressed concern about the activity of HUD. The Member expressed an opinion that the Secretary did something based on the recommendations of the Manufactured Housing Program, not the standard Organization. There was further concern that the MHCC is wasting its time and expressed dissatisfaction with the HUD process.

A Subcommittee Member in the General Interest category stated that there is a substantive issue on the standard and the MHCC could comment. However, most people are responding to a procedural issue with more ramifications than just this point. There is a lot at stake here. The whole vitality of the process depends on things not being done by emergency.

A Subcommittee Member in the General Interest Category stated that the MHCC doesn't have the info to do further work on this.

An MHCC Member in the Producer category stated that the Subcommittee is trying to justify action taken by HUD and retroactively discuss it. If HUD won't listen to the MHCC, we have no power unless HUD wants to cooperate. We need to go by the letter and intent of the law.

A Subcommittee Member in the Producer Category stated that there are a few facts: one is that the wood industry has established new values; another fact is that they made the change retroactive; another is that HUD is going to require that it be enforced at the beginning of the year.

Motion Regulatory3: Mr. Santana made a motion for the Subcommittee to recommend that the full Committee recommend to HUD that they delay implementation of the NDS addendum until it's presented to the committee or until it's presented through subpart I or as an emergency rule. Mr. Weinert seconded.

There was clarification that this motion would give HUD time to delay implementation until the MHCC could review the action.

An MHCC Member in the User category stated that HUD can decide when to bring something before the committee. In addition, I'm looking at the industry that has not brought any data, but only complained about the process.

An MHCC Member in the General Interest category disputed on fact addressed above: they industry didn't change the original standard; they made the addendum. Unless HUD adopts that addendum they can't make the industry follows the values. This isn't an emergency.

Vote: Motion Regulatory3 passes 8-1.

There was a motion to adjourn and a second with unanimous approval at 12:00 p.m.