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Office of General Counsel, Regulations Division
U.S. Department of Housing and Urban Development
451 7th Street, SW
Room 10276
Washington, DC 20410-001

Via regulations.gov

Re: Comments of the International Code Council to HUD on the Manufactured Home Construction and Safety Standards Proposed Rule (Docket Number FR-6149-P-01)

The International Code Council (ICC) is nonprofit organization, driven by the engagement of its 65,000 members, that is dedicated to helping communities and the building industry provide safe, resilient, and sustainable construction through the development and use of model codes (I-Codes) and standards used in design, construction, and compliance processes. Most U.S. states and communities, federal agencies, and many global markets choose the I-Codes to set the standards for regulating construction and major renovations, plumbing and sanitation, fire prevention, and energy conservation in the built environment.

ICC's model building codes are "voluntary consensus standards" under Office of Management and Budget (OMB) Circular A-119 and the National Technology Transfer Advancement Act (NTTAA), meaning they are developed in an open forum—with a balance of interests represented and due process—that, ultimately, ensures a consensus outcome. The NTTAA also calls for federal agencies to adopt private sector developed standards wherever possible. Federal agencies, including HUD, communities, developers, and affordable housing advocates are active participants in the code development process, ensuring the final consensus result balances cost, safety, and other public interest considerations. State and local governments adopt, amend, and enforce model building codes to advance policy goals and to ensure the health, safety, and welfare of their residents.

The I-Codes are widely utilized and supported at the federal, state, and local levels. All 50 states use the International Building Code (IBC) as the basis for commercial and multifamily housing construction and safety regulation. The International Residential Code (IRC) is in use or adopted in 49 states. The General Services Administration (GSA) requires the I-Codes for civilian governmental buildings¹ and the Department of Defense (DOD) requires the IBC and IRC for all U.S. military bases.²

The Code Council appreciates the opportunity to submit the following comments on the Department of Housing and Urban Development's (HUD) proposed rule to amend the Manufactured Home

¹ GSA, Facilities Standards for Public Buildings Service ("GSA P-100") (July 2018).

² DOD, Unified Facilities Criteria, DoD Building Code (General Building Requirements) (Nov. 2018).

Construction and Safety Standards. In general, we commend HUD and the MHCC for making efforts to bring manufactured housing closer to the design, construction and performance requirements expected of non-manufactured housing. This provides a benefit to both homeowners and the broader community. However, we do have concerns with many of the proposed changes as outlined below.

While building code adoption and enforcement are typically responsibilities of state and local governments, states and localities are pre-empted from the regulation of manufactured housing under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426) (the Act).

While not defined in the statute, HUD has defined “manufactured housing” narrowly in 24 CFR § 3280.2 based on the structure being a dwelling which includes habitable rooms built on a permanent chassis. The Code Council recognizes the preemption of state and local requirements for requirements applicable to components within the chassis. HUD does not have the authority to preempt design, construction and performance requirements outside of the chassis—those fall to state and local authorities and their building code requirements and inspection protocols.

“Add-on or accessory buildings or structures” are not built on a permanent chassis. Hence, approval, installation and inspection of such add-ons are the responsibility of the local jurisdiction to assure safety and compliance with the codes in place within that jurisdiction. This separation of responsibilities is not clearly recognized within many sections of the proposed rule, potentially leading to confusion and gaps in the provision of public safety.

As recognized in the Federal Register notice on page 5596, “HUD’s proposals addressing the design and construct of multi-story homes, attached homes or homes that are designed to accommodate an attached garage or carport that is not factory constructed but added to the home during the home installation process, may create confusion between state, local and Federal authorities and may sometimes require HUD approval through the AC process prior to the manufacturer being able to incorporate these design features.” (emphasis added). The proposed rule does not alleviate this confusion and in fact causes greater confusion.

The Code Council is prepared to work with HUD, the manufactured housing community and state and local code departments to develop guidance specifically focused on the interface of manufactured homes, add-on or accessory buildings and structures and other items within the purview of state and local code officials to assure that responsibilities are clearly defined. In parallel to such guidance, the Code Council would develop education and training resources to support effective implementation.

To address this confusion and assure public safety, the Code Council requests that HUD clearly recognize the responsibility of state and local authorities in protecting the health, safety and welfare of their community for design and construction activities beyond the components on the chassis. Specific sections of the proposed rule where such clarification would be particularly relevant along with other areas of concern are discussed below.

Attached Garages, Carports and Add-Ons, §3280.212, §3280.213, §3282.8(j), §3285.903(c) – The guidance provided in these sections appears contradictory and confusing. Sections 3280.212 and 3280.213 provide guidance on how manufactured housing should be prepared for the addition of garages and carports which is clearly within the scope of the Federal standards. These sections along

with sections 3282.8 discuss load paths, providing conflicting information on where loads should be transferred. For example, section 3282.8(j)(1) indicates that, “Add-ons including an attached accessory building or structure must be structurally independent. Attachment is for weatherproofing and cosmetic purposes only.” (emphasis added) Section 3282.8(j)(2) states that, “If an attached accessory building or structure is not structurally independent all of the following must be met for attachment to the manufactured home. . .” (emphasis added) If the intent is to offer options, then the sections should be presented with an “or” statement to indicate they are options (as is included in the data plate requirements of section 3280.5). Section 3285.903 provides conditions where add-on or attached accessory buildings or structures may be installed, but again fails to designate inspection responsibilities.

The definition for “Attached accessory building or structure” proposed for addition to sections 3280.2 and 3285.5 further adds to the confusion indicating that it includes such items when they are designed for attachment and structural support from the basic manufactured home.

Further, the term “basic manufactured home” is not defined, pre-supposing that there is such a thing as a “non-basic manufactured home.” If this is the case, HUD should clearly indicate what they mean by these terms and how the federal standards would apply. The Code Council contends that regardless of the differentiation made by HUD in this case, the manufactured housing federal standards should be applied consistently and any manufactured home, whether deemed “basic” or “non-basic” be clearly marketed as a manufactured home to avoid customer confusion and an expectation of the type of product being received.

It should also be clarified who bears responsibility for approval and inspection of these attached accessory buildings and structures. Given their designation as “attached buildings or structures” and not the extension of the manufactured home, these structures should comply with the local building code and be inspected to that code by the local jurisdiction.

Installation of appliances, §3280.709(a)(1) – The language would allow for the installation of direct vent space heating appliances on-site following approved instructions and the installation and inspection procedures provided. While the important step of inspection is acknowledged, it is unclear as to whose responsibility it is to perform such an inspection. HUD should clarify that the installation is to comply with the local building code requirements and be subject to inspection by state or local code officials

Carbon monoxide detectors §3280.211 – The Code Council commends HUD for recognizing the importance of requiring carbon monoxide detectors consistent with the requirements of the International Residential Code. Through incorporation into the federal standards, HUD relieves local officials from conducting additional inspections and potential re-work post installation to comply with local requirements.

Energy conservation standards for manufactured housing – The Code Council recognizes the valuable role energy efficiency requirements play in reducing the energy burden of households (particularly low- and moderate-income households) and supporting affordability across the life-cycle of homeownership/rental. The International Energy Conservation Code (IECC) is the national reference code for energy efficiency requirements in residential structures.³ While DOE continues to be delinquent

³ 42 U.S.C. 6833

in issuing findings on energy conservation standards for manufactured housing, such delay does not absolve HUD of its obligation to provide manufactured home owners with energy efficient homes. Federal law establishes the IECC as the de facto standard for manufactured homes.⁴ We recommend HUD incorporate provisions of the IECC appropriate for manufactured homes into the federal standards (with appropriate attribution as discussed below). HUD should also work diligently with DOE to assure the implementation of the requirements in 42 U.S.C. 17071. Each moment of delay results in increased energy burdens for homeowners.

Attached Manufactured Homes and Special Construction Considerations, Subpart K – While there are numerous benefits of consistent language across requirements for both manufactured and non-manufactured housing, the Code Council notes that much of the proposed language in the new Subpart K duplicates nearly verbatim the language contained in Sections R302.2 and R302.4 of the International Residential Code without observing and protecting the rights of the International Code Council as its copyright holder. Office of Management and Budget Circular A-119 spells out how federal agencies are to reference voluntary consensus standards in regulatory activities:

g. How should my agency reference standards?

Where your agency seeks to incorporate a standard by reference, your agency should reference the standard, along with sources from which a copy of the standard may be obtained, in relevant publications, regulations, and related internal documents. The Office of the Federal Register's regulations at 1 CFR Part 51 govern the use of incorporation by reference in regulation. For all other uses, your agency must determine the most appropriate form of reference. If a standard is used and published in an agency document, your agency must observe and protect the rights of the copyright holder and meet any other similar obligations, such as those relating to patented technology that must be used to comply with the standard.⁵ (emphasis added)

If HUD wishes to publish any part of the IRC in its rules or future rulemaking proceeding, in order to comply with OMB Circular A-119, HUD must: (a) expressly acknowledge that the IRC is a copyright protected document, published and owned by the Code Council; (b) explicitly state that any reproduction or copying of the standard requires express written permission or license from the Code Council; and (c) state that copies of the IRC may be viewed for free on the Code Council's publicACCESS website, <https://codes.iccsafe.org>, and are available for purchase from the Code Council at its website, www.iccsafe.org.

Further, we note that in the preamble HUD overtly intends to preempt the authority of state and local jurisdictions through Subpart K. There are good reasons as to why such requirements are within the domain of state and local authorities. Adjacent and attached manufactured homes may be manufactured by different companies and installed at different times resulting in potential interactions

⁴ See 42 U.S.C. § 17071(a)(1).

⁵ Office of Management and Budget, Executive Office of the President, *OMB Circular A-119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities* (OMB Circular A-119), available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A119/revised_circular_a-119_as_of_1_22.pdf.

that have not been addressed within either manufactured home, but which could be within the requirements of the proposed rule. The proposed rule provides no requirements that attached manufactured homes be manufactured by the same manufacturer or installed at the same time.

Thank you for the opportunity to comment. The Code Council would be pleased to work with HUD to provide language clarifying the areas of confusion identified here, with future development of the federal standards and development of guidance documents that clearly defines federal, state and local authority in the regulation and inspection of manufactured homes and other activities on the home site.

Sincerely,

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