

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT****24 CFR Part 3282**

[Docket No. FR-5072-N-01]

**Manufactured Housing Consensus
Committee—Rejection of Subpart I
Proposal**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of rejection of Manufactured Housing Consensus Committee recommendation of proposed regulation.

SUMMARY: The Manufactured Housing Consensus Committee (MHCC) has submitted to HUD recommended regulatory text that would revise HUD's current Subpart I regulations that implement statutory requirements concerning how manufacturers and others address reports of problems with manufactured homes, including notifications to consumers and correction of safety defects and of homes that fail to meet the Federal construction and safety standards. The National Manufactured Housing Construction and Safety Standards Act of 1974 expressly limits HUD to either accepting such an MHCC recommendation in its entirety for publication as a proposed rule, or rejecting the recommendation, providing the MHCC a written explanation of the reasons for rejection, and publishing in the **Federal Register** the rejected proposal, the reasons for rejection, and any recommended modifications. The Secretary commends the careful work of the MHCC on this initiative and would accept almost all of the MHCC's recommendation. HUD has met with the MHCC numerous times on these regulations, and the Department and the MHCC have worked together to draft a clear and comprehensive revision of these regulations. However, because HUD believes that certain language included in the MHCC recommendation is contrary to the statute, HUD cannot accept the proposal. Nevertheless, in accordance with a different statutory procedure that is available, and in an effort to resolve the remaining differences between what HUD could accept and what was included in the MHCC recommendation, HUD has also submitted to the MHCC for its review a HUD proposal for revision of subpart I that is based on the MHCC recommendation, with a few modifications as discussed in this notice.

As required by the statute, the full text of the MHCC's recommendation is set forth in this notice for informational purposes, along with HUD's reasons for not accepting all of the recommendations and an explanation of the modifications HUD has suggested to the MHCC. A set of principles that the MHCC drafted to guide its development of its recommendation is also set out in this notice. In accordance with statutory procedure, after HUD has received the MHCC's comments on HUD's proposal to revise Subpart I and HUD has considered those comments, HUD expects to publish separately a proposed rule revising Subpart I for public comment.

FOR FURTHER INFORMATION CONTACT:

William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs, Office of Regulatory Affairs and Manufactured Housing, Room 9164, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-6401 (this is not a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800-877-8389.

SUPPLEMENTARY INFORMATION: The Manufactured Housing Consensus Committee (MHCC) was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401-5426 (the Act), for the purpose of providing periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards and the procedural and enforcement regulations. 42 U.S.C. 5403(a)(3)(A). The MHCC may submit to the Secretary proposed procedural and enforcement regulations and recommendations for the revision of the regulations. 42 U.S.C. 5403(b)(1). To be promulgated by the Department, the regulations and revisions recommended by the MHCC must be consistent with the Act.

When the Secretary receives a proposed procedural or enforcement regulation from the MHCC, the Secretary must either approve the proposal with no modification or reject the proposal. If the Secretary rejects the proposal, HUD must provide to the MHCC a written explanation of the reasons for rejection and publish the proposal, the reasons for rejection, and recommended modifications in the **Federal Register**. 42 U.S.C. 5403(b)(4).

The MHCC has transmitted to the Secretary a recommendation dated June 3, 2005 (Recommendation), that the

Manufactured Housing Home Procedural and Enforcement Regulations, 24 CFR part 3282, be amended by revising Subpart I, Consumer Complaint Handling and Remedial Actions (24 CFR 3282.401-3282.416) (Subpart I). The Recommendation is the product of extensive work of the MHCC over a period of several months, through 20 lengthy meetings that have involved producers and a retailer of manufactured housing, consumers, administrators of State manufactured housing programs, other interested parties, and HUD. During those discussions, HUD advised the MHCC members, orally and in writing, of concerns that HUD would have with certain language under consideration by the MHCC and the reasons for those concerns. The MHCC addressed some, but not all, of those concerns in its final Recommendation.

Subsequent to the submission of the Recommendation, there have been 7 additional meetings of the MHCC and HUD to discuss the MHCC Recommendation and revisions that HUD had suggested. Agreement was reached on some further changes suggested by HUD or members of the MHCC during those meetings, and those changes will be included in the proposed rule that HUD expects to publish later. In the end the MHCC declined, however, to revise its Recommendation in a manner that would allow HUD to accept it, unchanged, for publication as a proposed rule.

While HUD agrees with a great majority of the MHCC Recommendation, HUD continues to believe that some of the language in the Recommendation is not consistent with the Act and that a few modifications of the language are needed. Therefore, because HUD cannot accept the entire Recommendation, HUD must reject the entire Recommendation. HUD is following the procedure established in section 604(b)(4) of the Act (42 U.S.C. 5403(b)(4)), under which, upon rejection, the Secretary must publish notice of the Recommendation in the **Federal Register**, along with modifications that HUD would suggest.

The Secretary appreciates the dedication and care that the MHCC members have shown in their consideration of the changes suggested for subpart I, and expects to move forward under the separate procedure to publish a proposed rule for public comment that embraces a great majority of the revised subpart I language included in the Recommendation. The proposed rule that HUD has presented

to the MHCC for its consideration under the procedures in section 604(b)(3) of the Act (42 U.S.C. 4503(b)(3)) uses the MHCC Recommendation as its base, but also includes the modifications that are discussed in this notice.

Areas To Be Modified

HUD is setting out in this section of the notice its reasons for the rejection of the Recommendation and the modifications that HUD has suggested to the MHCC.

Reasons for Rejection: Requirements Not Consistent With Statutory Authority

(§§ 3282.404(b)(3), 3282.405(a)(2), 3282.415(c), and 3282.415(d) in Recommendation). In section 615 of the Act (42 U.S.C. 5414), Congress placed responsibility for the notification and correction of defects in manufactured homes on manufacturers, and set guidelines for manufacturers to meet these responsibilities. Section 613 of the Act (42 U.S.C. 5412) imposes additional repair and repurchase requirements on manufacturers. The MHCC has recommended some revisions of the Subpart I requirements that are not consistent with the responsibilities established by Congress when it granted preemption for the Federal standards that apply to the construction of manufactured homes.

The MHCC has recommended limiting the responsibility for furnishing notification to homeowners about safety hazards and failures to comply with the Federal standards, which Congress expressly placed on manufacturers under section 615(a) of the Act (42 U.S.C. 5414(a)). Under the MHCC Recommendation, in some of these instances consumers would not receive notification of problems in their home. HUD would modify the language in §§ 3282.404(b)(3) and 3282.405(a)(2) of the Recommendation to eliminate phrases that limit a manufacturer's notification responsibilities to only those problems that are caused by persons working on behalf of a manufacturer. Consistent with the Act HUD would continue, however, to limit the manufacturer's correction responsibilities to only those defects that are related to errors in design or assembly of the home by the manufacturer, in accordance with section 615(g) (42 U.S.C. 5414(g)).

HUD has a similar concern about language limiting the manufacturer's responsibility under section 613 of the Act (42 U.S.C. 5412) for correcting noncompliances, defects, serious defects, and imminent safety hazards in homes delivered to retailers and distributors before those homes are sold

to purchasers, and about language establishing new responsibilities for retailers and distributors that are not found in the Act. HUD would modify § 3282.415(c) of the MHCC Recommendation by eliminating phrases that would limit the manufacturers' pre-sale correction responsibilities and could require HUD and State regulators to meet new burdens of proof in assuring production of manufactured homes that comply with the Federal construction and safety standards. HUD also would delete § 3282.415(d) as being inconsistent with sections 613 and 623(c)(12) of the Act (42 U.S.C. 5412 and 5422 (c)(12)).

Other suggested modifications: determination factors

(§ 3282.404(c)(2)(iii)). In the proposed rule that HUD has submitted to the MHCC for prepublication review, HUD also included a few other modifications to the Recommendation, even though HUD does not base its rejection of the MHCC Recommendation on these modifications.

HUD believes that it is important for manufacturers to use appropriate methods for determining which manufactured homes should be included in a class of homes for which notification or correction of defects or safety hazards is required. Currently, § 3282.409(c) of HUD's regulations recognizes a methodology that includes inspection of the actual homes, not the records of those homes. The MHCC Recommendation would revise the current provision by permitting inspection of the records, including consumer and retailer complaints, rather than the homes. HUD would modify that permissive language to make it clear that the methodology would only be acceptable if the cause of the problem is such that it would be understood and reported by consumers or retailers. For example, inadequate firestopping in a home is not a condition that a homeowner, or even a retailer, can be expected to observe and report. Therefore, a manufacturer who is determining the scope of a class of homes with inadequate firestopping should not be permitted to rely on complaint records alone to identify the homes to be included in the class.

Other suggested modifications: recordkeeping

HUD would also add language in the recordkeeping requirements in § 3282.417 that would provide options for how to comply with the requirements and would avoid using an undefined term. These modifications would establish a brighter line for how manufacturer records are to be maintained. The new provisions would also recognize a manufacturer's right to

keep some of these records in a central class determination file that might be preferred by some manufacturers and would reduce the amount of paperwork required. HUD would add such an alternative because some manufacturers are already keeping their records in this alternative format, which is a format that also could be more user-friendly for HUD and State regulators in enforcing the law.

Other suggested modifications:

generally. HUD would reorganize §§ 3282.411 and 3282.412 of the MHCC Recommendation, to assure these provisions are internally consistent. The general structure of the MHCC Recommendation would be retained, however. Section 3282.411 of the Recommendation establishes the prerequisites for any SAA to refer information to the appropriate SAA or HUD for possible investigation. Section 3282.412 sets forth requirements for HUD or an appropriate SAA to initiate a formal administrative investigation process. The revisions HUD would make in these sections of the Recommendation would be technical changes to simplify and clarify the provisions and to avoid overlap within the two sections.

HUD also would add a requirement in § 3282.404(a) that, when a manufacturer makes an initial determination of a serious defect or imminent safety hazard, the manufacturer must notify HUD, the appropriate SAA, and the manufacturer's IPIA of the determination. The purpose of this requirement would be to provide advance notice of a potentially serious problem during the time the manufacturer is required to develop a full plan of notification and correction regarding the problem. HUD would consider this modification to be appropriate in light of the MHCC's Recommendation that would extend the time a manufacturer has to complete its plan beyond what is permitted under the existing regulations.

Finally, HUD included clarifying and nonsubstantive, editorial changes in the modified version of the Recommendation that HUD submitted to the MHCC for its prepublication review. These changes would be minor and would be for the purpose of making the intent of the applicable provision more clear.

Principles Guiding MHCC Subcommittee

The following principles were adopted by the MHCC subcommittee that was charged with developing a draft revision of subpart I for full committee consideration, and are

included in this notice to provide additional context for the MHCC's efforts on this difficult undertaking:

(1) Subpart I regulations should clearly identify, especially to the homeowner, what problems manufacturers will correct. At a minimum, problems currently being corrected will continue to be corrected.

(2) Subpart I should hold the manufacturer accountable for all construction to comply with the Federal manufactured home construction and safety standards.

(3) If a person is contractually obligated to provide a service or extend a warranty for work that is the manufacturer's responsibility, subpart I regulations would not preclude fulfillment of that obligation or warranty.

(4) Subpart I regulations should clearly define when a manufacturer has a duty to investigate and how the investigation should be performed.

(5) Subpart I should describe methods available to conduct an investigation and indicate the investigation methods may vary based on the circumstances surrounding the problem.

(6) Subpart I regulations should hold the manufacturer accountable for choosing the most appropriate method of investigation based on the known facts concerning the problem.

(7) Subpart I regulations should support the manufacturer's findings and subsequent course of action when a manufacturer has conducted in good faith an appropriate investigation based on the facts available and taken appropriate action. If additional information is presented, then a new investigation may be necessary. SAAs and HUD oversight may be conducted as necessary.

(8) Subpart I regulations should require manufacturers to utilize service records and approved designs as part of the investigative process.

(9) Subpart I regulations should clearly identify who is accountable for problems occurring to sections of homes that are in transit, in storage or at retail sales centers.

(10) Subpart I regulations should not hold the manufacturer responsible for normal wear and aging, unforeseeable consumer abuse or neglect of proper maintenance. The regulations need to indicate how old the manufactured home needs to be before these factors could be considered the primary cause of the problem. The life of the product warranty may be considered for time limits.

(11) The manufacturer's responsibility for construction should be separate and

distinct from any manufacturer responsibility for installation.

(12) Subpart I regulations should utilize consistent wording and be in conformance with the Act as amended by the MHIA 2000.

(13) Subpart I regulations should place a priority on correcting the problem while maintaining requirements for sufficient documentation to identify patterns in construction problems.

(14) HUD cannot exceed its statutory authority and must implement all of the requirements of the Act.

(15) For each recommendation, the MHCC will consider the factors in section 604(e) of the Act and any other statutory guidance.

(16) The recommendations for notification and correction should be consistent with the requirements of sections 602 and 615 of the Act.

Text of MHCC Proposal

The text of the rejected proposal submitted by the MHCC is published as Appendix A.

Dated: May 23, 2006.

Brian D. Montgomery,
Assistant Secretary for Housing-Federal
Housing Commissioner.

Appendix A—Text of Rejected MHCC Recommendation to Amend Subpart I of 24 CFR Part 3282

Subpart A: Changes in Definitions:

§ 3282.7 (j): Text with proposed modification:

Defect means, for purposes of this part, a failure to comply with an applicable Federal manufactured home safety and construction standard including any defect in the performance, construction, components or material 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.

§ 3282.7 (v): Text with proposed modification:

Manufactured Home Construction means all activities relating to the assembly and manufacture of a manufactured home including, but not limited to, those relating to durability, quality, and safety, but does not include those activities regulated under the installation standards in this chapter.

§ 3282.7 (dd) (NEW): Proposed New Text:

Manufactured Home installation standards means reasonable specifications for the installation of a manufactured home, at the place of occupancy, to ensure the proper siting, the joining of all sections of the home, and the installation of stabilization, support or anchoring systems.

Subpart H, § 3282.362(c)(1):

Add the following new 11th sentence, before the sentence "Failure to perform to the

approved manual justifies withholding labels until an adequate level of performance is attained."

"The IPHA must periodically review the manufacturer's service records for determinations under § 3282.404 to see whether evidence exists that the manufacturer is ignoring or not performing under its approved quality assurance manual, and, if such evidence is found, must advise the manufacturer so that appropriate action may be taken under § 3282.404."

Subpart I

Table of Contents:

§ 3282.401	Purpose and scope
§ 3282.402	General provisions
§ 3282.403	Consumer complaint and information referral
§ 3282.404	Determinations and concurrences
§ 3282.405	Notification pursuant to manufacturer's determination
§ 3282.406	Required manufacturer correction
§ 3282.407	Voluntary compliance with the notification and correction requirements under the Act
§ 3282.408	Plan of notification required
§ 3282.409	Contents of plan
§ 3282.410	Implementation of plan
§ 3282.411	Administrative initiation of remedial action
§ 3282.412	Preliminary and final administrative determinations
§ 3282.413	Implementation of Final Determination
§ 3282.414	Replacement or repurchase after sale to purchaser
§ 3282.415	Correction of homes before sale to purchaser
§ 3282.416	Oversight of notification and correction activities
§ 3282.417	Recordkeeping
§ 3282.418	Factors for appropriateness and amount of civil penalties

§ 3282.401 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to establish a system of protections provided by the Act with respect to imminent safety hazards and violations of the construction and safety standards with a minimum of formality and delay, while protecting the rights of all parties.

(b) *Scope.* This subpart sets out the procedures to be followed by manufacturers, retailers, State Administrative Agencies, primary inspection agencies, and the Secretary to assure that notification and correction are provided with respect to manufactured homes when required under this subpart. Notification and correction may be required with respect to manufactured homes that have been sold or otherwise released by the manufacturer to another party.

§ 3282.402 General provisions.

(a) *Purchaser's rights.* Nothing in this subpart shall limit the rights of the purchaser under any contract or applicable law.

(b) *Manufacturer's liability limited.* A manufacturer is not responsible for failures that occur in any manufactured home or component as the result of normal wear and

aging, unforeseeable consumer abuse, or unreasonable neglect of maintenance. The life of a component warranty may be one of the indicators used to establish normal wear and aging. A failure of any component may not be attributed by the manufacturer to normal wear and aging under this subpart during the term of any applicable warranty provided by the original manufacturer of the affected component.

§ 3282.403 Consumer complaint and information referral.

(a) *Retailer responsibilities.* When a retailer receives a consumer complaint or other information about a home in its possession, or that it has sold or leased, that likely indicates a noncompliance, defect, serious defect, or imminent safety hazard, the retailer must forward the complaint or information to the manufacturer of the manufactured home in question as early as possible in accordance with § 3282.256.

(b) *SAA and HUD responsibilities.* (1) When an SAA or the Secretary receives a consumer complaint or other information that likely indicates a noncompliance, defect, serious defect, or imminent safety hazard in a manufactured home, the SAA or HUD must:

(i) Forward the complaint or information to the manufacturer of the home in question as early as possible; and

(ii) 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.

(2) When it appears from the complaint or other information that an imminent safety hazard or serious defect may be involved, the SAA of the State where the home was manufactured must also send a copy of the complaint or other information to the Secretary.

(c) *Manufacturer responsibilities.* Whenever the manufacturer receives information from any source that the manufacturer believes in good faith relates to a noncompliance, defect, serious defect, or imminent safety hazard in any of its manufactured homes, the manufacturer must, for each such occurrence, make the determinations required by § 3282.404.

§ 3282.404 Manufacturers' determinations and related concurrences.

(a) *Initial determination.* (1) Not later than 30 days after a manufacturer receives information that it believes in good faith likely indicates a noncompliance, defect, serious defect, or imminent safety hazard, the manufacturer must make a specific initial determination that there is a noncompliance, a defect, a serious defect, an imminent safety hazard, or that the information requires no further action under subpart I. When no further action under subpart I is required and a problem still exists, the manufacturer must forward the information in its possession to the appropriate retailer and, if known, the installer, for their consideration.

(2) In making the determination of noncompliance, defect, serious defect, imminent safety hazard, or that no further action is required under subpart I, the manufacturer must review the information it

received and carry out reasonable investigations, including, if appropriate, inspections. The manufacturer must review the information, the known facts, and the circumstances relating to the complaint or information, including service records, approved designs, and audit findings, as applicable, to decide what investigations are reasonable.

(b) *Class determination.* (1) When the manufacturer makes an initial determination of defect, serious defect, or imminent safety hazard, the manufacturer must also make a good faith determination of the class that includes each manufactured home in which the same defect, serious defect, or imminent safety hazard exists or likely exists. Multiple occurrences of defects may be considered the same defect if they have the same cause, are related to a specific workstation description, or are related to the same failure to follow the manufacturer's approved quality assurance manual. Good faith may be used as a defense to the imposition of a penalty, but does not relieve the manufacturer of its responsibilities for notification or correction under this subpart I. The manufacturer must make this class determination not later than 20 days after making a determination of defect, serious defect, or imminent safety hazard.

(2) Paragraph (c) of this section sets out methods for a manufacturer to use in determining the class of manufactured homes. If the manufacturer can identify the precise manufactured homes affected by the defect, serious defect, or imminent safety hazard, the class of manufactured homes may include only those manufactured homes actually affected by the same defect, serious defect, or imminent safety hazard. The manufacturer is also permitted to exclude from the class those manufactured homes for which the manufacturer has information that indicates the homes were not affected by the same cause. If it is not possible to identify the precise manufactured homes affected, the class must include every manufactured home in the group of homes that is identifiable because the same defect, serious defect, or imminent safety hazard exists or likely exists in some homes in that group of manufactured homes.

(3) For purposes related to this section, a defect, a serious defect, or an imminent safety hazard likely exists in a manufactured home if the cause of the defect, serious defect, or imminent safety hazard is such that the same defect, serious defect, or imminent safety hazard would likely have been introduced systematically into more than one manufactured home by the manufacturer, including a person performing work or providing a component on behalf of the manufacturer. Indications that the defect, serious defect, or imminent safety hazard would likely have been introduced systematically may include, but are not limited to, complaints that can be traced to the same faulty design, problems known to exist in supplies of components or parts, information related to the performance of a particular employee or use of a particular process, and information signaling a failure to follow quality control procedures with respect to a particular aspect of the manufactured home.

(4) If under this paragraph (b) the manufacturer must determine the class of homes, the manufacturer must obtain from the IPIA, and the IPIA must provide, either:

(i) The IPIA's written concurrence on the methods used by the manufacturer to identify the homes that should be included in the class of homes; or

(ii) The IPIA's written statement explaining why it believes the manufacturer's methods for determining the class of homes were inappropriate or inadequate.

(c) *Methods for determining class.* (1) In making a class determination under paragraph (b) of this section, a manufacturer is responsible for carrying out reasonable investigations. In carrying out reasonable investigations, the manufacturer must review the information, the known facts, and the relevant circumstances, and generally must establish the cause of the defect, serious defect, or imminent safety hazard. Based on the results of such investigations and all information received, the manufacturer must use an appropriate method or appropriate methods to determine the class of manufactured homes in which the same defect, serious defect, or imminent safety hazard exists or likely exists.

(2) Methods that may be used in determining the class of manufactured homes include, but are not limited to:

(i) Inspection of the manufactured home in question, including its design, to determine whether the defect, serious defect, or imminent safety hazard resulted from the design itself;

(ii) Physical inspection of manufactured homes of the same design or construction, as appropriate, that were produced before and after a home in question;

(iii) Inspection of the service records of a home in question and of homes of the same design or construction, as appropriate, produced before and after that home;

(iv) Inspection of manufacturer quality control records to determine whether quality control procedures were followed and, if not, the time period during which they were not;

(v) Inspection of IPIA records to determine whether the defect, serious defect, or imminent safety hazard was either detected or specifically found not to exist in some manufactured homes;

(vi) Identification of the cause as relating to a particular employee whose work, or to a process whose use, would have been common to the production of the manufacturer's homes for a period of time; and

(vii) Inspection of records relating to components supplied by other parties and known to contain or suspected of containing a defect, a serious defect, or an imminent safety hazard.

(3) When the Secretary or an SAA decides the method chosen by the manufacturer to conduct an investigation in order to make a class determination is not the most appropriate method, the Secretary or SAA must explain in writing to the manufacturer why the chosen method is not the most appropriate.

(d) *Documentation required.* The manufacturer must comply with the recordkeeping requirements in § 3282.417 as

applicable to its determinations and any IPIA concurrence or statement that it does not concur.

§ 3282.405 Notification pursuant to manufacturer's determination.

(a) *General requirement.* Every manufacturer of manufactured homes must provide notification as set out in this section with respect to any manufactured home produced by the manufacturer in which the manufacturer determines, in good faith, that there exists or likely exists:

(1) A serious defect or an imminent safety hazard; or

(2) The same defect caused by a manufacturer, including a person performing work or providing a component on behalf of the manufacturer, that has been introduced systematically into more than one home.

(b) *Requirements by category.* (1) *Noncompliance.* A manufacturer must provide notification of a noncompliance only when ordered to do so by the Secretary or an SAA pursuant to §§ 3282.412 and 3282.413.

(2) *Defects.* When a manufacturer has made a determination in accordance with § 3282.404 that a defect exists or likely exists in more than one home, the manufacturer must prepare a plan for notification in accordance with § 3282.408, and must provide notification with respect to each manufactured home in the class of manufactured homes.

(3) *Serious defects and imminent safety hazards.* When a manufacturer has made a determination in accordance with § 3282.404 that a serious defect or imminent safety hazard exists or likely exists, the manufacturer must prepare a plan for notification in accordance with § 3282.408, must provide notification with respect to all manufactured homes in which the serious defect or imminent safety hazard exists or likely exists, and must correct the home or homes in accordance with § 3282.406.

(c) *Plan for notification required.* (1) If a manufacturer determines that it is responsible for providing notification under this section, the manufacturer must prepare and receive approval on a plan for notification as set out in § 3282.408, unless the manufacturer meets alternative requirements established in § 3282.407.

(2) If the Secretary or SAA orders a manufacturer to provide notification in accordance with the procedures in §§ 3282.412 and 3282.413, the Secretary or SAA has the option of requiring a manufacturer to prepare and receive approval on a plan for notification.

(d) *Method of notification.* When a manufacturer provides notification as required under this section, notification must be:

(1) By certified mail or other more expeditious means to each retailer or distributor to whom any manufactured home in the class of homes containing the defect, serious defect, or imminent safety hazard was delivered;

(2) By certified or express mail to the first purchaser of each manufactured home in the class of manufactured homes containing the defect, serious defect, or imminent safety hazard, and, to the extent feasible, to any

subsequent owner to whom any warranty provided by the manufacturer or required by Federal, State, or local law on such manufactured home has been transferred, except that notification need not be sent to any person known by the manufacturer not to own the manufactured home in question if the manufacturer has a record of a subsequent owner of the manufactured home; and

(3) By certified or express mail to each other person who is a registered owner of a manufactured home in the class of homes containing the defect, serious defect, or imminent safety hazard and whose name has been ascertained pursuant to § 3282.211 or is known to the manufacturer.

§ 3282.406 Required manufacturer correction.

(a) *Correction of noncompliances and defects.* (1) Section 3282.415 sets out requirements with respect to a manufacturer's correction of any noncompliance or defect that exists in each manufactured home that has been sold or otherwise released to a retailer but that has not yet been sold to a purchaser.

(2) In accordance with section 623 of the Act and the regulations in part 3288 of this chapter, the manufacturer, retailer, or installer of a manufactured home must correct, at its expense, each failure in the performance, construction, components, or material of the home that renders the home or any part of the home not fit for the ordinary use for which it was intended and that is reported during the 1-year period beginning on the date of installation of the home.

(b) *Correction of serious defects and imminent safety hazards.* (1) A manufacturer required to furnish notification under § 3282.405 or § 3282.413 must correct, at its expense, any serious defect or imminent safety hazard that can be related to an error in design or assembly of the manufactured home by the manufacturer, including an error in design or assembly of any component or system incorporated into the manufactured home by the manufacturer.

(2) If while making corrections under any of the provisions of this subpart, the manufacturer creates an imminent safety hazard or serious defect, the manufacturer shall correct the imminent safety hazard or serious defect.

(3) Each serious defect or imminent safety hazard corrected under this paragraph must be brought into compliance with applicable Standards or, where the Standards are not specific, with the manufacturer's approved design.

(c) *Inclusion in plan.* (1) In the plan required by § 3282.408, the manufacturer must provide for correction of those homes that are required to be corrected pursuant to paragraph (b) of this section.

(2) If the Secretary or SAA orders a manufacturer to provide correction in accordance with the procedures in § 3282.413, the Secretary or SAA has the option of requiring a manufacturer to prepare and receive approval on a plan for correction.

(d) *Corrections by owners.* A manufacturer that is required to make corrections under

paragraph (b) of this section or that elects to make corrections in accordance with § 3282.407 must reimburse any owner of an affected manufactured home who chose to make the correction before the manufacturer did so for the reasonable cost of correction.

(e) *Correction of appliances, components, or systems.* (1) If any appliance, component, or system in a manufactured home is covered by a product warranty, the manufacturer, retailer, or installer that is responsible under this section for correcting a noncompliance, a defect, a serious defect, or an imminent safety hazard in the appliance, component, or system may seek the required correction directly from the producer. The SAA that approves any plan of notification required pursuant to § 3282.408 or the Secretary, as applicable, may establish reasonable time limits for the manufacturer of the home and the producer of the appliance, component, or system to agree on who is to make the correction and for completing the correction.

(2) Nothing in this section shall prevent the manufacturer, retailer, or installer from seeking indemnification from the producer of the appliance, component, or system for correction work done on any appliance, component, or system.

§ 3282.407 Voluntary compliance with the notification and correction requirements under the Act.

A manufacturer that takes corrective action that complies with one of the following three alternatives to the requirement in § 3282.408 for preparing a plan will be deemed to have provided any notification required by § 3282.405:

(a) *Voluntary action—one home.* When a manufacturer has made a determination that only one manufactured home is involved, the manufacturer is not required to provide notification pursuant to § 3282.405 or to prepare or submit a plan if:

(1) The manufacturer has made a determination of defect; or

(2) The manufacturer has made a determination of serious defect or imminent safety hazard and corrects the home within the 20-day period. The manufacturer must maintain, in the plant where the manufactured home was manufactured, a complete record of the correction. The record must describe briefly the facts of the case and any known cause of the serious defect or imminent safety hazard and state what corrective actions were taken, and it must be maintained in the service records in a form that will allow the Secretary or an SAA to review all such corrections.

(b) *Voluntary action—multiple homes.* Regardless of whether a plan has been submitted under § 3282.408, the manufacturer may act prior to obtaining approval of the plan. Such action is subject to review and disapproval by the SAA of the State where the home was manufactured or the Secretary, unless the manufacturer obtains the written agreement of the SAA or the Secretary that the corrective action is adequate. If such an agreement is obtained, the correction must be accepted as adequate by all SAA's and the Secretary if the manufacturer makes the correction as agreed to and any imminent safety hazard or serious defect is eliminated.

(c) *Waiver.* (1) A manufacturer may obtain a waiver of the notification requirements in § 3282.405 and the plan requirements in § 3282.408 either from the SAA of the State of manufacture, when all of the manufactured homes that would be covered by the plan were manufactured in that State, or from the Secretary. As of the date of a request for a waiver, the notification and plan requirements are deferred pending timely submission of any additional documentation as the SAA or the Secretary may require and final resolution of the waiver request. If a waiver request is not granted, the plan required by § 3282.408 must be submitted within 5 days after the expiration of the time period established in § 3282.408 if the manufacturer is notified that the request was not granted.

(2) The waiver may be approved if not later than 20 days after making the determination that notification is required, the manufacturer presents evidence that it in good faith believes would show to the satisfaction of the SAA or the Secretary that:

(i) The manufacturer has identified all homes that would be covered by the plan in accordance with § 3282.408;

(ii) The manufacturer will correct, at its expense, all of the identified homes, either within 60 days of being informed that the request for waiver has been granted or within another time limit approved in the waiver; and

(iii) The proposed repairs are adequate to remove the defect, serious defect, or imminent safety hazard that gave rise to the determination that correction is required; and

(3) The manufacturer must correct all affected manufactured homes within 60 days of being informed that the request for waiver has been granted or the time limit approved in the waiver, as applicable. The manufacturer must record the known cause of the problem and the correction in the service records in an approved form that will allow the Secretary or SAA to review the cause and correction.

§ 3282.408 Plan of notification required.

(a) *Manufacturer's plan required.* Except as provided in § 3282.407, if a manufacturer determines that it is responsible for providing notification under § 3282.405, the manufacturer must prepare a plan in accordance with this section and § 3282.409. The manufacturer must, as soon as practical, but not later than 20 days after making the determination of defect, serious defect, or imminent safety hazard, submit the plan for approval to one of the following, as appropriate:

(1) The SAA of the State of manufacture, when all of the manufactured homes covered by the plan were manufactured in that State; or

(2) The Secretary, when the manufactured homes were manufactured in more than one State or there is no SAA in the State of manufacture.

(b) *Implementation of plan.* Upon approval of the plan, including any changes for cause required by the Secretary or SAA after consultation with the manufacturer, the manufacturer must carry out the approved plan within the agreed time limits.

§ 3282.409 Contents of plan.

(a) *Purpose of plan.* This section sets out the requirements that must be met by a manufacturer in preparing any plan it is required to submit under § 3282.408. The underlying requirement is that the plan shows how the manufacturer will fulfill its responsibilities with respect to notification and correction.

(b) *Contents of plan.* The plan must:

(1) Identify, by serial number and other appropriate identifying criteria, all manufactured homes for which notification is to be provided, as determined pursuant to § 3282.404;

(2) Include a copy of the notice that the manufacturer proposes to use to provide the notification required by § 3282.405;

(3) Provide for correction of those manufactured homes that are required to be corrected pursuant to § 3282.406(b);

(4) Include the IPIA's written concurrence or statement on the methods used by the manufacturer to identify the homes that should be included in the class of homes, as required pursuant to § 3282.404(b); and

(5) Include a deadline for completion of all notifications and corrections.

(c) *Contents of notice.* Except as otherwise agreed by the Secretary or the SAA reviewing the plan under § 3282.408, the notice to be approved as part of the plan must include the following:

(1) An opening statement that reads: "This notice is sent to you in accordance with the requirements of the National Manufactured Housing Construction and Safety Standards Act.";

(2) The following statement: "[choose one, as appropriate: Manufacturer's name, or the Secretary, or the (insert State) SAA] has determined that [insert identifying criteria of manufactured home] may not comply with an applicable Federal Manufactured Home Construction or Safety Standard."

(3) Except when the manufacturer is providing notice pursuant to an approved plan or agreement with the Secretary or an SAA under § 3282.408, each applicable statement as follows:

(i) "An imminent safety hazard may exist in (identifying criteria of manufactured home)."

(ii) "A serious defect may exist in (identifying criteria of manufactured home)."

(iii) "A defect may exist in (identifying criteria of manufactured home)."

(4) A clear description of the defect, serious defect, or imminent safety hazard and an explanation of the risk to the occupants, which must include:

(i) The location of the defect, serious defect, or imminent safety hazard in the manufactured home;

(ii) A description of any hazards, malfunctions, deterioration, or other consequences that may reasonably be expected to result from the defect, serious defect, or imminent safety hazard;

(iii) A statement of the conditions that may cause such consequences to arise; and

(iv) Precautions, if any, that the owner can, should, or must take to reduce the chance that the consequences will arise before the manufactured home is repaired;

(5) A statement of whether there will be any warning that a dangerous occurrence

may take place and what that warning would be, and any signs that the owner might see, hear, smell, or feel which might indicate danger or deterioration of the manufactured home as a result of the defect, serious defect, or imminent safety hazard;

(6) A statement that the manufacturer will correct the manufactured home, if the manufacturer will correct the manufactured home under this subpart or otherwise;

(7) A statement in accordance with whichever of the following is appropriate:

(i) Where the manufacturer will correct the manufactured home at no cost to the owner, the statement must indicate how and when the correction will be done, how long the correction will take, and any other information that may be helpful to the owner; or

(ii) When the manufacturer does not bear the cost of repair, the notification must include a detailed description of all parts and materials needed to make the correction, a description of all steps to be followed in making the correction including appropriate illustrations, and an estimate of the cost of the purchaser or owner of the correction;

(8) A statement informing the owner that the owner may submit a complaint to the SAA or Secretary if the owner believes that:

(i) The notification or the remedy described therein is inadequate;

(ii) The manufacturer has failed or is unable to remedy the problem in accordance with its notification; or

(iii) The manufacturer has failed or is unable to remedy within a reasonable time after the owner's first attempt to obtain remedy; and

(9) A statement that any actions taken by the manufacturer under the Act in no way limit the rights of the owner or any other person under any contract or other applicable law and that the owner may have further rights under contract or other applicable law.

§ 3282.410 Implementation of plan.

(a) *Deadline for notifications.* (1) The manufacturer must complete the notifications carried out under a plan approved by an SAA or the Secretary under § 3282.408 on or before the deadline approved by the SAA or Secretary. In approving each deadline, an SAA or the Secretary will allow a reasonable time to complete all notifications, taking into account the number of manufactured homes involved and the difficulty of completing the notifications.

(2) The manufacturer must, at the time of dispatch, furnish to the SAA or the Secretary a true or representative copy of each notice, bulletin, and other written communication sent to retailers, distributors, or owners of manufactured homes regarding any serious defect or imminent safety hazard that may exist in any homes produced by the manufacturer, or regarding any noncompliance or defect for which the SAA or Secretary requires, under § 3282.413(c), the manufacturer to submit a plan for providing notification.

(b) *Deadline for corrections.* A manufacturer that is required to correct a serious defect or imminent safety hazard pursuant to § 3282.406(b) must complete implementation of the plan required by

§ 3282.408 on or before the deadline approved by the SAA or the Secretary. The deadline must be no later than 60 days after approval of the plan. In approving the deadline, the SAA or the Secretary will allow a reasonable amount of time to complete the plan, taking into account the seriousness of the problem, the number of manufactured homes involved, the immediacy of any risk, and the difficulty of completing the action. The seriousness and immediacy of any risk posed by the serious defect or imminent safety hazard will be given greater weight than other considerations.

(c) *Extensions.* An SAA that approved a plan or the Secretary may grant an extension of the deadlines included in a plan if the manufacturer requests such an extension in writing and shows good cause for the extension, and the SAA or the Secretary decides that the extension is justified and is not contrary to the public interest. When the Secretary grants an extension for completion of any corrections, the Secretary will notify the manufacturer and must publish notice of such extension in the Federal Register. When an SAA grants an extension for completion of any corrections, the SAA must notify the Secretary and the manufacturer.

(d) *Recordkeeping.* The manufacturer must provide the report and maintain the records that are required by § 3282.417 for all notification and correction actions.

§ 3282.411 Administrative initiation of remedial action.

(a) *Administrative review of information.* Whenever the Secretary or an SAA has information indicating the possible existence of a noncompliance, defect, serious defect, or imminent safety hazard in a manufactured home, the Secretary or SAA may initiate administrative review of the need for notification and correction in accordance with paragraphs (b) and (c) of this section.

(b) *SAA authority.* (1) An SAA that decides to initiate such administrative review must refer the matter to the SAA in the state of manufacture or, whenever the affected manufactured homes were manufactured in more than one state, to the Secretary for possible action pursuant to § 3282.412.

(2) An SAA in a State of manufacture is permitted to issue a preliminary determination in accordance with § 3282.412 under the following circumstances:

(i) The SAA believes that a manufactured home that has been sold or otherwise released by a manufacturer to a retailer or distributor, but for which there is no completed sale to a purchaser, contains a noncompliance, defect, serious defect, or imminent safety hazard;

(ii) The SAA believes that the information referenced in paragraph (a) of this section indicates a class of homes in which a noncompliance or defect possibly exists;

(iii) The SAA believes that the information referenced in paragraph (a) of this section indicates one or more homes in which a serious defect or an imminent safety hazard possibly exists;

(iv) The SAA is reviewing a plan under § 3282.408 and the SAA and manufacturer disagree on proposed changes to the plan;

(v) The SAA believes that the manufacturer has failed to fulfill the requirements of a waiver granted under § 3282.407; or

(vi) There is evidence that a manufacturer in the State failed to make the determinations required under § 3282.404.

(3) For purposes of this paragraph (b), the conclusion that there is a class of homes in which a noncompliance or defect possibly exists must be based on the same factors that are established for a manufacturer's class determination in § 3282.404(b). If evidence arises that the manufactured homes in the class were manufactured in more than one state, the SAA must refer the matter to the Secretary for any further action.

(4) An SAA that issues a preliminary determination must provide a copy of the preliminary determination to the Secretary at the time of its issuance. Failure to comply with this requirement does not affect the validity of the preliminary determination.

(c) *Secretary authority.* The Secretary may make a preliminary determination in accordance with § 3282.412 when:

(1) There is evidence that a noncompliance, defect, serious defect, or imminent safety hazard possibly exists in any manufactured home; or

(2) There is evidence that the manufacturer failed to make the determinations required under § 3282.404.

(d) *Secretary notification.* The Secretary will notify the SAA of each State where the affected homes were manufactured and, to the extent it is reasonable, the SAA of each State where the homes are located of the issuance of a preliminary determination. Failure to comply with this requirement does not affect the validity of the preliminary determination.

§ 3282.412 Preliminary and final administrative determinations.

(a) *Issuance of preliminary determination.* In accordance with § 3282.411, the Secretary or an SAA may issue a Notice of Preliminary Determination when:

(1) The manufacturer has not provided to the Secretary or SAA the necessary information to make a determination that:

(i) A noncompliance, defect, serious defect, or imminent safety hazard possibly exists; or

(ii) A manufacturer had information that likely indicates a noncompliance, defect, serious defect, or imminent safety hazard for which the manufacturer failed to make the determinations required under § 3282.404; or

(2) The Secretary or SAA has information that likely indicates a noncompliance, a defect, a serious defect, or an imminent safety hazard exists.

(b) *Notice of Preliminary Determination.* (1) The Notice of Preliminary Determination must be sent by certified mail or express delivery and must:

(i) Include the factual basis for the determination;

(ii) Include the criteria used to identify any class of homes in which the noncompliance, defect, serious defect, or imminent safety hazard possibly exists;

(iii) If applicable, indicate that the manufacturer may be required to make corrections on a home or in a class of homes; and

(iv) If the preliminary determination is that the manufacturer failed to make an initial determination required under § 3282.404(a), include an allegation that the manufacturer failed to act in good faith.

(2) The Notice of Preliminary Determination must inform the manufacturer that the preliminary determination will become final unless the manufacturer requests a hearing or presentation of views under subpart D of this part.

(c) *Presentation of views.* (1) The Secretary or the SAA, as applicable, must receive the manufacturer's request for a hearing or presentation of views:

(i) Within 15 days of delivery of the Notice of Preliminary Determination of serious defect, defect, or noncompliance; or

(ii) Within 5 days of delivery of the Notice of Preliminary Determination of imminent safety hazard.

(2) A Formal or an Informal Presentation of Views will be held in accordance with § 3282.152 promptly upon receipt of a manufacturer's request under paragraph (c) of this section.

(d) *Issuance of Final Determination.* (1) The SAA or the Secretary, as appropriate, may make a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists, or that the manufacturer failed to make the determinations required under § 3282.404, if:

(i) The manufacturer fails to respond to the Notice of Preliminary Determination within the time period established in paragraph (c)(2) of this section; or

(ii) The SAA or the Secretary decides that the views and evidence presented by the manufacturer or others are insufficient to rebut the preliminary determination.

(2) At the time that the SAA or Secretary makes a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists, the SAA or Secretary, as appropriate, must issue an order in accordance with § 3282.413.

§ 3282.413 Implementation of Final Determination.

(a) *Issuance of orders.* (1) The SAA or the Secretary, as appropriate, must issue an order directing the manufacturer to furnish notification if:

(i) The SAA makes a Final Determination that a defect or noncompliance exists in a class of homes;

(ii) The Secretary makes a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists; or

(iii) The SAA makes a Final Determination that an imminent safety hazard or serious defect exists in any home and the SAA has received the Secretary's concurrence on the issuance of the Final Determination and order.

(2) The SAA or the Secretary, as appropriate, must issue an order directing the manufacturer to make corrections in any affected manufactured home if:

(i) The SAA or the Secretary makes a Final Determination that a defect or noncompliance exists in a manufactured home that has been sold or otherwise released by a manufacturer to a retailer or

distributor but for which the sale to a purchaser has not been completed;

(ii) The Secretary makes a Final Determination that an imminent safety hazard or serious defect exists; or

(iii) The SAA makes a Final Determination that an imminent safety hazard or serious defect exists in any home and the SAA has received the Secretary's concurrence on the issuance of the Final Determination and order.

(3) Only the Secretary may issue an order directing a manufacturer to repurchase or replace any manufactured home already sold to a purchaser, unless the Secretary authorizes an SAA to issue such an order.

(4) An SAA that has a concurrence or authorization from the Secretary on any order issued under this section must have the Secretary's concurrence on any subsequent changes to the order. An SAA that has issued a Preliminary Determination must have the Secretary's concurrence on any waiver of notification or any settlement when the concerns addressed in the Preliminary Determination involve a serious defect or an imminent safety hazard.

(5) If an SAA or the Secretary makes a Final Determination that the manufacturer failed to make in good faith an initial determination required under § 3282.404(a):

(i) The SAA may impose any penalties or take any action applicable under State law and may refer the matter to the Secretary for appropriate action; and

(ii) The Secretary may take any action permitted by law.

(b) *Decision to order replacement or repurchase.* The SAA or the Secretary will order correction of any manufactured home covered by an order issued in accordance with paragraph (a) of this section unless any requirements and factors applicable under § 3282.414 and § 3282.415 indicate that the SAA or the Secretary should order replacement or repurchase of the home.

(c) *Time for compliance with order.* (1) The SAA or the Secretary may require the manufacturer to submit a plan for providing any notification and any correction, replacement, or repurchase remedy that results from an order under this section. The manufacturer's plan must include the method and date by which notification and any corrective action will be provided.

(2) The manufacturer must provide any such notification and correction, replacement, or repurchase remedy as early as practicable, but not later than:

(i) Thirty (30) days, in the case of a Final Determination of imminent safety hazard or when the SAA or Secretary has ordered replacement or repurchase of a home pursuant to § 3282.414; or

(ii) Sixty (60) days, in the case of a Final Determination of serious defect, defect, or noncompliance.

(3) Subject to the requirements of paragraph (a)(3) of this section, the SAA that issued the order or the Secretary may grant an extension of the deadline for compliance with an order if:

(i) The manufacturer requests such an extension in writing and shows good cause for the extension; and

(ii) The SAA or the Secretary is satisfied that the extension is justified in the public interest.

(4) When the SAA grants an extension, it must notify the manufacturer and forward to the Secretary a draft of a notice of the extension for the Secretary to publish in the **Federal Register**. When the Secretary grants an extension, the Secretary must notify the manufacturer and publish notice of such extension in the **Federal Register**.

(d) *Appeal of SAA determination.* Within 10 days of a manufacturer receiving notice that an SAA has made a Final Determination that an imminent safety hazard, serious defect, defect, or noncompliance exists or that the manufacturer failed to make the determinations required under § 3282.404, the manufacturer may appeal the Final Determination to the Secretary under § 3282.309.

(e) *Settlement offers.* A manufacturer may propose in writing, at any time, an offer of settlement which shall be submitted to and considered by the Secretary or the SAA that issued the Notice of Preliminary Determination. The Secretary or the SAA has the option of providing the manufacturer making the offer with an opportunity to make an oral presentation in support of such offer. If the manufacturer is notified that an offer of settlement is rejected, the offer is deemed to have been withdrawn and will not constitute a part of the record in the proceeding. Final acceptance by the Secretary or an SAA of any offer of settlement automatically terminates any proceedings related to the matter involved in the settlement.

(f) *Waiver of notification.* (1) At any time after the Secretary or an SAA has issued a Notice of Preliminary Determination, the manufacturer may request the Secretary or SAA to waive any formal notification requirements. When requesting a waiver, the manufacturer must certify that:

(i) The manufacturer has made a class determination in accordance with § 3282.404(b);

(ii) The manufacturer will correct, at the manufacturer's expense, all affected manufactured homes in the class within a time period that is specified by the Secretary or SAA, but is not later than 60 days after the manufacturer is notified of the acceptance of the request for waiver or the issuance of any Final Determination, whichever is later; and

(iii) The proposed repairs are adequate to correct the noncompliance, defect, serious defect, or imminent safety hazard that gave rise to the issuance of the Notice of Preliminary Determination.

(2) If the Secretary or SAA grant a waiver, the manufacturer must reimburse any owner of an affected manufactured home who chose to make the correction before the manufacturer did so for the reasonable cost of correction.

(g) *Recordkeeping.* The manufacturer must provide the report and maintain the records that are required by § 3282.417 for all notification and correction actions.

§ 3282.414 Replacement or repurchase of homes after sale to purchaser.

(a) *Order to replace or repurchase.*

Whenever a manufacturer cannot fully correct an imminent safety hazard or a serious defect in a manufactured home for which there is a completed sale to a purchaser within 60 days of the issuance of an order under § 3282.413 or any extension of the 60-day deadline that has been granted by the Secretary in accordance with § 3282.413(c), the Secretary or, if authorized in writing by the Secretary in accordance with § 3282.413(a)(3), the SAA may require that the manufacturer:

(1) Replace the manufactured home with a home that:

(i) Is substantially equal in size, equipment, and quality; and

(ii) Either is new or is in the same condition that 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) Take possession of the manufactured home, if the Secretary or the SAA so orders, and refund the purchase price in full, except that the amount of the purchase price may be reduced by a reasonable amount for depreciation if the home has been in the possession of the owner for more than 1 year and the amount of depreciation is based on:

(i) Actual use of the home; and

(ii) An appraisal system approved by the Secretary or the SAA that does not take into account damage or deterioration resulting from the imminent safety hazard or serious defect.

(b) *Factors affecting order.* In determining whether to order replacement or refund by the manufacturer, the Secretary or the SAA will consider:

(1) The threat of injury or death to manufactured home occupants;

(2) Any costs and inconvenience to manufactured home owners that will result from the lack of adequate repair within the specified period;

(3) The expense to the manufacturer;

(4) Any obligations imposed on the manufacturer under contract or other applicable law of which the Secretary or the SAA has knowledge; and

(5) Any other relevant factors that may be brought to the attention of the Secretary or the SAA.

(c) *Owner's election of remedy.* When under contract or other applicable law the owner has the right of election between replacement and refund, the manufacturer must inform the owner of such right of election and must inform the Secretary of the election, if any, made by the owner.

(d) *Recordkeeping.* The manufacturer must provide the report that is required by § 3282.417 when a manufactured home has been replaced or repurchased under this section.

§ 3282.415 Correction of homes before sale to purchaser.

(a) *Sale or lease prohibited.* Manufacturers, retailers, and distributors must not sell, lease, or offer for sale or lease any manufactured home that they have reason to know in the

exercise of due care contains a noncompliance, defect, serious defect, or an imminent safety hazard. The sale of a home to a purchaser is complete when all contractual obligations of the manufacturer, retailer, and distributor to the purchaser have been met.

(b) *Retailer/distributor notification to manufacturer.* When a retailer, acting as a reasonable retailer, or a distributor, acting as a reasonable distributor, believes that a manufactured home that has been sold to the retailer or distributor, but for which there is no completed sale to a purchaser, likely contains a noncompliance, defect, serious defect, or an imminent safety hazard, the retailer or distributor must notify the manufacturer of the home in a timely manner.

(c) *Manufacturer's remedial responsibilities.* Upon a Final Determination pursuant to § 3282.412 by the Secretary or an SAA, a determination by a court of appropriate jurisdiction, or a manufacturer's own determination that a manufactured home that has been sold to a retailer but for which there is no completed sale to a purchaser contains a noncompliance, defect, serious defect, or an imminent safety hazard, if caused by the manufacturer or a person working on behalf of the manufacturer, or when the retailer/distributor has not made the corrections for the problems they cause, the manufacturer must do one of the following:

(1) Immediately repurchase such manufactured home from the retailer or distributor at the price paid by the retailer or distributor, plus all transportation charges involved, if any, and a reasonable reimbursement of not less than 1 percent per month of such price paid prorated from the date the manufacturer receives notice by certified mail of the noncompliance, defect, serious defect, or imminent safety hazard; or

(2) At its expense, immediately furnish to the retailer or distributor all required parts or equipment for installation in the home by the retailer or distributor, and the manufacturer must reimburse the retailer or distributor for the reasonable value of the retailer's or distributor's work, plus a reasonable reimbursement of not less than 1 percent per month of the manufacturer's or distributor's selling price prorated from the date the manufacturer receives notice by certified mail to the date the noncompliance, defect, serious defect, or imminent safety hazard is corrected, so long as the retailer or distributor proceeds with reasonable diligence with the required work; or

(3) Carry out all needed corrections to the home.

(d) *Retailer/distributor responsibilities.* Upon a Final Determination pursuant to 3282.412 by the Secretary or an SAA, a determination by a court of appropriate jurisdiction, or an agreement reached under section 623(c)(12) of the Act [Dispute Resolution] that a retailer/distributor is responsible for taking a home out of compliance with the construction standards and that the home contains a noncompliance, defect, serious defect, or an imminent safety hazard, the retailer/distributor must, before it is permitted to sell the home:

(1) At its expense, immediately obtain approved designs or instructions from the manufacturer and all required parts and equipment for correction of the home and reimburse the manufacturer or the person authorized by the manufacturer to make the corrections on the home; or

(2) Carry out all needed corrections to the home when approved by the manufacturer.

(e) *Establishing costs.* The value of reasonable reimbursements as specified in paragraph (c) of this section will be fixed by either:

(1) Mutual agreement of the manufacturer and retailer or distributor; or

(2) A court in an action brought under section 613(b) of the Act (42 U.S.C. 5412(b)).

(f) *Records required.* The manufacturer and the retailer or distributor must maintain records of their actions taken under this section in accordance with § 3282.417.

(g) *Exception for leased homes.* This section does not apply to any manufactured home purchased by a retailer or distributor that has been leased by such retailer or distributor to a tenant for purposes other than resale. Other remedies that may be available to a retailer or distributor under subpart I of this part continue to be applicable.

(h) *Indemnification.* A manufacturer may indemnify itself through agreements or contracts with retailers, distributors, transporters, installers, or others for the costs of repurchase, parts, equipment, and corrective work incurred by the manufacturer pursuant to paragraph (c).

§ 3282.416 Oversight of notification and correction activities.

(a) *IPIA responsibilities.* The IPIA in each manufacturing plant must:

(1) Assure that notifications required under this subpart I are sent to all owners, purchasers, retailers, and distributors of whom the manufacturer has knowledge;

(2) Audit the certificates required by § 3282.417 to assure that the manufacturer has made required corrections;

(3) Whenever a manufacturer is required to determine a class of homes pursuant to § 3282.404(b), provide either:

(i) The IPIA's written concurrence on the methods used by the manufacturer to identify the homes that should be included in the class of homes; or

(ii) The IPIA's written statement explaining why it believes the manufacturer's methods for determining the class of homes were inappropriate or inadequate; and

(4) Periodically review the manufacturer's service records of determinations under § 3282.404 and take appropriate action in accordance with §§ 3282.362(c) and 3282.364.

(b) *SAA and Secretary's responsibilities.* (1) SAA oversight of manufacturer compliance with this subpart I will be done primarily by periodically checking the records that manufacturers are required to keep under § 3282.417.

(2) The SAA or Secretary to which the report required by § 3282.417(a) is sent is responsible for assuring through oversight that remedial actions have been carried out as described in the report. The SAA of the State in which an affected manufactured

home is located may inspect that home to determine whether any correction required under this subpart I is carried out in accordance with the approved plan or, if there is no plan, to the Standards or other approval obtained by the manufacturer.

§ 3282.417 Recordkeeping requirements.

(a) *Manufacturer report on notifications and corrections.* Within 30 days after the deadline for completing any notifications, corrections, replacement, or repurchase required pursuant to this subpart I, the manufacturer must provide a complete report of the action taken to, as appropriate, the Secretary or the SAA that approved the plan under § 3282.408, granted a waiver, or issued the order under § 3282.413. If any other SAA or the Secretary forwarded the relevant consumer complaint or other information to the manufacturer in accordance with § 3282.403, the manufacturer must send a copy of the report to that SAA or the Secretary, as applicable.

(b) *Records of manufacturer's determinations.* (1) A manufacturer must record each initial and class determination required under § 3282.404 in its service records, in a manner approved by the Secretary or an SAA and that identifies who made each determination, what each determination was, and all bases for each determination. Such information must be available for review by the IPIA.

(2) The manufacturer records must include:

(i) The information it received that likely indicated a noncompliance, defect, serious defect, or imminent safety hazard;

(ii) All of the manufacturer's determinations and each basis for those determinations;

(iii) The methods used by the manufacturer to establish any class, including, when applicable, the cause of the defect, serious defect, or imminent safety hazard; and

(iv) Any IPIA concurrence or statement that it does not concur with the manufacturer's class determination, in accordance with § 3282.404(b).

(c) *Manufacturer records of notifications.* When a manufacturer is required to provide notification under this subpart, the manufacturer must maintain in its files a copy of each type of notice sent and a complete list of the persons notified and their addresses. The manufacturer must maintain these records in a manner approved by the Secretary or an SAA to identify each notification campaign.

(d) *Manufacturer records of corrections.* When a manufacturer is required to provide or provides correction under this subpart, the manufacturer must maintain in its files one of the following, as appropriate, for each manufactured home involved:

(1) If the correction is made, a certification by the manufacturer that the repair was made to conform to the Federal construction and safety standards in effect at the time the home was manufactured and that each identified imminent safety hazard or serious defect has been corrected; or

(2) If the owner refuses to allow the manufacturer to repair the home, a certification by the manufacturer that:

(i) The owner has been informed of the problem that may exist in the home;

(ii) The owner has been provided with a description of any hazards, malfunctions, deterioration, or other consequences that may reasonably be expected to result from the defect, serious defect, or imminent safety hazard; and

(iii) An attempt has been made to repair the problems, but the owner has refused the repair.

(e) *Retailer and distributor records of corrections.* When a retailer or distributor makes corrections necessary to bring a manufactured home into compliance with the Standards, the retailer or distributor must maintain a complete record of its actions.

(f) *Length of retention.* Records of the information and any other records required to be maintained by this subpart must be kept

for a minimum of 5 years from the date the manufacturer, retailer, or distributor, as applicable:

- (1) Received the information;
- (2) Creates the record; or
- (3) Completes the notification or correction campaign.

§ 3282.418 Factors for appropriateness and amount of civil penalties.

In determining whether to seek a civil penalty for a violation of the requirements of this subpart I, and the amount of such penalty to be recommended, the Secretary will consider the provisions of the Act and the following factors:

- (a) The gravity of the violation;
- (b) The degree of the violator's culpability, including whether the violator had acted in

good faith in trying to comply with the requirements;

- (c) The injury to the public;
- (d) Any injury to owners or occupants of manufactured homes;
- (e) The ability to pay the penalty;
- (f) Any benefits received by the violator;
- (g) The extent of potential benefits to other persons;
- (h) Any history of prior violations;
- (i) Deterrence of future violations; and
- (j) Such other factors as justice may require.

[End of MHCC recommended text.]

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