DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–5238–P–01]

RIN 2502–AI84

Manufactured Housing: Notification, Correction, and Procedural Regulations

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

ACTION: Proposed rule.

SUMMARY: HUD is proposing to revise its regulations that implement statutory requirements concerning how manufacturers and others address reports of problems with manufactured homes. These "Subpart I" regulations establish a system of protections with respect to imminent safety hazards and violations of the Federal construction and safety standards, assuring a minimum of formality and delay, while protecting the rights of all parties. The regulations implement requirements established by Congress in the National Manufactured Housing Construction and Safety Standards Act of 1974. Manufacturers, retailers, and distributors, State Administrative Agencies, primary inspection agencies, and the Secretary would follow the procedures set out in Subpart I to assure that notification and correction are provided with respect to manufactured homes, when required. These remedial actions are not required, however, for failures that occur in any manufactured home or component as the result of normal wear and aging, unforeseeable consumer abuse, or unreasonable neglect of maintenance.

DATES: *Comment Due Date:* April 18, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. All submissions must refer to the above docket number and title. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the above docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410; telephone number 202–708–6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This proposed revision of Subpart I is based on a previous revision developed and submitted by the Manufactured Housing Consensus Committee (MHCC) for the Secretary's consideration. HUD agreed with most, but not all, of that revision. These changes are discussed in the "Supplementary Information" section of this document. For the convenience of commenters on today's proposed rule, HUD will provide page numbers to the location of the MHCC's recommendation within the **Federal Register**, to facilitate comparison.

I. Background

Since 1976, a major component of HUD's manufactured housing regulations has been the procedural and enforcement provisions in 24 CFR part 3282, subpart I ("Subpart I"). These provisions establish the system for manufacturers and retailers to assure that factory-built homes sold to consumers after having been manufactured pursuant to a federal building code provide at least the protections that are built into the construction and safety standards in that building code. Because the federal building code preempts a multiplicity of state and local building codes that would otherwise apply to the construction of such homes, manufacturers, distributors, retailers, and regulators are charged with particular responsibilities designed to protect both the purchasers of these homes and the general public. The regulations in Subpart I seek to balance the interests of all persons who have a stake in the future of quality, affordable manufactured housing.

As the manufactured housing industry has evolved from largely single-section homes to today's multiple-section homes that can be creatively and aesthetically configured and finished while maintaining the important affordable character of the homes, various parties have identified a need to refine the regulations in Subpart I. The Manufactured Housing Consensus Committee (MHCC) has made refinement of these regulations a priority, and HUD has worked with the MHCC to redraft Subpart I in a way that would address issues identified by regulated entities, State and Federal regulators, and consumers.

The MHCC was established by amendments made in December 2000 to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5426 (the Act), in large part for the purpose of providing periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards and the procedural and enforcement regulations. (See 42 U.S.C. 5403(a)(3)(A).) The 22-member Federal Advisory Committee includes seven voting members in each of three categories, plus a nonvoting representative of the Secretary. The three categories, as established in the Act, are: (1) Producers; (2) Users; and (3) General Interest and Public Officials.

The MHCC has twice recommended specific revisions of Subpart I to the Secretary. To be promulgated under the Secretary's authority, however, the recommended revisions must be consistent with the Act. In both cases, HUD concluded that the MHCC recommendations were not consistent with the statutory requirements and the

Secretary's authority. (*See* 68 FR 47881 (August 12, 2003, amending 68 FR 35850, July 25, 2003) and 71 FR 34464 (June 14, 2006) ("June 14 notice").)

The June 14, 2006, notice included the complete text of the most recent MHCC recommendation. This second set of recommendations by the MHCC was developed through much more extensive discussions in public meetings of the MHCC and in task force and subcommittees than was the first set, and was very close to being acceptable under the Act. HUD has based today's proposed rule on the second set of the MHCC recommendations, with a few modifications. As required by section 604(b)(3) of the Act (42 U.S.C. 5403(b)(3)), HUD first submitted its proposed rule to the MHCC for the committee's prepublication review and comments. HUD has considered those comments and now is issuing this proposed rule for public comment. Most of the text of this proposal is the same as the text that was included in the MHCC proposal submitted to HUD, as published in the June 14, 2006 notice. HUD believes that today's proposed rule provides clearer regulatory structure and appropriate consumer protection provisions, while substantially adopting the MHCC recommendation.

II. Reasons for HUD's Changes

Between the time that the MHCC submitted its recommended revision of Subpart I and the time that HUD developed today's proposed rule based on the MHCC recommendation, numerous meetings of the MHCC and HUD were held to discuss the MHCC recommendation and HUD-suggested revisions. Agreement was reached in principle on some further changes suggested by HUD or members of the MHCC. Agreement could not be reached on all of the changes, however, so there was no reason for the MHCC to amend its recommendation to include the changes agreed upon. Instead, HUD has included those changes in today's proposed rule.

While HUD agreed with the MHCC on the majority of the language used in today's proposed rule, some of the MHCC's language was not consistent with the Act. HUD's proposed rule also differs from the MHCC language by adding consumer protections when warranted, ensuring that provisions are internally consistent, and adding flexibility that benefit both manufacturers and regulators. A few editorial changes have also been made for the purpose of clarifying the intent of the applicable provision.

Most of the changes made by HUD to the MHCC recommendation can be explained using six justifications, many of which are also contained in the June 14, 2006, notice rejecting the MHCC language. The justifications are as follows:

Justification 1: Changes agreed on in principle by HUD and MHCC in prepublication meetings. This justification applies to the change made in § 3282.362(c)(1).

Justification 2: The rejected MHCC language was not consistent with statutory authority. In section 615 of the Act (42 U.S.C. 5414), Congress placed responsibility for the notification and correction of defects in manufactured homes on manufacturers, and set guidelines for manufacturers to meet these responsibilities. Section 613 of the Act (42 U.S.C. 5412) imposes additional repair and repurchase requirements on manufacturers with respect to homes delivered to retailers and distributors before those homes are sold to purchasers. HUD's proposed rule recognizes those statutory responsibilities, which the MHCC recommendation failed to acknowledge appropriately. Consistent with the Act, however, HUD continues to limit the manufacturer's correction responsibilities to only those defects that are related to errors in design or assembly of the home by the manufacturer, in accordance with section 615(g) (42 U.S.C. 5414(g)).

HUD's proposed rule does not adopt MHCC language that would have established new responsibilities for retailers and distributors that are not found in the Act, would have limited the manufacturers' pre-sale correction responsibilities, and could have required HUD and state regulators to meet new burdens of proof in assuring production of manufactured homes that comply with the federal construction and safety standards. HUD also did not adopt MHCC language in § 3282.415(d) that would have been inconsistent with sections 613 and 623(b)(12) of the Act (42 U.S.C. 5412 and 5422(b)(12)). The dispute resolution program referenced in the MHCC language is intended to address problems reported in manufactured homes after installation, while the regulatory section included language to address corrections that would be required before a home is sold.

This justification applies to the changes made in §§ 3282.404(b)(3), 3282.405(a)(2), 3282.415(c), and 3282.415(d). At the same time, however, in § 3282.405(a)(2) the phrase "introduced systematically" was inserted, by agreement in principle with the MHCC. As a result of the change in § 3282.415(d), the subsequent paragraphs had to be redesignated.

Justification 3: Other proposed modifications: determination factors. HUD is also proposing a few other modifications to the MHCC's language, even though HUD did not base its June 14, 2006, notice of rejection of the MHCC language on these modifications.

HUD believes that it is important for manufacturers to use appropriate methods for determining which manufactured homes should be included in a class of homes for which notification or correction of defects or safety hazards is required. Currently, § 3282.409(c) of HUD's regulations recognizes a methodology that includes inspection of the actual homes, not the records of those homes. The MHCC language would have revised the current provision by permitting inspection of the records, including consumer and retailer complaints, rather than the homes.

HUD proposes modifying that permissive language to make it clear that the methodology would be acceptable only if the cause of the problem is such that it would be understood and reported by consumers or retailers. For example, inadequate firestopping in a home is not a condition that a homeowner, or even a retailer, can be expected to observe and report. Therefore, a manufacturer that is determining the scope of a class of homes with inadequate firestopping should not be permitted to rely on complaint records alone to identify the homes to be included in the class. HUD would also clarify that, in selecting a methodology, the manufacturer is expected to rely on information it discovers during an investigation, not just information initially provided in a complaint.

This justification applies to the changes made in § 3282.404(c).

Justification 4: Other suggested modifications: recordkeeping. HUD also proposes adding language in the recordkeeping requirements that, rather than mandating how manufacturers maintain records regarding corrective actions, would provide manufacturers options for how to comply with the requirements. HUD's proposal would also avoid using an undefined term that may have several uses in the industry and create confusion. These modifications would provide manufacturers flexibility regarding how manufacturer records are to be maintained. The new provisions would also recognize a manufacturer's right to keep some of these records in a central class determination file that might be

preferred by some manufacturers and would reduce the amount of paperwork required. HUD would add such an option because some manufacturers are already keeping their records in this alternative format, which is a format that also could be more user-friendly for HUD and state regulators in enforcing the law. This justification applies to the changes made in § 3282.417.

Justification 5: Other suggested modifications: generally. HUD would reorganize §§ 3282.411 and 3282.412 of the MHCC recommendation, to assure these provisions are internally consistent. The general structure of the MHCC recommendations for these sections would be retained, however. Section 3282.411 of the MHCC recommendation would have established the prerequisites for any state administrative agency (SAA) to refer information to the appropriate SAA or HUD for possible investigation. Section 3282.412 would have set forth requirements for HUD or an appropriate SAA to initiate a formal administrative investigation process. The revisions HUD proposes to make in these sections are technical changes to simplify and clarify the provisions and to avoid overlap within the two sections.

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

This justification applies to the changes made in §§ 3282.404(a), 3282.411, and 3282.412.

Justification 6: Finally, HUD included clarifying and nonsubstantive, editorial changes in the modified version of the MHCC recommendations that HUD submitted to the MHCC for its prepublication review. These changes would be minor and would be for the purpose of making the intent of the applicable provision more clear. Punctuation changes are also included in this justification. This justification applies to the changes made in §§ 3282.7(j), (v), and (dd); 3282.401(b); 3282.406(b)(3); 3282.407(b); 3282.409(c)(5) and (c)(7)(ii); 3282.413(a), (b), (c), (d), and (f); 3282.415(b); 3282.416(b)(2); and 3282.417.

To make it easier for readers to cross-reference to these justifications from the changes indicated in the proposed rule, the following table also lists the sections of the MHCC recommendation that have been modified by HUD, and also provides their page number location in the June 14 notice:

Section(s)	Reference to MHCC rule (in June 14, 2006 Notice)	MHCC's original recommendations	HUD's justification for modifying MHCC's recommendation
3282.7(j) and (v) and (dd).	71 FR 34466	No MHCC recommendation. Editorial change	Justification 6—HUD's clarifying and nonsubstantive, editorial changes would be minor and for the purpose of making the intent of the applicable provision clearer. Punctuation changes were also included in this justification.
3282.362(c)(1)	71 FR 34466	MHCC included use of an undefined term "Service record".	Justification 1—This justification applies to the change made in § 3282.362(c)(1). The MHCC recommendation uses the term "service record," with no guidance on the contents of a "service record," which could have led to more confusion about the requirements and duplicative filing systems.
3282.401(b)	71 FR 34466	MHCC omitted "distributors" from the list of regulated parties.	Justification 6—HUD added "distributors" to mean any person engaged in the sale and distribution of manufactured homes for resale. Clarifying and nonsubstantive, editorial changes that would be minor and for the purpose of making the intent of the applicable provision clearer. Punctuation changes were also included in this justification.
3282.404(a)	71 FR 34467	MHCC recommended expanding from 20 days (current 3282.404(b)) to 30 days for manufacturer to make initial determinations.	Justification 5—HUD accepted MHCC's recommendation to expand from 20 to 30 days.
3282.404(b)(3)	See 71 FR 34467	MHCC recommended language to limit a manufacturer's notification responsibilities to only problems caused by persons working on behalf of a manufacturer, such as a retailer.	Justification 2—HUD's proposed rule does not adopt MHCC proposed language that would have established new responsibilities for retailers and distributors not found in the Act. The proposed language would have limited the manufacturers' pre-sale correction responsibilities, and could have required HUD and state regulators to meet new burdens of proof in assuring production of manufactured homes that meet HUD's standards.

Section(s)	Reference to MHCC rule (in June 14, 2006 Notice)	MHCC's original recommendations	HUD's justification for modifying MHCC's recommendation
3282.404(c)(1) and (c)(2)(iii).	71 FR 34467	MHCC language would have limited manufacturer's search for defects to consumer complaints and retailer records.	Justification 3—HUD rejected this language and instead requires manufacturers to use appropriate methods for determining which manufactured homes should be included in a class of homes for which notification or correction of defects or safety hazards is required. HUD's language does allow the manufacturer to solely use those records, but only when consumers and retailers understand and report the defect or problem. But HUD has retained the required use of other sources of information.
3282.405(a)(2)	71 FR 34468	MHCC language would have established new responsibilities for parties not designated in the Act and limited manufacturers' pre-sale correction responsibilities, and could have required HUD and state regulators to meet new burdens of proof in assuring production of manufactured homes that comply with the federal construction and safety standards.	Justification 2—HUD removed this because the proposed language is inconsistent with statute. HUD did, however, maintain in 405(a), the phrase developed in conjunction with the MHCC: "introduced systematically."
3282.406(b)(3)	71 FR 34468	Editorial change. No modification to the MHCC recommendation.	Justification 6—HUD's clarifying and nonsubstantive, editorial changes would be minor and for the purpose of making the intent of the applicable provision clearer. Punctuation changes were also included in this justification.
3282.407(b)	71 FR 34468	Editorial change. No modification to the MHCC recommendation.	Justification 6—HUD's clarifying and nonsubstantive, editorial changes would be minor and for the purpose of making the intent of the applicable provision clearer. Punctuation changes were also included in this justification.
3282.409(c)(5)	71 FR 34469	Editorial change. No modification to the MHCC recommendation.	Justification 6—HUD's clarifying and nonsubstantive, editorial changes would be minor and for the purpose of making the intent of the applicable provision clearer. Punctuation changes were also included in this justification.
3282.409(c)(7)(ii)	71 FR 34469	Editorial change. No modification to the MHCC recommendation.	Justification 6—HUD's clarifying and nonsubstantive, editorial changes would be minor and for the purpose of making the intent of the applicable provision clearer. Punctuation changes were also included in this justification.
3282.411 and 3282.412.	71 FR 34470	The general structure of the MHCC recommendations for these sections would be retained.	Justification 5—The general structure of the MHCC recommendations for these sections would be retained; however, HUD would reorganize §§ 3282.411 and 3282.412 of the MHCC recommendation, to assure these provisions are internally consistent. The revisions HUD proposes to make in these sections are technical changes to simplify and clarify the provisions and to avoid overlap within the two sections.
3282.413(a), (b), (c), (d), and (f).	71 FR 34470–34471	Editorial change. No modification to the MHCC recommendation.	Justification 6—HUD's clarifying and nonsubstantive, editorial changes would be minor and for the purpose of making the intent of the applicable provision clearer. Punctuation changes were also included in this justification.
3282.415(b)	71 FR 34472	Editorial change. No modification to the MHCC recommendation.	Justification 6—HUD's clarifying and nonsubstantive, editorial changes would be minor and for the purpose of making the intent of the applicable provision clearer. Punctuation changes were also included in this justification.
3282.415(c)	71 FR 34472	MHCC recommended eliminating phrases to limit the manufacturers' pre-sale correction responsibilities.	Justification 2—HUD removed this because the proposed language is inconsistent with the statute.

Section(s)	Reference to MHCC rule (in June 14, 2006 Notice)	MHCC's original recommendations	HUD's justification for modifying MHCC's recommendation
3282.415(d)	71 FR 34472	MHCC recommended that retailers/distributors become responsible parties in the notification and correction process.	Justification 2—HUD removed 415(d) because the proposed language is inconsistent with Sections 613 and 623(c)(12) of the Act (42 U.S.C. 5412 and 5422 (c)(12)).
3282.416(b)(2)	71 FR 34472	Editorial change. No modification to the MHCC recommendation.	Justification 6—HUD's clarifying and nonsubstantive, editorial changes would be minor and for the purpose of making the intent of the applicable provision clearer. Punctuation changes were also included in this justification.
3282.417	71 FR 34472	MHCC recommended rejecting all of § 3282.417.	Justification 4—HUD's modifications would provide manufacturers flexibility regarding how they keep records, including what are referred to as "service records." HUD's proposal also outlines how current service records may be supplemented with all required determination records, but without creating and maintaining a separate set of files. HUD's proposal recognizes a manufacturer's right to keep these records in a central class determination file, reducing the amount of paperwork required. The recommendation allows this, but does not require this. Justification 6—Clarifying and non-substantive, editorial changes that would be minor and for the purpose of making the intent of the applicable provision more clear. Punctuation changes were also included in this justification.

III. Response to MHCC Comments

As noted, before publishing this proposed rule, HUD was required by section 604(b)(3) of the Act (42 U.S.C. 5403(b)(3)) to first submit its proposal to the MHCC for its prepublication review and comments. HUD has considered those comments and now is issuing this proposed rule for public comment. In MHCC committee and subcommittee meetings, HUD had repeatedly discussed with MHCC members its concerns with the most recent MHCC recommendation for revision of Subpart I. As a consequence of these discussions and HUD's explanations in the June 14, 2006, notice, the MHCC was fully informed of the substantive changes HUD is proposing in today's publication, even before the proposal was formally submitted to the MHCC for its review.

Nevertheless, if HUD rejects any significant comments provided by the MHCC during its formal review of the HUD proposed rule, the Act further requires HUD to: (1) Provide to the MHCC a written explanation of the reasons for the rejection; and (2) publish the MHCC's comments and HUD's response in the **Federal Register** for public comment.

In order to comply fully with the requirements of the Act, and so that there is no question about whether HUD has appropriately characterized any particular comment of the MHCC as "significant," HUD recommends a side-by-side comparison with the June 14 notice. HUD is referencing the page numbers to where the MHCC's original proposed text can be found. The MHCC incorporated into its comments by reference its own previous recommendations and the principles it had adopted to guide its own efforts to revise the regulations in Subpart I. Both of those documents have been published in the June 14 notice. The June 14 notice is available through the Government Printing Office's **Federal Register** Web site at *http://www.gpoaccess.gov/fr/index.html* (search using the citation "71 FR 34464, June 14, 2006").

This preamble and the changes indicated in the proposed rule provide HUD's primary response to the MHCC prepublication comments. Additional HUD responses to the MHCC prepublication comments are as follows:

The MHCC comments continue to confuse the statutory authorities and procedures that are applicable to the distinct responsibilities of the regulators and regulated parties for the new dispute resolution program and the installation programs, as distinguished from the historical construction and safety standards program. HUD continues to believe that its total regulatory framework will be consistent with the Act and that Congress has made HUD responsible for implementing the statute.

Some of the MHCC prepublication comments do not accurately reflect either its own recommendations or HUD's proposed rule. For example, the comments on the recordkeeping provisions suggest that the MHCC requirements would be less burdensome than the HUD requirements. HUD's proposal evolved because the MHCC recommendation used an undefined term ("service records"), which might have several uses in the industry and create confusion about the recordkeeping requirements and lead to duplicative filing systems. HUD's less-prescriptive proposal, seen in the changes in §§ 3282.417(b) and (c), affords manufacturers flexibility in deciding how to keep their records, so that they are not required to repeat the same information in the file associated with every manufactured home that is part of a class determination. HUD's proposal also permits, but does not require, that manufacturers maintain records in a single or central class determination file. Notwithstanding, HUD specifically welcomes comment on whether it should require a single or central class determination file, whether

it should define the term "service records," and, if so, how it should define the term.

Further, HUD's proposed rule provides additional, not less, authority to SAAs to initiate and pursue preliminary and final determinations about problems in manufactured homes. The proposed rule also distinguishes between the responsibility for manufacturers to investigate "likely" defects, while the State and Federal regulators would continue to have the authority conferred by the Act to investigate possible defects. The MHCC comments also fail to acknowledge that regulators would still have to meet a higher standard of evidence before they could enforce notification or correction procedures against a manufacturer for a defect.

The MHCC also fails to distinguish between the statutory remedies of notification and correction. Under the Act, manufacturers are required to notify retailers and consumers about problems that render the manufactured home or any component unfit for its ordinary use, while the manufacturer is required to correct the problem only when it both presents a significant health or safety issue and is related to an error in design or assembly by the manufacturer. In its comments, the MHCC suggests that HUD can and should use its regulatory authority to rewrite these statutory requirements adopted by Congress.

On the other hand, the MHCC fails to acknowledge that HUD would adopt MHCC-recommended language that, for the first time, expressly recognizes a manufacturer's right to seek indemnification from component producers (§ 3283.406(e)(2)) and other commercial entities (§ 3282.415(h)) for the costs of corrections. Such arrangements would not be contrary to the Act, although section 622 of the Act (42 U.S.C. 5421) provides that purchasers may not waive their rights under it. The proposed rule (§ 3282.402(b)) also continues to protect manufacturers from responsibility for normal aging of manufactured homes and consumer abuse, as do the current regulations.

The MHCC comments suggest that HUD should not offer its own revisions to clarify language that, applying its experience as a regulator, HUD can identify as problematic. In the past, the regulations have allowed manufacturers to identify a class of manufactured homes that might share a certain defect, by inspecting homes. HUD has accepted for this proposed rule a MHCC recommendation that revises this optional method to permit inspection of records, but HUD has added that the method should be used only when the defect is such that there could be a reasonable expectation that the defect would be reported by a consumer or retailer. HUD continues to believe that a manufacturer should not rely on a records review when the defect involves a hidden construction problem, such as improper firestopping.

Before any final rule becomes effective, HUD will, of course, also respond to public comment on today's proposed rule, including further comments from the MHCC and its members.

IV. Findings and Certifications

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and it was not reviewed by the Office of Management and Budget (OMB). This rule revises 24 CFR part 3282, subpart I, which provides the procedures by which HUD enforces the notification and correction of defects requirements of the Manufactured Home Construction and Safety Standards Act of 1974. This rule is not significant because it reorganizes and streamlines the existing regulation and proposes to clarify rather than change or add substance to the existing regulation.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has Federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt state law within the meaning of the Executive Order.

HUD is proposing to revise its current regulations in 24 CFR part 3282, subpart I, in order to make them more clear and consistent with the Act. These revisions are, in large part, based on recommendations by the MHCC. The revisions, however, do not greatly change current requirements affecting or preempting state law. Participation by an SAA in HUD's Manufactured Housing Program is optional, and preemption of state law is provided only to the extent required by the Act.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0541. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. HUD is required by law to implement statutory requirements concerning how manufacturers and others address reports of problems with manufactured homes, in order to protect both purchasers of factory-built homes and the general public. Small entities would not be burdened by this rule because this rule would not establish requirements that differ significantly from current requirements. This rule would streamline the current regulatory

process to reduce burdens on small entities. Roughly 60,000 manufactured homes are produced each year, and this rule would not affect or alter the cost of manufacture of such homes. For instance, this rule would revise current regulations to allow manufacturers to indemnify themselves through agreements or contracts with retailers, transporters, installers, distributors, or others for certain costs associated with corrective work performed. As a result, HUD does not believe that the rule would have a significant economic effect on a substantial number of small entities. Further, the rule is intended to have a beneficial impact, by reducing the recordkeeping burdens on manufacturers. For example, manufacturers would be allowed to keep records in a central file, thereby reducing recordkeeping requirements for small entities. Also under the rule, manufacturers would no longer be required to provide notification of a possible defect if only one home is involved and the manufacturer corrects the home, thus further reducing paperwork burdens on small entities. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule would not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Manufactured Housing Program is 14.171.

List of Subjects in 24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend part 3282 of title 24 of the Code of Federal Regulations, as follows:

PART 3282—MANUFACTURED HOUSING PROCEDURAL AND ENFORCEMENT REGULATIONS

1. The authority citation for part 3282 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 5424; and 42 U.S.C. 3535(d).

2. In § 3282.7, revise paragraphs (j) and (v), and add paragraph (dd) to read as follows:

§ 3282.7 Definitions.

* * * * *

(j) *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.

* * * * *

(v) *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.

* * * * *

(dd) *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.

* * * * *

3. In § 3282.362, paragraph (c)(1), add a sentence immediately before the last sentence to read as follows:

§ 3282.362 Production Inspection Primary Inspection Agencies (IPIAs).

* * * * *

(c) * * *

(1) * * * The IPIA must periodically review the records that § 3282.417(e) requires the manufacturers to keep, for determinations under § 3282.404, to determine whether evidence exists that the manufacturer is ignoring or not performing under its approved quality assurance manual, and, if such evidence is found, must advise the manufacturer so that appropriate action may be taken under § 3282.404. * * *

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4. Revise subpart I to read as follows:

Subpart I—Consumer Complaint Handling and Remedial Actions

Sec.

§ 3282.401 Purpose and scope.

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

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

§ 3282.402 General provisions.

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

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

§ 3282.403 Consumer complaint and information referral.

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

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

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

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

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

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

§ 3282.404 Manufacturers' determinations and related concurrences.

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

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

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

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

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

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

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

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

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

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

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

(i) Inspection of the manufactured home in question, including its design, to determine whether the defect, serious

defect, or imminent safety hazard resulted from the design itself;

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

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

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

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

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

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

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

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

§ 3282.405 Notification pursuant to manufacturer's determination.

(a) *General requirement.* Every manufacturer of manufactured homes must provide notification as set out in this section with respect to any manufactured home produced by the manufacturer in which the manufacturer determines, in good faith, that there exists or likely exists, in more than one home, the same defect introduced systematically, a serious defect, or an imminent safety hazard.

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

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

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

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

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

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

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

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

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

§ 3282.406 Required manufacturer correction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3282.408 Plan of notification required.

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

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

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

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

§ 3282.409 Contents of plan.

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

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

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

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

(3) Provide for correction of those manufactured homes that are required

to be corrected pursuant to § 3282.406(b);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 3282.410 Implementation of plan.

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

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

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

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

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

§ 3282.411 SAA initiation of remedial action.

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

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

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

(b) *SAA referral of matter.* If at any time it appears that the affected manufactured homes were manufactured in more than one State, an SAA that decides to initiate such administrative review must refer the matter to the Secretary for possible action pursuant to § 3282.412. If it appears that all of the affected manufactured homes were manufactured in another State, an SAA that decides to initiate administrative review must refer the matter to the SAA in the State of manufacture or to the Secretary, for possible action pursuant to § 3282.412.

§ 3282.412 Preliminary and final administrative determinations.

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

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

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

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

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

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

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

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

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

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

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

(b) *Additional requirements—SAA issuance.* (1) An SAA that receives information that indicates a serious defect or an imminent safety hazard possibly exists in a home manufactured in that SAA's State must notify the Secretary about that information.

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

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

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

(i) Include the factual basis for the determination;

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

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

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

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

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

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

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

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

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

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

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

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

§ 3282.413 Implementation of Final Determination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Actual use of the home; and

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

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

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

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

(3) The expense to the manufacturer;

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

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

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

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

§ 3282.415 Correction of homes before sale to purchaser.

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

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

(c) *Manufacturer's remedial responsibilities.* Upon a Final Determination pursuant to § 3282.412 by the Secretary or an SAA, a determination by a court of appropriate jurisdiction, or a manufacturer's own determination that a manufactured home that has been sold to a retailer but for which there is no completed sale to a purchaser contains a noncompliance, defect, serious defect, or imminent safety hazard, the manufacturer must do one of the following:

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

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

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

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

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

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

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

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

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

§ 3282.416 Oversight of notification and correction activities.

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

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

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

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

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

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

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

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

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

§ 3282.417 Recordkeeping requirements.

(a) *Manufacturer report on notifications and corrections.* Within 30 days after the deadline for completing any notifications, corrections, replacement, or repurchase required pursuant to this subpart, the manufacturer must provide a complete

report of the action taken to, as appropriate, the Secretary or the SAA that approved the plan under § 3282.408, granted a waiver, or issued the order under § 3282.413. If any other SAA or the Secretary forwarded the relevant consumer complaint or other information to the manufacturer in accordance with § 3282.403, the manufacturer must send a copy of the report to that SAA or the Secretary, as applicable.

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

(2) The manufacturer records must include:

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

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

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

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

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

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

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

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

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

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

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

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

(e) *Maintenance of manufacturer's records.* (1) Except as provided in paragraph (b)(3) of this section, for each manufactured home produced by a manufacturer, the manufacturer must maintain all of the information required by paragraphs (b), (c), and (d) of this section in a printed or electronic format, and must consolidate the information in a readily accessible file or in a readily accessible combination of a printed file and an electronic file. For each home, the manufacturer also must include in such file a copy of the home's data plate; all information related to manufacture, handling, and assembly of the home; any checklist or similar documentation used by the manufacturer in the transport of the home; the name and address of the retailer; the original or a copy of each purchasers' registration record received by the manufacturer; all correspondence with the retailer and homeowner that is related to the home; any information received by the manufacturer regarding set-up of the home; all work orders for servicing the home; and the information that the manufacturer is required to keep pursuant to § 3282.211. The manufacturer must organize all such files in order of the serial number of the homes produced.

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

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

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

(1) Received the information;

(2) Creates the record; or

(3) Completes the notification or correction campaign.

§ 3282.418 Factors for appropriateness and amount of civil penalties.

In determining whether to seek a civil penalty for a violation of the requirements of this subpart, 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.

Dated: February 4, 2011.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to FR–5238–P–01: Prepublication Comments of the MHCC

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 [HUD submittal] 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 bv 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. [*HUD* **Note:** the dispute resolution process is also subject to specific statutory requirements, which are separate from the statutory requirements that are the basis of today's proposed rule.]

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 Preliminarv 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/SAAs—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 eterminations made by regulators.

Section 3: Specific Language Changes Recommended bv 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 riling 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.

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