



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

February 15, 2006

Robert E. Solomon, P.E.
Project Manager
National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02269-7422

**Re: Transmittal of HUD Proposed Rule on Subpart I
for MHCC Review and Comment**

Dear Mr. Solomon:

I am requesting that, as the representative of the Administering Organization for the Manufactured Housing Consensus Committee ("MHCC"), you circulate this letter and its enclosure to the members of the MHCC. The letter submits to the MHCC, for its review and comment, a proposed rule on Subpart I (24 CFR part 3282), prior to publication for public comment in the Federal Register. This proposed rule includes changes discussed with the MHCC in its teleconference on January 23, 2006, and is being submitted in advance of the next MHCC teleconference, which is scheduled for February 23, 2006.

The Secretary, the Assistant Secretary for Housing-Federal Housing Commissioner, and HUD's Office of Regulatory Affairs and Manufactured Housing (ORAMH) appreciate the thoughtful effort of the MHCC to update and bring more clarity to the Consumer Complaint Handling and Remedial Actions provisions in Subpart I of HUD's manufactured housing regulations. To this date, the MHCC and HUD have held more than 20 in-person and conference call meetings on Subpart I. The MHCC members are commended for the attention they have paid to the various viewpoints presented during the numerous subcommittee and full committee meetings leading up to the vote on the MHCC recommendation on Subpart I that was submitted to HUD, and subsequent to that vote.

ORAMH is in agreement with the vast majority of the MHCC recommendation that resulted from these meetings. Because HUD would make a few modifications to the MHCC recommendation, however, ORAMH is presenting this draft proposed rule in accordance with the prepublication procedure established in Section 604(b)(3) of the Act. That section provides the MHCC with a review and comment period before HUD can publish the proposed rule for public comment under the Administrative Procedure Act (see 5 U.S.C. 553). The draft proposed rule (enclosed) incorporates almost all of the language recommended by the MHCC, but with the modifications that were discussed by HUD representatives and the MHCC in previous meetings

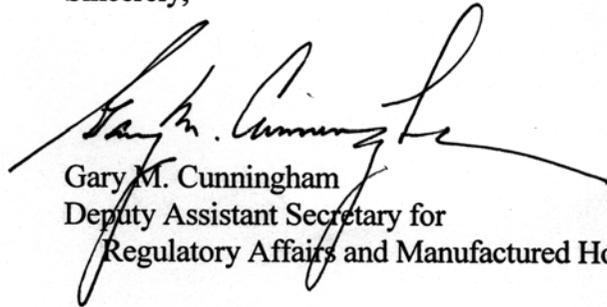
on Subpart I, and were reviewed by the Committee in a prior draft of ORAMH's Subpart I proposal.

To assist the MHCC in its review, the enclosed draft proposed rule shows all of HUD's limited changes from the MHCC recommendation in redline format. In other words, the draft proposed rule is the same as the recommendation submitted to the Secretary by the MHCC except for the few changes in the text that are indicated as being additions (redline or underscore, or other formatting, depending on how each reader's options are set) or deletions (strikeout). Language changes that resulted from the January 23, 2006, conference call with the MHCC are shown in bold redline format, as part of HUD's proposed changes that the MHCC has reviewed previously.

Our hope is that this presentation will make it easier for the MHCC to focus its comments and will expedite review and eventual publication of the revised Subpart I for public comment. Because the changes in §§ 3282.411 and 3282.412 include a clarification and simplification of the MHCC recommendation, without substantive revision, the redline format of the draft proposed rule overstates the extent of the changes HUD is proposing.

We look forward to the MHCC's response to the enclosed draft proposed rule, and to continuing to work closely with the members on this matter throughout the remaining rulemaking stages.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary M. Cunningham", is written over the typed name and title.

Gary M. Cunningham
Deputy Assistant Secretary for
Regulatory Affairs and Manufactured Housing

Enclosure

**HUD's Office of Manufactured Housing Programs
Draft Proposed Rule for MHCC Consideration**

**(REVISED -- to Include, in Bold Text, Changes from
12-9-05 Version, as Discussed in MHCC 1-23-06 Meeting)**

Changes since 12-9-05 appear at: [pg. 2] **§ 3282.362(c)(1)**
 [pg. 7] **§ 3282.405(a)**
 [pp. 10-11] **§ 3282.407(c)(2) (reverted to MHCC "good
 faith" language).**
 [pp. 27-29] **§ 3282.417(b)(3), (e)(1), (e)(3), and correct
 numbering of (f) and (g).**

MHCC SUBPART I PROPOSAL FOR BALLOTING

**TITLE 24, CODE OF FEDERAL REGULATIONS
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 ~~H~~home-~~C~~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 ~~H~~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.

1 **SUBPART H, § 3282.362(c)(1):**

2
3 Add the following new 11th sentence, before the sentence "Failure to
4 perform to the approved manual justifies withholding labels until an
5 adequate level of performance is attained."

6
7 "The IPIA must periodically review the **records that**
8 **§ 3282.417(e) requires the** manufacturer's ~~service records to~~
9 **keep,** for determinations under § 3282.404 to see whether evidence
10 exists that the manufacturer is ignoring or not performing under its
11 approved quality assurance manual, and, if such evidence is found,
12 must advise the manufacturer so that appropriate action may be
13 taken under § 3282.404."
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17 **SUBPART I**

18
19 **Table of Contents:**

20
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39 **§ 3282.418 Factors for appropriateness and amount of civil penalties**
40
41

1 **§ 3282.401 Purpose and scope.**
2

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

7 (b) Scope. This subpart sets out the procedures to be followed by
8 | manufacturers, retailers and distributors, State Administrative Agencies, primary
9 inspection agencies, and the Secretary to assure that notification and correction
10 are provided with respect to manufactured homes when required under this
11 subpart. Notification and correction may be required with respect to
12 manufactured homes that have been sold or otherwise released by the
13 manufacturer to another party.
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17 **§ 3282.402 General provisions.**
18

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

21 (b) Manufacturer's liability limited. A manufacturer is not responsible for
22 failures that occur in any manufactured home or component as the result of
23 normal wear and aging, unforeseeable consumer abuse, or unreasonable neglect of
24 maintenance. The life of a component warranty may be one of the indicators used
25 to establish normal wear and aging. A failure of any component may not be
26 attributed by the manufacturer to normal wear and aging under this subpart during
27 the term of any applicable warranty provided by the original manufacturer of the
28 affected component.
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31 **§ 3282.403 Consumer complaint and information referral.**
32

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

39 (b) SAA and HUD responsibilities. (1) When an SAA or the Secretary
40 receives a consumer complaint or other information that likely indicates a

1 noncompliance, defect, serious defect, or imminent safety hazard in a
2 manufactured home, the SAA or HUD must:

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

5 (ii) Send a copy of the complaint or other information to the SAA of the
6 State where the manufactured home was manufactured or to the Secretary if there
7 is no such SAA.

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

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

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20 **§ 3282.404 Manufacturers' determinations and related concurrences.**

21
22 (a) Initial determination. (1) Not later than 30 days after a manufacturer
23 receives information that it believes in good faith likely indicates a
24 noncompliance, defect, serious defect, or imminent safety hazard, the
25 manufacturer must make a specific initial determination that there is a
26 noncompliance, a defect, a serious defect, an imminent safety hazard, or that the
27 information requires no further action under subpart I. When no further action
28 under subpart I is required and a problem still exists, the manufacturer must
29 forward the information in its possession to the appropriate retailer and, if known,
30 the installer, for their consideration.

31 (2) When a manufacturer makes an initial determination that there is a
32 serious defect or an imminent safety hazard, the manufacturer must immediately
33 notify the Secretary, the SAA in the State of manufacture, and the manufacturer's
34 IPIA.

35 ~~(3)~~ In making the determination of noncompliance, defect, serious
36 defect, imminent safety hazard, or that no further action is required under subpart
37 I, the manufacturer must review the information it received and carry out
38 reasonable investigations, including, if appropriate, inspections. The
39 manufacturer must review the information, the known facts, and the
40 circumstances relating to the complaint or information, including service records,

1 approved designs, and audit findings, as applicable, to decide what investigations
2 are reasonable.

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

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

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

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

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

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

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

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

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

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

28 (iii) Inspection of the service records of a home in question and of homes
29 of the same design or construction, as appropriate, produced before and after that
30 home, if it is clear that the cause of the defect, serious defect, or imminent safety
31 hazard is such that the defect, serious defect, or imminent safety hazard would be
32 readily reportable by consumers or retailers;

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

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

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

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

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

8 (d) Documentation required. The manufacturer must comply with the
9 recordkeeping requirements in § 3282.417 as applicable to its determinations and
10 any IPIA concurrence or statement that it does not concur.

14 § 3282.405 Notification pursuant to manufacturer's determination.

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

20 ~~(1) A the same defect introduced systematically in more than one home,~~
21 ~~a serious defect, or an imminent safety hazard; or~~

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

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

28 (2) Defects. When a manufacturer has made a class determination in
29 accordance with § 3282.404 that a defect exists or likely exists in more than one
30 home, the manufacturer must prepare a plan for notification in accordance with
31 § 3282.408, and must provide notification with respect to each manufactured
32 home in the class of manufactured homes.

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

40 (c) Plan for notification required. (1) If a manufacturer determines that it
41 is responsible for providing notification under this section, the manufacturer must

1 prepare and receive approval on a plan for notification as set out in § 3282.408,
2 unless the manufacturer meets alternative requirements established in § 3282.407.

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

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

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

12 (2) By certified or express mail to the first purchaser of each
13 manufactured home in the class of manufactured homes containing the defect,
14 serious defect, or imminent safety hazard, and, to the extent feasible, to any
15 subsequent owner to whom any warranty provided by the manufacturer or
16 required by Federal, State, or local law on such manufactured home has been
17 transferred, except that notification need not be sent to any person known by the
18 manufacturer not to own the manufactured home in question if the manufacturer
19 has a record of a subsequent owner of the manufactured home; and

20 (3) By certified or express mail to each other person who is a registered
21 owner of a manufactured home in the class of homes containing the defect,
22 serious defect, or imminent safety hazard and whose name has been ascertained
23 pursuant to § 3282.211 or is known to the manufacturer.
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26

27 **§ 3282.406 Required manufacturer correction.**
28

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

33 (2) In accordance with section 623 of the Act and the regulations in part
34 3288 of this chapter, the manufacturer, retailer, or installer of a manufactured
35 home must correct, at its expense, each failure in the performance, construction,
36 components, or material of the home that renders the home or any part of the
37 home not fit for the ordinary use for which it was intended and that is reported
38 during the 1-year period beginning on the date of installation of the home.

39 (b) Correction of serious defects and imminent safety hazards. (1) A
40 manufacturer required to furnish notification under § 3282.405 or § 3282.413
41 must correct, at its expense, any serious defect or imminent safety hazard that can

1 be related to an error in design or assembly of the manufactured home by the
2 manufacturer, including an error in design or assembly of any component or
3 system incorporated into the manufactured home by the manufacturer.

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

7 (3) Each serious defect or imminent safety hazard corrected under this
8 paragraph (a) must be brought into compliance with applicable construction and
9 safety standards or, where those standards are not specific, with the
10 manufacturer's approved design.

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

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

18 (d) Corrections by owners. A manufacturer that is required to make
19 corrections under paragraph (b) of this section or that elects to make corrections
20 in accordance with § 3282.407 must reimburse any owner of an affected
21 manufactured home who chose to make the correction before the manufacturer
22 did so for the reasonable cost of correction.

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

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

1 **§ 3282.407 Voluntary compliance with the notification and correction**
2 **requirements under the Act.**

3
4 A manufacturer that takes corrective action that complies with one of the
5 following three alternatives to the requirement in § 3282.408 for preparing a plan
6 will be deemed to have provided any notification required by § 3282.405:

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

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

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

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

29 (c) Waiver. (1) A manufacturer may obtain a waiver of the notification
30 requirements in § 3282.405 and the plan requirements in § 3282.408 either from
31 the SAA of the State of manufacture, when all of the manufactured homes that
32 would be covered by the plan were manufactured in that State, or from the
33 Secretary. As of the date of a request for a waiver, the notification and plan
34 requirements are deferred pending timely submission of any additional
35 documentation as the SAA or the Secretary may require and final resolution of the
36 waiver request. If a waiver request is not granted, the plan required by
37 § 3282.408 must be submitted within 5 days after the expiration of the time period
38 established in § 3282.408 if the manufacturer is notified that the request was not
39 granted.

40 (2) The waiver may be approved if not later than 20 days after making the
41 determination that notification is required, the manufacturer, **in good faith,**

1 | presents evidence that **it in good faith believes would** shows to the satisfaction of
2 the SAA or the Secretary that:

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

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

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

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

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20 **§ 3282.408 Plan of notification required.**

21
22 (a) Manufacturer's plan required. Except as provided in § 3282.407, if a
23 manufacturer determines that it is responsible for providing notification under
24 § 3282.405, the manufacturer must prepare a plan in accordance with this section
25 and § 3282.409. The manufacturer must, as soon as practical, but not later than
26 20 days after making the determination of defect, serious defect, or imminent
27 safety hazard, submit the plan for approval to one of the following, as appropriate:

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

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

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

1 **§ 3282.409 Contents of plan.**

2
3 (a) Purpose of plan. This section sets out the requirements that must be
4 met by a manufacturer in preparing any plan it is required to submit under
5 § 3282.408. The underlying requirement is that the plan shows how the
6 manufacturer will fulfill its responsibilities with respect to notification and
7 correction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (5) A statement of whether there will be any warning that a dangerous
10 occurrence may take place and what that warning would be, and of any signs that
11 the owner might see, hear, smell, or feel which might indicate danger or
12 deterioration of the manufactured home as a result of the defect, serious defect, or
13 imminent safety hazard;

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

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

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

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

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

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

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

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

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

39
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41

1 **§ 3282.410 Implementation of plan.**
2

3 (a) Deadline for notifications. (1) The manufacturer must complete the
4 notifications carried out under a plan approved by an SAA or the Secretary under
5 § 3282.408 on or before the deadline approved by the SAA or Secretary. In
6 approving each deadline, an SAA or the Secretary will allow a reasonable time to
7 complete all notifications, taking into account the number of manufactured homes
8 involved and the difficulty of completing the notifications.

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

16 (b) Deadline for corrections. A manufacturer that is required to correct a
17 serious defect or imminent safety hazard pursuant to § 3282.406(b) must complete
18 implementation of the plan required by § 3282.408 on or before the deadline
19 approved by the SAA or the Secretary. The deadline must be no later than 60
20 days after approval of the plan. In approving the deadline, the SAA or the
21 Secretary will allow a reasonable amount of time to complete the plan, taking into
22 account the seriousness of the problem, the number of manufactured homes
23 involved, the immediacy of any risk, and the difficulty of completing the action.
24 The seriousness and immediacy of any risk posed by the serious defect or
25 imminent safety hazard will be given greater weight than other considerations.

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

35 (d) Recordkeeping. The manufacturer must provide the report and
36 maintain the records that are required by § 3282.417 for all notification and
37 correction actions.
38

1 **§ 3282.411 SAA initiation of remedial action.**
2

3 (a) SAA review of information. Whenever an SAA has information
4 indicating the possible existence of a noncompliance, a defect, a serious defect, or
5 an imminent safety hazard in a manufactured home, the SAA may initiate
6 administrative review of the need for notification and correction. An SAA
7 initiates administrative review by either:

8 (1) Referring the matter to another SAA in accordance with paragraph (b)
9 of this section or to the Secretary; or

10 (2) Taking action itself in accordance with § 3282.412, when it appears
11 that all of the homes affected by the noncompliance, defect, serious defect, or
12 imminent safety hazard were manufactured in the SAA's state.

13 (b) SAA referral of matter. If at any time it appears that the affected
14 manufactured homes were manufactured in more than one state, an SAA that
15 decides to initiate such administrative review must refer the matter to the
16 Secretary for possible action pursuant to § 3282.412. If it appears that all of the
17 affected manufactured homes were manufactured in another state, an SAA that
18 decides to initiate administrative review must refer the matter to the SAA in the
19 state of manufacture or to the Secretary, for possible action pursuant to
20 § 3282.412.
21
22

23
24 **§ 3282.412 Preliminary and final administrative determinations.**
25

26 (a) Grounds for issuance of preliminary determination. The Secretary or,
27 in accordance with § 3282.411, an SAA in the state of manufacture may issue a
28 Notice of Preliminary Determination when:

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

31 (i) A noncompliance, a defect, a serious defect, or an imminent safety
32 hazard possibly exists; or

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

36 (2) The Secretary or SAA has information that indicates a noncompliance,
37 a defect, a serious defect, or an imminent safety hazard possibly exists, and, in the
38 case of the SAA, the SAA believes that:

39 (i) The affected manufactured home has been sold or otherwise released
40 by a manufacturer to a retailer or distributor, but there is no completed sale of the
41 home to a purchaser;

1 (ii) Based on the same factors that are established for a manufacturer's
2 class determination in §3282.404(b), the information indicates a class of homes in
3 which a noncompliance or defect possibly exists; or

4 (iii) The information indicates one or more homes in which a serious
5 defect or an imminent safety hazard possibly exists;

6 (3) The Secretary or SAA is reviewing a plan under § 3282.408 and the
7 Secretary or SAA and the manufacturer disagree on proposed changes to the
8 plan;

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

11 (5) There is information that a manufacturer failed to make the
12 determinations required under § 3282.404.

13 (b) Additional requirements-SAA issuance. (1) An SAA that receives
14 information that indicates a serious defect or an imminent safety hazard possibly
15 exists in a home manufactured in that State must notify the Secretary about that
16 information.

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

21 (c) Additional requirements-Secretary issuance. The Secretary will notify
22 the SAA of each State where the affected homes were manufactured, and to the
23 extent it is reasonable the SAA of each state where the homes are located, of the
24 issuance of a preliminary determination. Failure to comply with this requirement
25 does not affect the validity of the preliminary determination.

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

28 (i) Include the factual basis for the determination;

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

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

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

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

1 (e) Presentation of views. (1) If a manufacturer elects to exercise its right
2 to a hearing or presentation of views, the Secretary or the SAA, as applicable,
3 must receive the manufacturer's request for a hearing or presentation of views:

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

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

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

11 (f) Issuance of Final Determination. (1) The SAA or the Secretary, as
12 appropriate, may make a Final Determination that is based on the allegations in
13 the preliminary determination and is adverse to the manufacturer if:

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

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

20 (2) At the time that the SAA or Secretary makes a Final Determination
21 that an imminent safety hazard, serious defect, defect, or noncompliance exists,
22 the SAA or Secretary, as appropriate, must issue an order in accordance with
23 § 3282.413.

24
25
26
27 **~~§ 3282.411 Administrative initiation of remedial action.~~**

28
29 ~~— (a) Administrative review of information. Whenever the Secretary or an~~
30 ~~SAA has information indicating the possible existence of a noncompliance,~~
31 ~~defect, serious defect, or imminent safety hazard in a manufactured home, the~~
32 ~~Secretary or SAA may initiate administrative review of the need for notification~~
33 ~~and correction in accordance with paragraphs (b) and (c) of this section.~~

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

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

40 ~~— (i) The SAA believes that a manufactured home that has been sold or~~
41 ~~otherwise released by a manufacturer to a retailer or distributor, but for which~~

1 ~~there is no completed sale to a purchaser, contains a noncompliance, defect,~~
2 ~~serious defect, or imminent safety hazard;~~
3 ~~——(ii) The SAA believes that the information referenced in paragraph (a) of~~
4 ~~this section indicates a class of homes in which a noncompliance or defect~~
5 ~~possibly exists;~~
6 ~~——(iii) The SAA believes that the information referenced in paragraph (a) of~~
7 ~~this section indicates one or more homes in which a serious defect or an imminent~~
8 ~~safety hazard possibly exists;~~
9 ~~——(iv) The SAA is reviewing a plan under § 3282.408 and the SAA and~~
10 ~~manufacturer disagree on proposed changes to the plan;~~
11 ~~——(v) The SAA believes that the manufacturer has failed to fulfill the~~
12 ~~requirements of a waiver granted under § 3282.407; or~~
13 ~~——(vi) There is evidence that a manufacturer in the State failed to make the~~
14 ~~determinations required under § 3282.404.~~
15 ~~——(3) For purposes of this paragraph (b), the conclusion that there is a class~~
16 ~~of homes in which a noncompliance or defect possibly exists must be based on the~~
17 ~~same factors that are established for a manufacturer's class determination in~~
18 ~~§3282.404(b). If evidence arises that the manufactured homes in the class were~~
19 ~~manufactured in more than one state, the SAA must refer the matter to the~~
20 ~~Secretary for any further action.~~
21 ~~——(4) An SAA that issues a preliminary determination must provide a copy~~
22 ~~of the preliminary determination to the Secretary at the time of its issuance.~~
23 ~~Failure to comply with this requirement does not affect the validity of the~~
24 ~~preliminary determination.~~
25 ~~——(c) Secretary authority. The Secretary may make a preliminary~~
26 ~~determination in accordance with § 3282.412 when:~~
27 ~~——(1) There is evidence that a noncompliance, defect, serious defect, or~~
28 ~~imminent safety hazard possibly exists in any manufactured home; or~~
29 ~~——(2) There is evidence that the manufacturer failed to make the~~
30 ~~determinations required under § 3282.404.~~
31 ~~——(d) Secretary notification. The Secretary will notify the SAA of each~~
32 ~~State where the affected homes were manufactured and, to the extent it is~~
33 ~~reasonable, the SAA of each State where the homes are located of the issuance of~~
34 ~~a preliminary determination. Failure to comply with this requirement does not~~
35 ~~affect the validity of the preliminary determination.~~

1 ~~§ 3282.412 Preliminary and final administrative determinations.~~

2
3 ~~—— (a) Issuance of preliminary determination. In accordance with~~
4 ~~§ 3282.411, the Secretary or an SAA may issue a Notice of Preliminary~~
5 ~~Determination when:~~

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

8 ~~—— (i) A noncompliance, defect, serious defect, or imminent safety hazard~~
9 ~~possibly exists; or~~

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

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

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

17 ~~—— (i) Include the factual basis for the determination;~~

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

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

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

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

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

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

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

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

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

1 ~~—— (i) The manufacturer fails to respond to the Notice of Preliminary~~
2 ~~Determination within the time period established in paragraph (c)(2) of this~~
3 ~~section; or~~
4 ~~—— (ii) The SAA or the Secretary decides that the views and evidence~~
5 ~~presented by the manufacturer or others are insufficient to rebut the preliminary~~
6 ~~determination.~~
7 ~~—— (2) At the time that the SAA or Secretary makes a Final Determination~~
8 ~~that an imminent safety hazard, serious defect, defect, or noncompliance exists,~~
9 ~~the SAA or Secretary, as appropriate, must issue an order in accordance with~~
10 ~~§ 3282.413.~~

11
12
13
14 **§ 3282.413 Implementation of Final Determination.**

15
16 (a) Issuance of orders. (1) The SAA or the Secretary, as appropriate, must
17 issue an order directing the manufacturer to furnish notification if:

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

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

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

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

28 (i) The SAA or the Secretary makes a Final Determination that a defect or
29 noncompliance exists in a manufactured home that has been sold or otherwise
30 released by a manufacturer to a retailer or distributor but for which the sale to a
31 purchaser has not been completed;

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

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

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

40 (4) An SAA that has a concurrence or authorization from the Secretary on
41 any order issued under this section must have the Secretary's concurrence on any

1 subsequent changes to the order. An SAA that has issued a Preliminary
2 Determination must have the Secretary's concurrence on any waiver of
3 notification or any settlement when the concerns addressed in the Preliminary
4 Determination involve a serious defect or an imminent safety hazard.

5 (5) If an SAA or the Secretary makes a Final Determination that the
6 manufacturer failed to make in good faith an initial determination required under
7 § 3282.404(a):

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

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

12 (b) Decision to order replacement or repurchase. The SAA or the
13 Secretary will order correction of any manufactured home covered by an order
14 issued in accordance with paragraph (a)(2) of this section unless any requirements
15 and factors applicable under § 3282.414 and § 3282.415 indicate that the SAA or
16 the Secretary should order replacement or repurchase of the home.

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

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

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

27 (ii) Sixty (60) days after issuance of the order, in the case of a Final
28 Determination of serious defect, defect, or noncompliance.

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

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

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

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

1 (d) Appeal of SAA determination. Within 10 days of a manufacturer
2 receiving notice that an SAA has made a Final Determination that an imminent
3 safety hazard, a serious defect, a defect, or noncompliance exists or that the
4 manufacturer failed to make the determinations required under § 3282.404, the
5 manufacturer may appeal the Final Determination to the Secretary under
6 § 3282.309.

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

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

21 (i) The manufacturer has made a class determination in accordance with
22 § 3282.404(b);

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

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

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

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

1 **§ 3282.414 Replacement or repurchase of homes after sale to purchaser.**

2
3 (a) Order to replace or repurchase. Whenever a manufacturer cannot fully
4 correct an imminent safety hazard or a serious defect in a manufactured home for
5 which there is a completed sale to a purchaser within 60 days of the issuance of an
6 order under § 3282.413 or any extension of the 60-day deadline that has been
7 granted by the Secretary in accordance with § 3282.413(c), the Secretary or, if
8 authorized in writing by the Secretary in accordance with § 3282.413(a)(3), the
9 SAA may require that the manufacturer:

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

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

12 (ii) Either is new or is in the same condition that the defective
13 manufactured home would have been in at the time of discovery of the imminent
14 safety hazard or serious defect had the imminent safety hazard or serious defect
15 not existed; or

16 (2) Take possession of the manufactured home, if the Secretary or the
17 SAA so orders, and refund the purchase price in full, except that the amount of
18 the purchase price may be reduced by a reasonable amount for depreciation if the
19 home has been in the possession of the owner for more than 1 year and the
20 amount of depreciation is based on:

21 (i) Actual use of the home; and

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

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

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

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

30 (3) The expense to the manufacturer;

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

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

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

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

1 § 3282.415 Correction of homes before sale to purchaser.
2

3 (a) Sale or lease prohibited. Manufacturers, retailers, and distributors
4 must not sell, lease, or offer for sale or lease any manufactured home that they
5 have reason to know in the exercise of due care contains a noncompliance, defect,
6 serious defect, or an imminent safety hazard. The sale of a home to a purchaser is
7 complete when all contractual obligations of the manufacturer, retailer, and
8 distributor to the purchaser have been met.

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

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

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

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

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

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

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

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

14 ~~(de) Establishing costs. The value of reasonable reimbursements as~~
15 ~~specified in paragraph (c) of this section will be fixed by either:~~

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

17 ~~(2) A court in an action brought under section 613(b) of the Act (42 USC~~
18 ~~5412(b)).~~

19 ~~(fe) Records required. The manufacturer and the retailer or distributor~~
20 ~~must maintain records of their actions taken under this section in accordance with~~
21 ~~§ 3282.417.~~

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

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

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33
34 **§ 3282.416 Oversight of notification and correction activities.**

35
36 (a) IPIA responsibilities. The IPIA in each manufacturing plant must:

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

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

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

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

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

9 (4) Periodically review the manufacturer's service records of
10 determinations under § 3282.404 and take appropriate action in accordance with
11 §§ 3282.362(c) and 3282.364.

12 (b) SAA and Secretary's responsibilities. (1) SAA oversight of
13 manufacturer compliance with this subpart I will be done primarily by
14 periodically checking the records that manufacturers are required to keep under
15 § 3282.417.

16 (2) The SAA or Secretary to which the report required by § 3282.417(a) is
17 sent is responsible for assuring through oversight that remedial actions have been
18 carried out as described in the report. The SAA of the State in which an affected
19 manufactured home is located may inspect that home to determine whether any
20 correction required under this subpart I is carried out in accordance with the
21 approved plan or, if there is no plan, to the construction and safety sStandards or
22 other approval obtained by the manufacturer.

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25
26 **§ 3282.417 Recordkeeping requirements.**

27
28 (a) Manufacturer report on notifications and corrections. Within 30 days
29 after the deadline for completing any notifications, corrections, replacement, or
30 repurchase required pursuant to this subpart I, the manufacturer must provide a
31 complete report of the action taken to, as appropriate, the Secretary or the SAA
32 that approved the plan under § 3282.408, granted a waiver, or issued the order
33 under § 3282.413. If any other SAA or the Secretary forwarded the relevant
34 consumer complaint or other information to the manufacturer in accordance with
35 § 3282.403, the manufacturer must send a copy of the report to that SAA or the
36 Secretary, as applicable.

37 (b) Records of manufacturer's determinations. (1) A manufacturer must
38 record each initial and class determination required under § 3282.404 ~~in its~~
39 ~~service records~~, in a manner approved by the Secretary or an SAA and that
40 identifies who made each determination, what each determination was, and all

1 bases for each determination. Such information must be available for review by
2 the IPIA.

3 (2) The manufacturer records must include:

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

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

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

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

13 *[The following language in paragraph (3) had originally been added by*
14 *HUD as § 3282.417(e)(3) in the 12/9/05 draft, but is moved to § 3282.417(b)(3)*
15 *in this 2/3/06 draft, with changes as identified in bold text.]*

16 (3) When the records that a manufacturer is required to keep in
17 accordance with this **paragraph (b)** section involve a class of manufactured
18 homes that have the same noncompliance, defect, serious defect, or imminent
19 safety hazard, the manufacturer has the option of meeting the requirements of this
20 paragraph by establishing a class determination file, instead of including the same
21 information in the file **required by paragraph (e) of this section** for each
22 affected home. Such class determination file must contain the records of each
23 class determination, notification, and correction, as applicable. For each class
24 determination, the manufacturer must record once in each class determination file
25 the information common to the class, and must identify by serial number all of the
26 homes that the class comprises and that are subject to notification and correction,
27 as applicable.

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

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

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

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

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

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

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

10 (e) Maintenance of manufacturer's records. (1) Except as provided in
11 paragraph (b)(3) of this section, for each manufactured home produced by a
12 manufacturer, the manufacturer must maintain all of the information required by
13 paragraphs (b), (c), and (d) of this section in a printed or electronic format, and
14 must consolidate the information in a readily accessible file or in a readily
15 accessible combination of a printed file and an electronic file. The
16 manufacturer also must include in the file for each home all work orders for
17 corrections made to the home, homeowner complaints, and the information
18 required to be maintained by the manufacturer pursuant to § 3282.211. **For each**
19 **home, the manufacturer also must include in such file a copy of the home's**
20 **data plate; all information related to manufacture, handling, and assembly of**
21 **the home; any checklist or similar documentation used by the manufacturer**
22 **in the transport of the home; the name and address of the retailer; the**
23 **original or a copy of each purchasers' registration record received by the**
24 **manufacturer; all correspondence with the retailer and homeowner that is**
25 **related to the home; any information received by the manufacturer**
26 **regarding set-up of the home; all work orders for servicing the home; and**
27 **the information that the manufacturer is required to keep pursuant to**
28 **§ 3282.211.** The manufacturer must organize all such files in order of the serial
29 number of the homes produced.

30 (2) The manufacturer must maintain each of these manufactured home
31 records at the plant where the home was produced. If that plant is no longer in
32 existence, the manufacturer must keep the records at its nearest production plant
33 in the same State, or, if such a plant does not exist, at the manufacturer's corporate
34 headquarters.

35 *[The following language in paragraph (3) that HUD had added into the*
36 *12/9/05 draft has been moved to § 3282.417(b)(3) in this 2/3/06 draft.]*⁽³⁾ ~~When~~
37 ~~the records that a manufacturer is required to keep in accordance with this section~~
38 ~~involve a class of manufactured homes that have the same noncompliance, defect,~~
39 ~~serious defect, or imminent safety hazard, the manufacturer has the option of~~
40 ~~meeting the requirements of this paragraph by establishing a class determination~~
41 ~~file, instead of including the same information in the file for each affected home.~~

1 ~~Such class determination file must contain the records of each class~~
2 ~~determination, notification, and correction, as applicable. For each class~~
3 ~~determination, the manufacturer must record once in each class determination file~~
4 ~~the information common to the class, and must identify by serial number all of the~~
5 ~~homes that the class comprises and that are subject to notification and correction,~~
6 ~~as applicable.~~

7 (fe) Retailer and distributor records of corrections. When a retailer or
8 distributor makes corrections necessary to bring a manufactured home into
9 compliance with the construction and safety sS standards, the retailer or distributor
10 must maintain a complete record of its actions.

11 (gf) Length of retention. Records of the information and any other
12 records required to be maintained by this subpart must be kept for a minimum of
13 5 years from the date the manufacturer, retailer, or distributor, as applicable:

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

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20 **§ 3282.418 Factors for appropriateness and amount of civil penalties.**

21
22 In determining whether to seek a civil penalty for a violation of the
23 requirements of this subpart I, and the amount of such penalty to be
24 recommended, the Secretary will consider the provisions of the Act and the
25 following factors:

- 26 (a) The gravity of the violation;
- 27 (b) The degree of the violator's culpability, including whether the violator
28 had acted in good faith in trying to comply with the requirements;
- 29 (c) The injury to the public;
- 30 (d) Any injury to owners or occupants of manufactured homes;
- 31 (e) The ability to pay the penalty;
- 32 (f) Any benefits received by the violator;
- 33 (g) The extent of potential benefits to other persons;
- 34 (h) Any history of prior violations;
- 35 (i) Deterrence of future violations; and
- 36 (j) Such other factors as justice may require.