

Manufactured Housing Consensus Committee

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US Department of Housing and Urban Development
Robert C. Weaver Building – 451 Seventh Street, S.W.
Washington, DC 20410

June 1, 2006

Attention: The Honorable Alphonso Jackson Secretary

Dear Secretary Jackson:

As required by the National Manufactured Housing Construction and Safety Standards Act of 1974, I am formally transmitting a procedural enforcement regulation concerning Part 3282, *Manufactured Home Procedural and Enforcement Regulations and Enforcement Interpretation Bulletins*.

In essence, this submission is for all practical purposes, a re-submission of the Subpart I draft document sent to your office last year (see HUD AO letter and enclosure dated June 3, 2005).

The Manufactured Housing Consensus Committee, MHCC, has been in an ongoing discussion with the HUD program staff concerning revisions to Subpart I since April of 2004. The original MHCC position and recommendation concerning Subpart I was provided to you last year (see HUD AO letter and enclosure dated June 3, 2005).

Since June of 2005, the MHCC has continued a dialogue with your staff on proposed changes to Subpart I. This discussion has led to your submittal and resulting opportunity by the MHCC to review HUD's proposed rule on Subpart I (see HUD letter and enclosure dated February 15, 2005).

The MHCC in conjunction with a Special Task Group has just completed their review of the HUD proposed rule and is submitting the following as their position:

1. The MHCC is providing to your office a series of comments that relate to the proposed rule provided to the MHCC by HUD on February 15, 2006. These comments reflect the concerns of the MHCC with regard to HUD's proposed rule. These comments address three specific areas: Formal resubmittal of the MHCC Subpart I proposal and the principles used by the MHCC to draft the proposal under Section 604 (b) (3) of the Act; Identification of policy changes in HUD'S proposed rule that differ from the MHCC proposal and the impact of such changes; and specific language for changing HUD's proposed rule and the impact of making those changes. (See Enclosure A).
2. The MHCC re-submittal under Section 604 (b) (3) of the Act of its original Subpart I proposal dated June 3, 2005 (See Enclosure B)

3. The MHCC is also providing to your office under 604 (b) (3) of the Act a summary of the 16 principles considered by the MHCC over the course of the last two years concerning Subpart I revisions. (See Enclosure C).

The final decision to submit these documents was discussed and completed by the members of the MHCC during a conference call on May 24, 2006. Two roll call votes were taken as follows:

1. Accept the comments discussed and shown in Enclosure A. This is the document that contains MHCC comments under Section 604 (b) (3) including the re-submittal of the MHCC recommendation from June 2005 and the principles used to draft the MHCC proposal. The roll call vote was:

Members eligible to vote: 18
Agree with the comments: 15
Disagree with the comments: 2 (Vogt, Weinert,)
Not Voting: 1 (Braun absent)

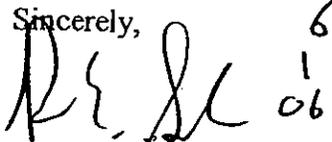
2. Formally adopt and accept the 16 principles discussed and shown in Enclosure C. The roll call vote was:

Members eligible to vote: 18
Agree with the principles: 15
Disagree with the comments: 2 (Vogt, Weinert)
Not Voting: 1 (Braun absent)

On behalf of the MHCC and in my capacity as the project manager with the Administering Organization, I am submitting this information for your review, action and follow up as required by the provisions of the 1974 Act.

Please contact me if you or your staff has any questions on this submission.

Sincerely,



Robert E. Solomon, PE
Project Manager

C: MHCC Members
ENCL: (3)

RES/sp

ENCLOSURE

A

FINAL

RE: HUD Proposed Rule on Subpart I for Consensus Committee Review and Comment

In a letter dated February 15, 2006 the Secretary of the U.S. Department of Housing and Urban Development (HUD) submitted a proposed rule to revise "Subpart I- Consumer Complaint Handling and Remedial Action" in the Manufactured Home Procedural and Enforcement Regulations to the Manufactured Housing Consensus Committee (MHCC or consensus committee) for review and comment under Section 604 (b) (3) of the Manufactured Housing Improvement Act of 2000 (2000 Act).

In accordance with Section 604 (b) (3) the consensus committee is providing the following written comments, including the attachments, to the Secretary for consideration and response.

The consensus committee has thoroughly reviewed the Secretary's proposed rule and strongly disagrees with the Secretary's response that the proposed rule "is the same as the recommendations submitted to the Secretary by the MHCC except for a few changes in the text" or that the proposed rule "incorporates almost all of the recommendations by the MHCC". The Secretary's proposed rule makes substantial and significant modifications to the Subpart I proposal submitted by the MHCC to the Secretary in June 2005 for the Secretary's consideration pursuant to Section 604 (b) (1) of the 2000 Act.

Additionally, the MHCC devoted almost all of the 20+ meetings referred to in the above letter to the development of the MHCC Subpart I proposal. The MHCC's proposal was formally submitted to the Secretary in June 2005, and the MHCC then devoted two meetings to considering the Secretary's proposed changes to the MHCC proposal. Instead of either approving or rejecting the MHCC proposal with a written explanation within 120 days as required by Section 604 (b) (4) of the 2000 Act, the Secretary submitted his own proposal in the form of a proposed rule.

On February 23, 2006, following a lengthy discussion, the MHCC adopted, by a 12 to 1 vote, a resolution stating (1) The MHCC does not agree with the HUD proposed rule at this time; (2) The MHCC would submit comments to the proposed rule in accordance with the 2000 Act that provides the MHCC 120 days to submit written comments and (3) The MHCC written comments would include the MHCC's Statement of Principles that was used to develop the MHCC's Subpart I reform proposal, the text of the MHCC June 2005 consensus Subpart I reform proposal and written comments containing MHCC's specific disagreements with the Secretary's proposal.

Our comments will be in three Sections:

Section 1) Formal re-submittal of the MHCC Subpart I Proposal along with the Principles we developed in order to guide us in proposing the changes contained in our Proposal as Attachments.

Section 2) Identification of the significant policy changes in the Secretary's proposed rule that are different from the Proposal submitted by the MHCC and the impact those policy changes will have on Consumer Complaint Handling and Remedial Actions.

Section 3) Identification of specific changes to Sections of the Secretary's proposed rule and the impact of making those changes.

Section 1: Formal Re-submittal of MHCC Subpart I Proposal and the Principles used by the Consensus Committee to Draft the Proposal

In accordance with the resolution adopted by the MHCC on February 23, 2006, the MHCC hereby formally re-submits to HUD its original consensus Subpart I reform proposal originally submitted on June 3, 2005, together with the consensus principles which it used to develop that proposal.

The purpose of this re-submission is three-fold. First, the MHCC continues to believe that its consensus approach to Subpart I is more fair, reasonable and ultimately, more effective, than the Secretary's proposed rule and continues to urge its adoption. Second, the original MHCC consensus proposal contains differences from the HUD proposed rule that may not otherwise be addressed in detail in these comments. To the extent that such differences occur, the MHCC prefers and continues to support its consensus-based approach. Consequently, the text of the original proposal supplements and expands the comments contained herein. Third, HUD has not taken action on the MHCC's original consensus proposal as required by section 604(b) (4) of the 2000 Act. Under that section, if the Secretary rejects an MHCC-proposed regulation, the regulation and the Secretary's reasons for rejection must be published in the Federal Register within 120 days. Insofar as the MHCC's original proposal has never been published with the reasons for its rejection, it is both re-submitted under authority of section 604(b) (1) and included as an integral part of these comments under authority of section 604(b) (3) which, among other things, requires the Secretary to publish the MHCC's comments together "with the Secretary's response thereto." The public will thereby be assured an opportunity to review the MHCC proposal and the grounds for its rejection by the Secretary.

- 1. Attachment A: MHCC Proposal**
- 2. Attachment B: Principles for amending Subpart I**

Section 2: Significant Policy changes in the MHCC Subpart I proposal that the MHCC continues to recommend the Secretary incorporate into any proposed rule to update and improve Subpart I.

The MHCC Subpart I proposal is based on a number of fundamental fairness concepts that have been rejected by the Secretary and deleted from the proposed rule that has been submitted to the MHCC for its consideration. Some, but not all of these concepts are set forth below. The MHCC continues to believe that these concepts need to be included as part of any reform of Subpart I.

A. Individual Accountability: The MHCC proposal contains the concept that if the retailer caused construction standard problems with the home, the retailer is accountable for fixing those problems. The Secretary's proposed rule deletes this retailer accountability and places that accountability with the manufacturer. This could cause significant problems in the dispute resolution process and does not hold the person accountable for the work they do.

B. Retailer accountability: The basic premise of the MHCC consensus proposal is that Subpart I accountability should attach to the person responsible for causing a particular defect (or serious defect or imminent safety hazard). The MHCC concluded that the Act provides HUD with clear regulatory authority over retailers and distributors (among others). For example, retailers may be ordered to repair defects under the proposed federal Dispute Resolution Program. As a result, the MHCC proposal provides, in section 415(d), that retailers or distributors may be required to correct defects that they cause when their actions take a home out of compliance with the construction standards. This entire provision (and concept) is deleted from the HUD submission.

C. Manufacturer accountability: As a corollary to its conclusion that defects should be addressed under Subpart I by the person or entity that caused them, the MHCC proposal provides that manufacturers are required to give notice of defects (section 405(a)) and provide correction (section 415 (c)), when the defect is "caused" by the manufacturer, "including a person performing work or providing a component on behalf of the manufacturer." The MHCC concluded that it is fundamentally unfair to require a manufacturer (or any other party) to investigate, document and remedy a defect caused by another party. This conclusion is consistent with a reasonable reading of the Act and the current Subpart I, which recognizes exceptions for certain defects caused during transportation and by the homeowner. Again, this entire concept is deleted.

D. Systematic introduction of defects: The Secretary's proposed rule actually imposes broader responsibility on manufacturers than now exists for defects caused by others, in that it deletes not only the

MHCC's "caused by" language noted above, but also current Subpart I language which limits notification of defects to those "systematically introduced during the course of production." Under the HUD proposal, a manufacturer would be required to investigate any type of defect in more than one home, regardless of who introduced the defect and when it was introduced.

E. New Program Responsibility: The MHCC proposal took into account the new program responsibility under the 2000 Act the Secretary has for finding and fixing installation problems and for resolving disputes about who will fix a problem between the manufacturer, the retailer and the installer by amending Subpart I with those potential new programs in mind.

1. The MHCC proposal accomplished this by indicating the manufacturer must determine if he is responsible for any problems under the Standards (Construction or Installation) that could be classified a noncompliance, defect, serious defect, or imminent safety hazard,
2. If the problem was not related to constructing the home, the manufacturer was to notify the appropriate retailer and installer, and
3. The MHCC proposal clarified the Subpart I rules by only speaking to a manufacturer's responsibility for notification and correction of construction related problems under Subpart I. The MHCC believes any manufacturer responsibility for notification or correction of problems with installation or as an outcome of the dispute resolution process should be addressed in those program rules. The Secretary's proposed rule rejects this concept and re-introduces generic notification requirements that are not specific to Subpart I issues. This continues the confusion and potential for misinterpretation of accountability.
4. In addition to the hundreds of hours the MHCC spent revising Subpart I, the MHCC also spent many hours on developing principles for a Dispute Resolution Program. However, when reading HUD's proposed rule in total, the need for a Dispute Resolution Program becomes meaningless – the manufacturer is responsible for all defects.

F. Installation-related defects: The MHCC proposal requires that corrections be made, under certain circumstances, to bring the home into compliance "with applicable standards." This language recognizes the fact that under the 2000 Act HUD will soon be regulating installation; that the installation standards, as codified by HUD, are not part of the "construction and safety standards;" and that improper installation is responsible for many reported defects.

These installation problems which are identified as part of a Subpart I investigation need to be referred to the installation program enforcement program for resolution. The HUD proposal rejects this concept by referring solely to bringing homes “into compliance with the construction and safety standards.”

It should be noted that the MHCC does not agree with HUD’s premise that Federal installation standards which it adopts under section 605 of the Act do not constitute Federal Manufactured Construction and Safety Standards within the meaning and intent of the Act. The public comments filed by the MHCC on June 23, 2005 in connection with HUD Rulemaking Docket No. FR-4928-P-01, reiterates MHCC’s position that the Federal installation standards fall within the statutory definitions of “manufactured home construction” (Sec. 603(1)) and “manufactured home safety,” (Sec. 603(8)) insofar as they relate to the “assembly” and ‘performance” of the home.

G. One file: The MHCC spent a lot of time debating the current cumbersome paperwork process and duplicate file requirements that the existing enforcement and Subpart I regulations require. To reduce this paperwork process we recommended that Subpart I documentation be put in the home’s service records maintained by the manufacturer. If this happened, the service records would contain all the problems identified for a home and could be a primary source of information to conduct Subpart I investigations for problems caused by patterns of construction.

- 1. Not only did the Secretary reject this concept, the proposed rule restricts what information regarding construction problems you could look for in the service records,**
- 2. The Secretary’s proposed rule continues to require separate Subpart I files,**
- 3. The Secretary’s proposed rule requires all services records to contain certain information in a specific format for any information the manufacturer wishes to put in its service records, thus increasing the amount of paperwork over existing requirements and**
- 4. The Secretary’s proposed rule has new reporting requirements during the initial 30 days, for reporting a potential serious defect or imminent safety hazard to the Secretary, the SAA in the State of manufacturer and the manufacturer’s IPIA. These same problems require a plan of notification under the proposed 3282.405 which must be sent for approval 20 days after initial determination. This requirement for duplicate notification focuses the effort on paperwork compilation as opposed to timely fixing of the homeowner’s problem and finding any additional homes that may have the problem.**

H. Service Record: The Secretary's proposed rule has new paperwork requirements placed on every home by dictating that every service record for each home have specific, and many times duplicate, information from other manufacturer filing systems such as production checklists, production correction notices, etc. However, the class determinations under Subpart I do not have to be in these files. The MHCC did not propose such an increase in paperwork and believes this increase in an already burdensome paperwork process takes the focus away from fixing the home.

I. Increased Secretary Involvement to the Detriment of the SAA: In several places through-out the proposed rules information is now required to be sent to the Secretary or the manufacturer can go directly to the Secretary rather than deal with the SAA in the State of manufacturer. This potential for by-passing the States which are in partnership with the Secretary in the Administration of the program would allow the manufacturer to determine whether the SAA or the Secretary would be more lenient to the detriment of the homeowner. Additionally, the Secretary's staffing is so limited timeliness of response would be an issue. The MHCC proposal did not recommend such procedures and continued to rely on the States fulfilling their responsibilities.

J. Vague and Subjective Wording: In the pivotal section concerning manufacturers determinations, the HUD proposal requires manufacturers to conduct inspections of "service records" of homes of the same design or construction if a defect, serious defect or imminent safety hazard "would be readily reportable" by consumers or retailers. This is extremely subjective and requires guesswork by manufacturers as to what would or would not be "readily reportable" and whether or not the Secretary or an SAA would agree. Given the possibility of criminal penalties under the Act, speculation and guesswork should not be a component of Subpart I.

K. "Possible" versus "Likely" as the Basis for Preliminary Determinations: Section 612 (a) of the Secretary's proposed rule allows the Secretary or an SAA to make a preliminary determination mandating notification if either has information "indicating" that a defect, serious defect, or an imminent safety hazard "possibly exists." The original MHCC consensus proposal authorized a preliminary determination if the Secretary or SAA has information which "likely indicates" the existence of a defect or a more serious problem. The difference is important. One of the purposes of the MHCC proposal is to move away from the paperwork caused by the subjective and the

speculative and focus on getting known problems fixed. To require notification of a "possible" defect effectively requires manufacturers to prove a negative – the non-existence of a defect in order to avoid the costs and stigmatization that are part of a notice campaign. The MHCC also adopted this standard in order to provide the same threshold standard for determinations by both manufacturers and the Secretary/SAAAs – i.e. likely existence of a defect or more serious problem. Under the HUD proposal, speculation regarding "possible" defects is reintroduced and differing thresholds are imposed for determinations made by manufacturers versus determinations made by regulators.

Section 3: Specific language changes recommended by the MHCC to the Proposed Rule submitted to the MHCC for review and comment

The MHCC offers the following recommended changes with comments to the Secretary's Proposed rule in accordance with Section 604 (b) (3) of the 2000 Act.

A. 3282.7 (j):

Secretary's proposed rule is the same as the MHCC proposal. MHCC agrees

B. 3282.7 (v):

Secretary's proposed rule is the same as the MHCC proposal. MHCC agrees

C. 3282.7 (dd):

Secretary's proposed rule except for a grammatical change is the same as the MHCC proposal. MHCC agrees

D. 3282.362 (c) (1) New sentence:

The Secretary's proposed rule is significantly different from MHCC proposal in the following ways:

- Requires the IPIA to look at all information the manufacturer would be required to keep including transporter checklists, retailer name and address, correspondence with retailer, and homeowner service work orders etc. None of this information is related to Subpart I problems
- Does not focus the IPIA's efforts to look at information on problems with the home because the review efforts are so generic
- Greatly increases IPIA responsibilities with little perceived benefit
- Section 2 comments under G, H, and J in this letter relate to the changes in this Section

MHCC recommends the Secretary adopt the MHCC wording for the new sentence in 3282.362 (c) (1) and delete the wording in the proposed rule

E. 3282.401 Purpose and Scope:

Secretary's proposed rule adds distributors to manufacturers and retailers in the MHCC proposal. MHCC agrees

F. 3282.402 General Provisions:

Secretary's proposed rule is the same as the MHCC proposal. MHCC agrees

G. 3282.403 Consumer complaint and information referral:

Secretary's proposed rule is the same as the MHCC proposal. MHCC agrees

H. 3282.404 Manufacturers' determinations and related concurrences:

Secretary's proposed rule is significantly different from the MHCC proposal in the following ways:

- Requires new reporting requirements to the Secretary, the SAA in the State of manufacturer and the manufacturer's IPIA during the first 30 critical days when the focus should be on finding and determining the scope of the problem and preparing the plan to fix the problem; not on paperwork. These regulators will be notified within 20 more days anyway with the plan of correction and notification as required by 3282.408
- Broadens manufacturer's current responsibilities for problems caused "during the course of production" to anything and rejects the MHCC proposal that persons should be accountable for the work or changes to the house they do. For example, one of the common problems in the field found during consumer complaint handling is the taking of fixtures out of one home and putting them in another home, sometimes incorrectly. The retailer who did this work should be accountable not the manufacturer. The Secretary's proposal rejects this notion
- The MHCC proposal included the referral to the installer and retailer but could not comment further since the MHCC has not seen the Secretary's final rule governing dispute resolution corrective actions
- Rejects the MHCC's attempt to reduce paperwork by filing Subpart I problems in the service records and then restricts service record review to items that "would be readily reportable by consumers or retailers" (whatever that means)
- Section 2 comments in C, D, E, F, G, H, I, and J in this letter relate to the changes in this Section

MHCC recommends the Secretary adopt the wording for Section 3282.404 in the MHCC proposal and delete the wording in the proposed rule

I. 3282.405 Notification pursuant to manufacturer's determination:

The Secretary's proposed rule is significantly different than the MHCC proposal in the following ways:

- Expands manufacturer's current responsibilities for notification from problems found during the course of production for imminent safety hazard (imminent and unreasonable risk of death or severe personal

injury) and serious defect (renders a part of the home not fit for ordinary use or results in unreasonable risk of injury) to any problem found in more than one home. The MHCC believes that to hold the manufacturer accountable for notification for work it did not do (outside the course of production) is not fair and holds the wrong person accountable

- Significantly expands the paperwork of manufacturers by requiring the manufacturer to prepare a plan for notification for every problem they receive, even if Subpart I requires them to do nothing or only one home was affected
- Section 2 comments in A, B, D, E, F, and J in this letter relate to the changes in this Section

MHCC recommends the Secretary adopt the wording for Section 3282.405 in the MHCC proposal and delete the wording in the proposed rule

J. 3282.406 Required manufacturer correction:

Secretary's proposal is more limiting than the MHCC proposal in the following way:

- The Secretary's proposal limits the manufacturer's correction to items that are construction and safety standards. The Secretary has interpreted the 2000 Act to exclude from construction and safety standards any item that is considered by the Secretary to be part of the installation standards. Close up of multi-section homes was historically considered part of the construction and safety standards (now in the installation standard) and manufacturer responsibilities for problems caused during the installation set-up may require correction. That is why the MHCC proposal included applicable standards
- Section 2 comments in A, E, and F in this letter relate to the changes in this Section

MHCC recommends the Secretary adopt the wording for Section 3282.406 in the MHCC proposal and delete the wording in the Secretary's proposal

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

Secretary's proposed rule uses different wording than the MHCC proposal but the intent seems to be the same. MHCC agrees

L. 3282.408 Plan of notification required:

Secretary's proposed rule is the same as the MHCC proposal. MHCC agrees

M. 3282.409 Contents of plan:

Secretary's proposed rule has grammatical edits from the MHCC proposal. MHCC agrees

N. 3282.410 Implementation of Plan:

Secretary's proposed rule and the MHCC proposal is the same. MHCC agrees

O. 3282.411 SAA Initiation of remedial action:

Secretary's proposed rule is completely different from the MHCC proposal in the following ways:

- MHCC proposal included a timeline for the Secretary's initiation remedial action. The Secretary's proposed rule deletes all references to when the Secretary will initiate remedial action. The MHCC believes it is reasonable to have the Secretary indicate when he would initiate remedial action
- The Secretary's proposed rule allows a State to refer a problem to either the State of manufacture or the Secretary. Historically, the States as partners with the Secretary handled the day to day activities of the program such as subpart I matters in their State. This change would allow for bypassing of the State and going directly to the Secretary at any time
- The Secretary's proposed rule allows for initiation of administrative review by a State when the State has information that a problem possibly exists. This is the same as the MHCC proposal. However, the MHCC proposal indicated this initiation must be based on the same information that the manufacturer had. If the State has new information they should refer that information to the manufacturer for possible adjustment of their position before the regulator arbitrarily steps in
- Section 2 comments in A, C, D, I, J, and K in this letter relate to the changes to in this Section

MHCC recommends the Secretary adopt the wording for Section 3292.411 in the MHCC proposal and delete the wording in the proposed rule

P. 3282.412 Preliminary and final administrative determinations:

Secretary's proposed rule is significantly different from the MHCC proposal in the following ways:

- The Secretary's proposal allows for making a preliminary determination based on a decision that a defect "possibly exists" versus the MHCC proposal that allows for initiation of administrative review but requires the regulator to make a determination when the information rises to the level of "likely exists". The MHCC proposal requires the manufacturer to provide enough information to the regulator to make such a determination and provides for the regulator to make preliminary determination if the manufacturer failed to do so. The MHCC believes that adoption of its position would move the program away from paperwork notification of speculative items and focus on getting known problems identified and fixed

- Section 2 comments in J, and K in this letter relate to the changes in this Section

MHCC recommends the Secretary adopt the wording for Section 3282.412 in the MHCC proposal and delete the wording in the proposed rule

Q. 3282.413 Implementation of Final Determination:

Secretary's proposed rule is the same as the MHCC proposal except for some grammatical changes. MHCC agrees

R. 3282.414 Replacement or repurchase of homes after sale to purchaser:

Secretary's proposed rule is the same as the MHCC proposal. MHCC agrees

S. 3282.415 Correction of homes before sale to purchaser:

Secretary's proposed rule is significantly different from the MHCC proposal in the following ways:

- The Secretary's proposed rule removes the concept of persons being accountable for the work they do by holding the manufacturer accountable for work done by others over which the manufacturer has no control
- The Secretary's proposed rule makes the new dispute resolution process in the 2000 Act null and void by holding the manufacturer accountable for everything including retailer work that would be part of a dispute
- Section 2 comments in A, B, C, D, E, F, and J in this letter relate to the changes in this Section

MHCC recommends the Secretary adopt the wording in Section 3282.415 in the MHCC proposal and delete the wording in the proposed rule

T. 3282.416 Oversight of notification and correction activities:

The Secretary's proposed rule has grammatical changes and a change that limits SAA (State) oversight to construction standards as defined in this subpart which is different from the MHCC proposal in the following ways:

- The MHCC proposal indicated "Standards" due to the placement of close-up of the home in the installation standards. Close-up is currently viewed as construction and safety standards. By limiting State oversight to the Subpart I definition of construction and safety standards, the Secretary's proposed rule would potentially have a body of work no longer regulated for correction of problems
- Section 2 comments in E, F, and J in this letter relate to the changes in this Section

MHCC recommends the Secretary adopt the working for Section 3282.416 in the MHCC proposal and delete the wording in the proposed rule

U. 3282.417 Recordkeeping requirements:

The Secretary's proposed rule is significantly different from the MHCC proposal in the following ways:

- The Secretary's proposed rule rejects the concept of one file for the recording and tracking of problems found with the home when it is out in the community which would reduce current paperwork requirements
- The Secretary's proposed rule adds new paperwork requirements by requiring manufacturers to put information in service records that is in separate filing systems such as the information about corrections made to the home during production
- The Secretary's proposed rule describes what should be the service file, how it should be organized and includes information that does not relate to fixing problems with the home
- Section 2 comments in C, D, G, H, I, and J in this letter relate to the changes in the Section.

MHCC recommends the Secretary adopt the wording for Section 3282.417 in the MHCC proposal and delete the wording in the proposed rule

V. 3282.418 Factors for appropriateness and amount of civil penalties:
Secretary's proposed rule is the same as the MHCC proposal. MHCC agrees

While consumers, the industry and the general public, as represented on the MHCC, have embraced the 2000 Act, it appears that others have not. The MHCC urges the Secretary to reconsider his proposed changes to Subpart I in the proposed rule. The MHCC recommends that the Secretary adopt the proposed rule changes recommended by the MHCC that carry out the intent of the 2000 Act and the principles used by the MHCC in developing the Subpart I reform proposal that was sent to the Secretary.

ENCLOSURE
B

Manufactured Housing Consensus Committee

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US Department of Housing and Urban Development
Robert C. Weaver Building – 451 Seventh Street, S.W
Washington, DC 20410

June 03, 2005

Attention: The Honorable Alphonso Jackson, Secretary

Dear Secretary Jackson:

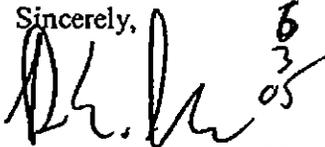
As required by the National Manufactured Housing Construction and Safety Standards Act of 1974, I am formally transmitting a procedural enforcement regulation concerning Part 3282, *Manufactured Home Procedural and Enforcement Regulations and Enforcement Interpretation Bulletins*.

These changes were discussed by the members of the Manufactured Housing Consensus Committee (MHCC) at meetings of the committee held in August 2004, December 2004, January 2005 and February 2005. The change was subsequently letter balloted and represents the official position of the MHCC in accordance with the bylaws under which MHCC conducts business. The supporting material associated with the letter ballot is enclosed.

On behalf of the MHCC, and in my capacity as the project manager with the Administering Organization, I am submitting this information for your review, action and follow up as required by the provisions of the 1974 Act. I am pleased with the efforts of the MHCC as they strive to uphold the provisions associated with the Act.

Please contact me if you or your staff have any questions on this submission.

Sincerely,



Robert E. Solomon, PE
Project Manager

C: MHCC Members
ENCL: (2)

RES/vc

Final Version

MHCC SUBPART I PROPOSAL

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**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 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.

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 manufacturer's service
8 records for determinations under § 3282.404 to see whether
9 evidence exists that the manufacturer is ignoring or not performing
10 under its approved quality assurance manual, and, if such evidence
11 is found, must advise the manufacturer so that appropriate action
12 may be taken under § 3282.404."
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16 **SUBPART I**

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34 § 3282.414 Replacement or repurchase after sale to purchaser
35 § 3282.415 Correction of homes before sale to purchaser
36 § 3282.416 Oversight of notification and correction activities
37 § 3282.417 Recordkeeping
38 § 3282.418 Factors for appropriateness and amount of civil penalties

39
40
41 **§ 3282.401 Purpose and scope.**

42
43 (a) **Purpose.** The purpose of this subpart is to establish a system of
44 protections provided by the Act with respect to imminent safety hazards and

1 violations of the construction and safety standards with a minimum of formality
2 and delay, while protecting the rights of all parties.

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

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11
12 **§ 3282.402 General provisions.**

13
14 (a) Purchaser's rights. Nothing in this subpart shall limit the rights of the
15 purchaser under any contract or applicable law.

16 (b) Manufacturer's liability limited. A manufacturer is not responsible for
17 failures that occur in any manufactured home or component as the result of
18 normal wear and aging, unforeseeable consumer abuse, or unreasonable neglect of
19 maintenance. The life of a component warranty may be one of the indicators used
20 to establish normal wear and aging. A failure of any component may not be
21 attributed by the manufacturer to normal wear and aging under this subpart during
22 the term of any applicable warranty provided by the original manufacturer of the
23 affected component.

24
25
26 **§ 3282.403 Consumer complaint and information referral.**

27
28 (a) Retailer responsibilities. When a retailer receives a consumer
29 complaint or other information about a home in its possession, or that it has sold
30 or leased, that likely indicates a noncompliance, defect, serious defect, or
31 imminent safety hazard, the retailer must forward the complaint or information to
32 the manufacturer of the manufactured home in question as early as possible in
33 accordance with § 3282.256.

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

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

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

43 (2) When it appears from the complaint or other information that an
44 imminent safety hazard or serious defect may be involved, the SAA of the State

1 where the home was manufactured must also send a copy of the complaint or
2 other information to the Secretary.

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

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10
11 **§ 3282.404 Manufacturers' determinations and related concurrences.**

12
13 (a) Initial determination. (1) Not later than 30 days after a manufacturer
14 receives information that it believes in good faith likely indicates a
15 noncompliance, defect, serious defect, or imminent safety hazard, the
16 manufacturer must make a specific initial determination that there is a
17 noncompliance, a defect, a serious defect, an imminent safety hazard, or that the
18 information requires no further action under subpart I. When no further action
19 under subpart I is required and a problem still exists, the manufacturer must
20 forward the information in its possession to the appropriate retailer and, if known,
21 the installer, for their consideration.

22 (2) In making the determination of noncompliance, defect, serious defect,
23 imminent safety hazard, or that no further action is required under subpart I, the
24 manufacturer must review the information it received and carry out reasonable
25 investigations, including, if appropriate, inspections. The manufacturer must
26 review the information, the known facts, and the circumstances relating to the
27 complaint or information, including service records, approved designs, and audit
28 findings, as applicable, to decide what investigations are reasonable.

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

41 (2) Paragraph (c) of this section sets out methods for a manufacturer to
42 use in determining the class of manufactured homes. If the manufacturer can
43 identify the precise manufactured homes affected by the defect, serious defect, or
44 imminent safety hazard, the class of manufactured homes may include only those
45 manufactured homes actually affected by the same defect, serious defect, or

1 imminent safety hazard. The manufacturer is also permitted to exclude from the
2 class those manufactured homes for which the manufacturer has information that
3 indicates the homes were not affected by the same cause. If it is not possible to
4 identify the precise manufactured homes affected, the class must include every
5 manufactured home in the group of homes that is identifiable because the same
6 defect, serious defect, or imminent safety hazard exists or likely exists in some
7 homes in that group of manufactured homes.

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

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

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

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

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

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

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

- 1 (ii) Physical inspection of manufactured homes of the same design or
2 construction, as appropriate, that were produced before and after a home in
3 question;
- 4 (iii) Inspection of the service records of a home in question and of homes
5 of the same design or construction, as appropriate, produced before and after that
6 home;
- 7 (iv) Inspection of manufacturer quality control records to determine
8 whether quality control procedures were followed and, if not, the time period
9 during which they were not;
- 10 (v) Inspection of IPIA records to determine whether the defect, serious
11 defect, or imminent safety hazard was either detected or specifically found not to
12 exist in some manufactured homes;
- 13 (vi) Identification of the cause as relating to a particular employee whose
14 work, or to a process whose use, would have been common to the production of
15 the manufacturer's homes for a period of time; and
- 16 (vii) Inspection of records relating to components supplied by other
17 parties and known to contain or suspected of containing a defect, a serious defect,
18 or an imminent safety hazard.

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

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

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28
29 **§ 3282.405 Notification pursuant to manufacturer's determination.**

30
31 (a) General requirement. Every manufacturer of manufactured homes
32 must provide notification as set out in this section with respect to any
33 manufactured home produced by the manufacturer in which the manufacturer
34 determines, in good faith, that there exists or likely exists:

- 35 (1) A serious defect or an imminent safety hazard; or
36 (2) The same defect caused by a manufacturer, including a person
37 performing work or providing a component on behalf of the manufacturer, that
38 has been introduced systematically into more than one home.

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

42 (2) Defects. When a manufacturer has made a determination in
43 accordance with § 3282.404 that a defect exists or likely exists in more than one
44 home, the manufacturer must prepare a plan for notification in accordance with

1 § 3282.408, and must provide notification with respect to each manufactured
2 home in the class of manufactured homes.

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

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

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

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

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

23 (2) By certified or express mail to the first purchaser of each
24 manufactured home in the class of manufactured homes containing the defect,
25 serious defect, or imminent safety hazard, and, to the extent feasible, to any
26 subsequent owner to whom any warranty provided by the manufacturer or
27 required by Federal, State, or local law on such manufactured home has been
28 transferred, except that notification need not be sent to any person known by the
29 manufacturer not to own the manufactured home in question if the manufacturer
30 has a record of a subsequent owner of the manufactured home; and

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

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37
38 **§ 3282.406 Required manufacturer correction.**

39
40 (a) Correction of noncompliances and defects. (1) Section 3282.415 sets
41 out requirements with respect to a manufacturer's correction of any
42 noncompliance or defect that exists in each manufactured home that has been sold
43 or otherwise released to a retailer but that has not yet been sold to a purchaser.

44 (2) In accordance with section 623 of the Act and the regulations in part
45 3288 of this chapter, the manufacturer, retailer, or installer of a manufactured

1 home must correct, at its expense, each failure in the performance, construction,
2 components, or material of the home that renders the home or any part of the
3 home not fit for the ordinary use for which it was intended and that is reported
4 during the 1-year period beginning on the date of installation of the home.

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

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

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

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

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

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

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

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

43
44

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 presents evidence
42 that it in good faith believes would show to the satisfaction of the SAA or the
43 Secretary that:

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

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

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

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

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15
16 **§ 3282.408 Plan of notification required.**

17
18 (a) Manufacturer's plan required. Except as provided in § 3282.407, if a
19 manufacturer determines that it is responsible for providing notification under
20 § 3282.405, the manufacturer must prepare a plan in accordance with this section
21 and § 3282.409. The manufacturer must, as soon as practical, but not later than
22 20 days after making the determination of defect, serious defect, or imminent
23 safety hazard, submit the plan for approval to one of the following, as appropriate:

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

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

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

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34
35 **§ 3282.409 Contents of plan.**

36
37 (a) Purpose of plan. This section sets out the requirements that must be
38 met by a manufacturer in preparing any plan it is required to submit under
39 § 3282.408. The underlying requirement is that the plan show how the
40 manufacturer will fulfill its responsibilities with respect to notification and
41 correction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (7) A statement in accordance with whichever of the following is
5 appropriate;

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

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

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

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

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

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

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

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29 **§ 3282.410 Implementation of plan.**
30

31 (a) **Deadline for notifications.** (1) The manufacturer must complete the
32 notifications carried out under a plan approved by an SAA or the Secretary under
33 § 3282.408 on or before the deadline approved by the SAA or Secretary. In
34 approving each deadline, an SAA or the Secretary will allow a reasonable time to
35 complete all notifications, taking into account the number of manufactured homes
36 involved and the difficulty of completing the notifications.

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

44 (b) **Deadline for corrections.** A manufacturer that is required to correct a
45 serious defect or imminent safety hazard pursuant to § 3282.406(b) must complete

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

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

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

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23
24 **§ 3282.411 Administrative initiation of remedial action.**

25
26 (a) Administrative review of information. Whenever the Secretary or an
27 SAA has information indicating the possible existence of a noncompliance,
28 defect, serious defect, or imminent safety hazard in a manufactured home, the
29 Secretary or SAA may initiate administrative review of the need for notification
30 and correction in accordance with paragraphs (b) and (c) of this section.

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

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

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

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

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

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

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

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

10 (3) For purposes of this paragraph (b), the conclusion that there is a class
11 of homes in which a noncompliance or defect possibly exists must be based on the
12 same factors that are established for a manufacturer's class determination in
13 §3282.404(b). If evidence arises that the manufactured homes in the class were
14 manufactured in more than one state, the SAA must refer the matter to the
15 Secretary for any further action.

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

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

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

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

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

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34 **§ 3282.412 Preliminary and final administrative determinations.**

35
36 (a) Issuance of preliminary determination. In accordance with
37 § 3282.411, the Secretary or an SAA may issue a Notice of Preliminary
38 Determination when:

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

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

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

1 (2) The Secretary or SAA has information that likely indicates a
2 noncompliance, a defect, a serious defect, or an imminent safety hazard exists.
3 (b) Notice of Preliminary Determination. (1) The Notice of Preliminary
4 Determination must be sent by certified mail or express delivery and must:
5 (i) Include the factual basis for the determination;
6 (ii) Include the criteria used to identify any class of homes in which the
7 noncompliance, defect, serious defect, or imminent safety hazard possibly exists;
8 (iii) If applicable, indicate that the manufacturer may be required to make
9 corrections on a home or in a class of homes; and
10 (iv) If the preliminary determination is that the manufacturer failed to
11 make an initial determination required under § 3282.404(a), include an allegation
12 that the manufacturer failed to act in good faith.

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

17 (c) Presentation of views. (1) The Secretary or the SAA, as applicable,
18 must receive the manufacturer's request for a hearing or presentation of views:
19 (i) Within 15 days of delivery of the Notice of Preliminary Determination
20 of serious defect, defect, or noncompliance; or

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

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

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

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

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

36 (2) At the time that the SAA or Secretary makes a Final Determination
37 that an imminent safety hazard, serious defect, defect, or noncompliance exists,
38 the SAA or Secretary, as appropriate, must issue an order in accordance with
39 § 3282.413.

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42
43 § 3282.413 Implementation of Final Determination.
44

1 (a) Issuance of orders. (1) The SAA or the Secretary, as appropriate, must
2 issue an order directing the manufacturer to furnish notification if:
3 (i) The SAA makes a Final Determination that a defect or noncompliance
4 exists in a class of homes;
5 (ii) The Secretary makes a Final Determination that an imminent safety
6 hazard, serious defect, defect, or noncompliance exists; or
7 (iii) The SAA makes a Final Determination that an imminent safety
8 hazard or serious defect exists in any home and the SAA has received the
9 Secretary's concurrence on the issuance of the Final Determination and order.
10 (2) The SAA or the Secretary, as appropriate, must issue an order
11 directing the manufacturer to make corrections in any affected manufactured
12 home if:
13 (i) The SAA or the Secretary makes a Final Determination that a defect or
14 noncompliance exists in a manufactured home that has been sold or otherwise
15 released by a manufacturer to a retailer or distributor but for which the sale to a
16 purchaser has not been completed;
17 (ii) The Secretary makes a Final Determination that an imminent safety
18 hazard or serious defect exists; or
19 (iii) The SAA makes a Final Determination that an imminent safety
20 hazard or serious defect exists in any home and the SAA has received the
21 Secretary's concurrence on the issuance of the Final Determination and order.
22 (3) Only the Secretary may issue an order directing a manufacturer to
23 repurchase or replace any manufactured home already sold to a purchaser, unless
24 the Secretary authorizes an SAA to issue such an order.
25 (4) An SAA that has a concurrence or authorization from the Secretary on
26 any order issued under this section must have the Secretary's concurrence on any
27 subsequent changes to the order. An SAA that has issued a Preliminary
28 Determination must have the Secretary's concurrence on any waiver of
29 notification or any settlement when the concerns addressed in the Preliminary
30 Determination involve a serious defect or an imminent safety hazard.
31 (5) If an SAA or the Secretary makes a Final Determination that the
32 manufacturer failed to make in good faith an initial determination required under
33 § 3282.404(a):
34 (i) The SAA may impose any penalties or take any action applicable
35 under State law and may refer the matter to the Secretary for appropriate action;
36 and
37 (ii) The Secretary may take any action permitted by law.
38 (b) Decision to order replacement or repurchase. The SAA or the
39 Secretary will order correction of any manufactured home covered by an order
40 issued in accordance with paragraph (a) of this section unless any requirements
41 and factors applicable under § 3282.414 and § 3282.415 indicate that the SAA or
42 the Secretary should order replacement or repurchase of the home.
43 (c) Time for compliance with order. (1) The SAA or the Secretary may
44 require the manufacturer to submit a plan for providing any notification and any
45 correction, replacement, or repurchase remedy that results from an order under

1 this section. The manufacturer's plan must include the method and date by which
2 notification and any corrective action will be provided.

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

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

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

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

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

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

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

22 (d) Appeal of SAA determination. Within 10 days of a manufacturer
23 receiving notice that an SAA has made a Final Determination that an imminent
24 safety hazard, serious defect, defect, or noncompliance exists or that the
25 manufacturer failed to make the determinations required under § 3282.404, the
26 manufacturer may appeal the Final Determination to the Secretary under
27 § 3282.309.

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

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

42 (i) The manufacturer has made a class determination in accordance with
43 § 3282.404(b);

44 (ii) The manufacturer will correct, at the manufacturer's expense, all
45 affected manufactured homes in the class within a time period that is specified by

1 the Secretary or SAA, but is not later than 60 days after the manufacturer is
2 notified of the acceptance of the request for waiver or the issuance of any Final
3 Determination, whichever is later; and

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

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

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

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16 **§ 3282.414 Replacement or repurchase of homes after sale to purchaser.**

17
18 (a) Order to replace or repurchase. Whenever a manufacturer cannot fully
19 correct an imminent safety hazard or a serious defect in a manufactured home for
20 which there is a completed sale to a purchaser within 60 days of the issuance of an
21 order under § 3282.413 or any extension of the 60-day deadline that has been
22 granted by the Secretary in accordance with § 3282.413(c), the Secretary or, if
23 authorized in writing by the Secretary in accordance with § 3282.413(a)(3), the
24 SAA may require that the manufacturer:

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

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

27 (ii) Either is new or is in the same condition that the defective
28 manufactured home would have been in at the time of discovery of the imminent
29 safety hazard or serious defect had the imminent safety hazard or serious defect
30 not existed; or

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

36 (i) Actual use of the home; and

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

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

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

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

45 (3) The expense to the manufacturer;

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

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

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

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

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15 **§ 3282.415 Correction of homes before sale to purchaser.**

16
17 (a) Sale or lease prohibited. Manufacturers, retailers, and distributors
18 must not sell, lease, or offer for sale or lease any manufactured home that they
19 have reason to know in the exercise of due care contains a noncompliance, defect,
20 serious defect, or an imminent safety hazard. The sale of a home to a purchaser is
21 complete when all contractual obligations of the manufacturer, retailer, and
22 distributor to the purchaser have been met.

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

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

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

44 (2) At its expense, immediately furnish to the retailer or distributor all
45 required parts or equipment for installation in the home by the retailer or

1 distributor, and the manufacturer must reimburse the retailer or distributor for the
2 reasonable value of the retailer's or distributor's work, plus a reasonable
3 reimbursement of not less than 1 percent per month of the manufacturer's or
4 distributor's selling price prorated from the date the manufacturer receives notice
5 by certified mail to the date the noncompliance, defect, serious defect, or
6 imminent safety hazard is corrected, so long as the retailer or distributor proceeds
7 with reasonable diligence with the required work; or

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

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

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

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

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

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

25 (2) A court in an action brought under section 613(b) of the Act (42 USC
26 5412(b)).

27 (f) Records required. The manufacturer and the retailer or distributor
28 must maintain records of their actions taken under this section in accordance with
29 § 3282.417.

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

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

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42 **§ 3282.416 Oversight of notification and correction activities.**

43
44 (a) IPIA responsibilities. The IPIA in each manufacturing plant must:

- 1 (1) Assure that notifications required under this subpart I are sent to all
2 owners, purchasers, retailers, and distributors of whom the manufacturer has
3 knowledge;
- 4 (2) Audit the certificates required by § 3282.417 to assure that the
5 manufacturer has made required corrections;
- 6 (3) Whenever a manufacturer is required to determine a class of homes
7 pursuant to § 3282.404(b), provide either:
- 8 (i) The IPIA's written concurrence on the class determination methods
9 used by the manufacturer to identify the homes that should be included in the
10 class of homes; or
- 11 (ii) The IPIA's written statement explaining why it believes the
12 manufacturer's methods for determining the class of homes were inappropriate or
13 inadequate; and
- 14 (4) Periodically review the manufacturer's service records of
15 determinations under § 3282.404 and take appropriate action in accordance with
16 §§ 3282.362(c) and 3282.364.
- 17 (b) SAA and Secretary's responsibilities. (1) SAA oversight of
18 manufacturer compliance with this subpart I will be done primarily by
19 periodically checking the records that manufacturers are required to keep under
20 § 3282.417.
- 21 (2) The SAA or Secretary to which the report required by § 3282.417(a) is
22 sent is responsible for assuring through oversight that remedial actions have been
23 carried out as described in the report. The SAA of the State in which an affected
24 manufactured home is located may inspect that home to determine whether any
25 correction required under this subpart I is carried out in accordance with the
26 approved plan or, if there is no plan, to the Standards or other approval obtained
27 by the manufacturer.

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31 **§ 3282.417 Recordkeeping requirements.**

32
33 (a) Manufacturer report on notifications and corrections. Within 30 days
34 after the deadline for completing any notifications, corrections, replacement, or
35 repurchase required pursuant to this subpart I, the manufacturer must provide a
36 complete report of the action taken to, as appropriate, the Secretary or the SAA
37 that approved the plan under § 3282.408, granted a waiver, or issued the order
38 under § 3282.413. If any other SAA or the Secretary forwarded the relevant
39 consumer complaint or other information to the manufacturer in accordance with
40 § 3282.403, the manufacturer must send a copy of the report to that SAA or the
41 Secretary, as applicable.

42 (b) Records of manufacturer's determinations. (1) A manufacturer must
43 record each initial and class determination required under § 3282.404 in its
44 service records, in a manner approved by the Secretary or an SAA and that
45 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 (c) Manufacturer records of notifications. When a manufacturer is
14 required to provide notification under this subpart, the manufacturer must
15 maintain in its files a copy of each type of notice sent and a complete list of the
16 persons notified and their addresses. The manufacturer must maintain these
17 records in a manner approved by the Secretary or an SAA to identify each
18 notification campaign.

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

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

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

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

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

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

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

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

43 (1) Received the information;

44 (2) Creates the record; or

45 (3) Completes the notification or correction campaign.

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§ 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.

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269

Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org

TO: Manufactured Housing Consensus Committee Members
FROM: Robert E. Solomon
DATE: May 25, 2005
SUBJECT: Final Letter Ballot Results for "SUBPART I Letter Ballot – Update MHCC – 2005"

The final letter ballot results for the "SUBPART I Letter Ballot – Update MHCC – 2005" have yielded the following vote:

19 Members Eligible to Vote
6 Affirmative
10 Affirmative with Comments
1 Negative
1 Ballot Not Received (J. Berger)
1 Abstention

Susan Brenton, Catherine Downs, Archie Major, Terry Nelson, Mike Zicman submitted votes on Circulation.

AFFIRMATIVE WITH COMMENTS

S. Brenton	C. Edgar Bryant
D. Ghorbani	D. Gorman
W. Lagano	A. Major
T. Nelson	D. Roberts
R. Vogt	M. Zicman

Affirmative

K. Braun	J. Mchale
W. Parish	N. Tomasbi
R. LaMont	R. Weinert

NEGATIVE

M. Conte

Abstain

C. Downs

Copies of the Affirmative With Comments, Negative and Abstain votes are enclosed.

The MHCC requires a letter ballot or an equivalent formal recorded vote with approval of two-thirds of the *MHCC*. This letter ballot achieves the required affirmative vote to be submitted to HUD as a formal recommendation. The 2/3rd vote is based on the total number of eligible votes (19) minus the abstain votes (1). Thus 2/3rd of 18 votes was necessary to move forward.

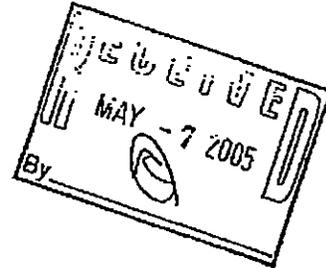
Enclosure

RES/vc

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org

TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART 1 Letter Ballot - Update MHCC- 2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME ✓ Susan Brenton

DATE 4/29/05

With respect to the proposed changes to Subpart 1, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

See Preamble

Proposed Subpart I – Comments:

(Note: Proposed additions are in CAPITAL BOLD letters)

§ 3282.404(a)(2): The second sentence should be clarified to read: The manufacturer must review the information, the known facts, and the circumstances relating to the complaint or information, including service records **OF DETERMINATIONS UNDER § 3282.404**, approved designs, and audit findings, as applicable, to decide what investigations are reasonable.

§ 3282.409(c)(3)(i): This sentence is not clear. I would recommend changing it as follows:
“An imminent safety hazard may exist in (INSERT identifying criteria of manufactured home).”

§ 3282.409(c)(3)(ii): This sentence is not clear. I would recommend changing it as follows:
“An serious defect may exist in (INSERT identifying criteria of manufactured home).”

§ 3282.409(c)(3)(iii): This sentence is not clear. I would recommend changing it as follows:
“An defect may exist in (INSERT identifying criteria of manufactured home).”

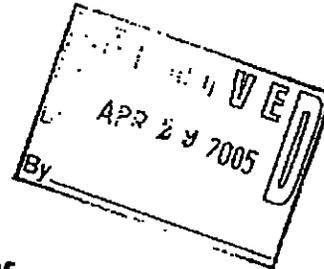
§ 3282.409(c)(7)(ii): After the last comma, change “of” to “to” so the end of the sentence would read “and an estimate of the cost to the purchaser or owner of the correction;”

§ 3282.418: In the title, delete the words “and amount” and “civil”; in the first sentence delete the word “civil”.

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: +1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org

TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME [REDACTED]
DATE 4-29-2005

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

SEE ATTACHED

* Reasons must accompany these votes.

*SPS
4/15/2005*

4/15/2005

Bryant

Comments for MHCC Subpart-I letter ballot.
4/29/2005
Ed Bryant

1. In 3282.404 (a) (2) page 4 line 27 after service records insert " of determinations under 3282.404
2. In 3282.409 (c) (3) page 11 in front of "identifying" in lines 22, 24, and 25 insert the word "insert"
3. In 3282.409 (c) (7) (ii) page 12 line 12 in the phrase "the cost of the purchaser" delete "of" and insert "to"
4. In 3282.418 Title on page 23, line 4 delete the words "and amount" and the word "civil"
5. In 3282.418 page 23, line 5 delete the word "civil" in the first sentence

REASON: To agree with my understanding of the version that was previously approved by the MHCC by voice vote in the conference call.



Doug Gorman

OK. Also, Pat and I compared notes on the other edits a week or so ago. We do have notes on items 2 and 4 but not on 1, 3, 5 or 6.

robert

- ~~1. In 3282.404 (a) (2) after service records insert "of determinations under 3282.404"~~
2. In 3282.404 (b) (4) (i) in front of methods insert "class determination"
- ~~3. In 3282.409 (c) (7) (ii) in the phrase an [estimate of the cost of] delete the second of and insert "to"~~
4. In 3282.416 (a) (3) (i) in front of methods insert "class determinations"
- ~~5. in 3282.418 title delete the words "and amount" and "civil"~~
- ~~6. In 3282.418 first sentence delete the word "civil"~~

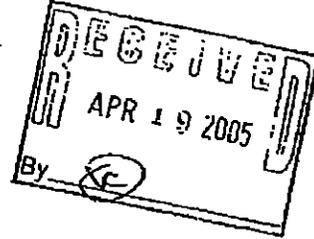
Add ① ③ ⑤ and ⑥
above

Page 20

Delete references
to retailer per
suggestion from
HUD staff

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org



TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005

Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

DATE April 19, 2005

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

While the document may not be perfect, I believe it is a step in the right direction and accomplishes a number of goals. Hopefully, it is a document that will be reviewed in the future and improved upon as the need arises. The process was in need of update and it is

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4/19/2005
Jagano

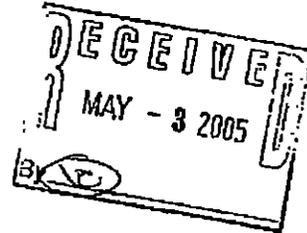
Bill Laysan

hoped that all parties involved will benefit from this revision which addresses the affordability aspect of manufactured housing, consumer protection and assessment of responsibility.

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org

TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME Archie R. Major 
DATE May 2, 2005

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- ~~XXX~~ AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

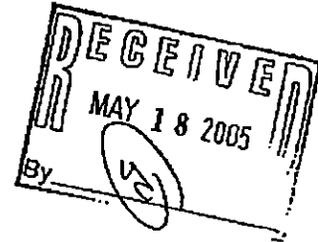
* Reasons must accompany these votes.

While Subpart I might not be completely perfect at this juncture ... it does however represent some marked improvements over the previous not justifying a negative vote.

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org

TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC-2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME Terry Nelson

DATE May 3, 2005

With respect to the proposed changes to Subpart I, record my vote as:

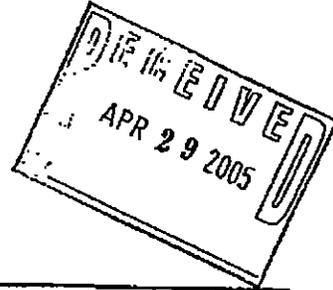
- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes. Being new to the board and missing the many debates and conversations that took place leading up to this vote, I have based my decision on conversations and reading material from the last meeting. There are still issues that need addressed, however I feel this is a good start at working towards results that will benefit everyone that would be affected by the final decision making.

Manufactured Housing Consensus Committee

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TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME [REDACTED]

DATE 3/29/05

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

Logg
5/12/05
(2)
4/16/2005

Palmer

1. IN 3282.404 (a)(2) pg 4 line 27
after "service records" insert: "of determinations
under 3282.404
2. IN 3282.409 (c)(1)(ii) pg 12, line 13
in the phrase "the cost of the purchase"
delete of and insert "to "
3. IN 3282.409 (c)(3): pg 11
line 22 - (i) insert the word "insert" in front
of identifying
line 24 - (ii) insert the word "insert" in front of
identifying
line 26 - (iii) insert the word "insert" in front of
identifying
4. IN 3282.418 Title pg 23, line 4
delete the words "and amount" and the
word "civil"
5. IN 3282.418 pg 23, line 6
delete in the first sentence the
word "civil".

Manufactured Housing Consensus Committee

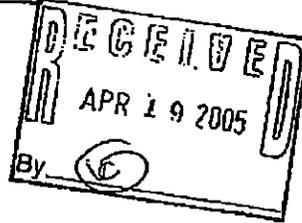
NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: +1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org

TO: MHCC Committee Members

FROM: Robert E. Solomon

DATE: April 15, 2005

SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

 *R. E. Solomon*
DATE_4/19/05

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

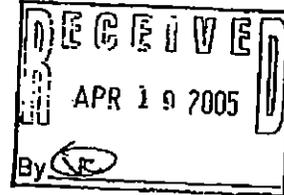
* Reasons must accompany these votes.
Section 3282.406 (b)(3), should include wording that also allows product manufactures product listing for use.

Uast

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org

TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC-2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME [REDACTED]
DATE 4-19-05

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

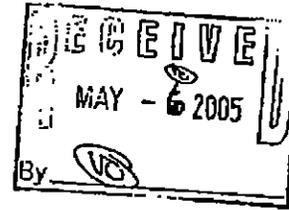
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4/16/2005

By Green

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org

TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: hudtemp@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME MIKE ZIEMAN *MZiemian*
DATE 5/2/05

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

Comments on Subpart I Letter Ballot Due 4-29-05
Submitted after Circulation of Votes.
Submitted May 3, 2005
By Michael Ziemann

First, I want to apologize for missing the original deadline for votes.

1. I agree with the affirmative comments submitted by Dana Roberts, Ed Bryant and others who comment on the same sections as these two did. (Do not want to imply that I agree with all comments submitted by others.)

2. I am reluctantly voting affirmative with comment due to the new section 3282.362(c)(1). If we had been given the opportunity, through a segmented ballot, I would have voted negative on that section. This new section is:

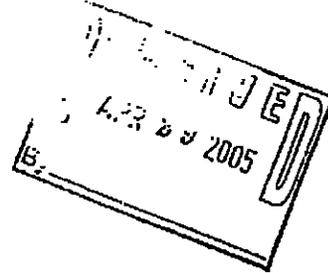
- A. Overly broad.
- B. Vague.
- C. Ambiguous.

The relationship between what might be found in "the manufacturer's service records for determinations under 3282.404" and the "manufacturer ... ignoring or not performing under its approved quality assurance manual" is not spelled out. As written a single positive determination under 3282.404 by a manufacturer could be cited as a failure to perform under his QAM. The Department's monitoring contractor (currently IBTS) could have a heyday with this creating lots of angst for the IPIAs and manufacturers while doing nothing for the consumers.

Manufactured Housing Consensus Committee

NEPA 1 Batterymarch Park Quincy, MA 02269
Phone: +1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org

TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME [REDACTED]

DATE APRIL 29, 2005

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

*5/21/05
V. Crawford*

4/15/2005

Farish

Manufactured Hoisting Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org



TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005

Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valarce Crawford
NFPA
1 Batterymarch Park
Quincy, MA .02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME [REDACTED]

DATE 4-27-2005

With respect to the proposed changes to Subpart 1, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

Handwritten notes:
①
4/15/2005
La. Markt

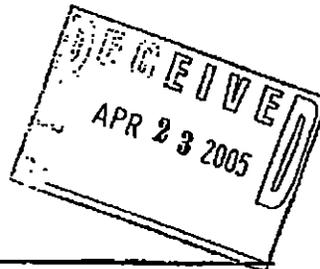
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4/15/2005

La Markt

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: +1(617) 984-7507 Fax +1 (617) 984-7110 www.nfpa.org

TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005



Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 23 April, 2005.

NAME [REDACTED]

DATE 4/23/05

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

4/23/05

1
4/23/2005

mc/rae

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269

Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org



TO: M

FROM: B

DATE: April 15, 2005

SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005



FAX: (617) 984-7110

EMAIL: Temphud@nfpa.org

29 April, 2005.

NAME: [REDACTED]

DATE 4/29/2005



- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

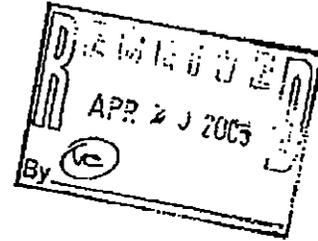


1
B

Tomashi

Manufactured Housing Consensus Committee

NFPA 1 Batterymarch Park Quincy, MA 02269
Phone: + 1(617) 984-7507 Fax: +1 (617) 984-7110 www.nfpa.org



TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005

Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

Valaree Crawford
NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME Richard Weinert

DATE 4/19/2005

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

Mark Conte

April 22, 2005

Subpart I Ballot

Negative vote justifications

3282.7(v)

The proposed change to the definition *Manufactured Home Construction* is inconsistent with the Act, Sec. 603 (1). Furthermore, the installation standards that are proposed to be excluded from this term have yet to be established.

3282.403(a)

This paragraph requires that retailers filter consumer complaints or other information about homes it has sold. A retailer would have to determine if the information likely indicated a violation of the standards or imminent safety hazard, before the information was forwarded to the manufacturer. For a retailer to determine if information regarding the home likely indicated a violation of the standards, they would need to become very familiar with the manufacturer's approved designs for the construction of the home as well as the Manufactured Home Construction and Safety Standards. The typical retailer does not have this type of information at its disposal.

This could result in significant problems going unreported to the manufacturer.

3282.403(c)

This paragraph introduces the term *Good Faith* into the regulations. As defined in part in Blacks Law Dictionary, "good faith is an intangible and abstract quality with no technical meaning or statutory definition..." The Scope of these regulations is clear that the procedures are to assure notification and corrections are provided. Introducing this term negatively impacts the assurances required in this subpart and invites arguments regarding the manufacturer's level of competency in evaluating and classifying information received regarding possible failures in homes produced.

This term is also used in 3282.404(a), (b), 405(a), 407(c)(2)

3282.404(c)

This paragraph provides that the manufacturer carry out *reasonable* investigations and *generally* determine the cause of each problem. In order to protect the rights of the homeowner, the manufacturer should carry out adequate investigations and based on the performance nature of the Manufactured Home Construction and Safety Standards, the source of the problem must be determined in all cases.

3282.404(c)(2)(iii)

The primary method used by manufacturers to determine if notification and correction is required is through a review of service records. In many cases, the issue at hand is not an issue that would be reported to the manufacturer by the consumer and as a result would not be evident in the service records. As this method is appropriate only in cases where the consumer would be aware of the problem, it is critical that qualifying language be

Mark Conley

included in this paragraph to indicate to the manufacturer, when using the service records would be appropriate for making class determinations.

3282.405

The language in this section reduces the level of consumer protection provided in the Act Sec. 615 (a) that provides for notification of any defect in any manufactured home. The proposed regulations limit the manufacturers' responsibility for notification to defects only caused by the manufacturer.

3282.406

This section, requiring correction of a manufactured home by a retailer or installer, lacks statutory basis. Additionally, a definition of "installer" has yet to be established. To identify such a party who has yet to be defined is improper.

3282.407(c)(2) & 413(f)

These subsections fail to require the IPJA to concur with the method used by the manufacturer to identify all affected homes.

3282.415(d)

I fail to see proper statutory authority to require a retailer to correct a home. It is recognized that the Dispute Resolution process from the Act is cited in these proposed regulations; however it would only be applicable for defects reported during the first one year period beginning after installation. This seriously undermines protection for the consumer if a problem is reported after the expiration of the time limit if a retailer was found to be responsible for the problem.

Manufactured Housing Consensus Committee

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TO: MHCC Committee Members
FROM: Robert E. Solomon
DATE: April 15, 2005
SUBJECT: SUBPART I Letter Ballot - Update MHCC- 2005

Complete the ballot as indicated. If you vote affirmative with comments, negative, or if you abstain, please indicate the reason (s) for doing so. Once you have reviewed the material and completed this ballot, return to:

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NFPA
1 Batterymarch Park
Quincy, MA 02169
FAX: (617) 984-7110
EMAIL: Temphud@nfpa.org

The due date for receipt of this ballot is 29 April, 2005.

NAME Sheenie E. Downs
DATE 5-3-05

With respect to the proposed changes to Subpart I, record my vote as:

- AFFIRMATIVE
- AFFIRMATIVE WITH COMMENTS*
- NEGATIVE*
- ABSTAIN*

* Reasons must accompany these votes.

I have just joined the committee and do not have the knowledge base to vote on this issue.

1
5/3/2005

ENCLOSURE
C

FINAL (5/24/06)**PRINCIPLES FOR AMENDING SUBPART I – CONSUMER COMPLAINT
HANDLING REMEDIAL ACTIONS**

The Manufactured Housing Improvement Act (MHIA) of 2000 provides the Manufactured Housing Consensus Committee with the authority to propose recommendations for changes to the Manufactured Home Procedural and Enforcement Regulations to the U.S. Department of Housing and Urban Development (HUD).

One important regulation needing change in light of the MHIA of 2000 is the Procedural and Enforcement Regulation governing consumer complaint handling and remedial actions by manufacturers known as Subpart I. Subpart I regulates the way manufacturers investigate specific problems regarding manufactured homes brought to their attention from any source, the reporting of their findings, and if a serious defect or imminent safety hazard exists, the manufacturer's correction.

The MHIA of 2000 requires the implementation in December of 2005 of a national dispute resolution program and the regulation of installers and the installation set-up of manufactured homes. Subpart I should be updated to accommodate these program improvements.

Subpart I also should be updated due to the changes in manufactured home construction over the last 25+ years. Today, multi-section homes exceed 50% of manufactured home production. These multi-section homes have more of their construction completed on-site rather than in the factory due to the increased potential for transportation damage and size limitations for highway travel.

To address on-site construction, HUD is considering on-site completion rules and the MHCC has already provided the Department its recommendations for drafting those rules. Subpart I should be up-dated to address the on-site construction work that is the responsibility of the manufacturer.

To develop its Subpart I recommendations, the MHCC utilized as its baseline document, proposed amendments to Subpart I presented to the MHCC by the Manufactured Housing Association for Regulatory Reform.

The MHCC utilized the following principles to develop its recommendations:

- Subpart I regulations should clearly identify, especially to the homeowner, what problems manufacturers will correct
- Subpart I should hold the manufacturer accountable for all construction to comply with the Federal manufactured home construction and safety standards
- 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

- Subpart I regulations should clearly define when a manufacturer has a duty to investigate and how the investigation should be performed
- Subpart I should describe methods available to conduct an investigation and indicate the investigation methods may vary based on the circumstances surrounding the problem
- Subpart I regulations should hold the manufacturer accountable for choosing the most appropriate method of investigation based on the known facts concerning the problem
- 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.
- Subpart I regulations should require manufacturers to utilize service records and approved designs as part of the investigative process
- 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
- 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
- The manufacturer's responsibility for construction should be separate and distinct from any manufacturer responsibility for installation
- Subpart I regulations should utilize consistent wording and be in conformance with the Act as amended by the MHIA 2000
- Subpart I regulations should place a priority on correcting the problem while maintaining requirements for sufficient documentation to identify patterns in construction problems
- HUD cannot exceed its statutory authority and must implement all of the requirements of the Act.
- For each recommendation, the MHCC will consider the factors in Section 604(e)

of the Act and any other statutory guidance

- The recommendations for notification and correction should be consistent with the requirements of Sections 602 and 615 of the Act