MINUTES
MHCC REGULATORY ENFORCEMENT SUBCOMMITTEE MEETING

August 6, 2019

-AND-

August 14, 2019

Teleconferences

(Approved on October 29, 2019 at the MHCC Meeting in Washington DC)

MINUTES
MANUFACTURED HOUSING CONSENSUS COMMITTEE (MHCC)
REGULATORY ENFORCEMENT SUBCOMMITTEE TELECONFERENCES

AUGUST 6, 2019

Teleconference

Call to Order

The Manufactured Housing Consensus Committee (MHCC) Regulatory Enforcement Subcommittee meeting was held via teleconference on Tuesday, August 6, 2019 at 10:00 a.m. (EDT). Chairman, Michael Moglia, called the meeting to order at 10:04 a.m. Kevin Kauffman, Administering Organization (AO) Home Innovation Research Labs, called the roll and announced that a quorum was present. Teresa Payne, Acting Administrator of the Office of Manufactured Housing Programs and Designated Federal Official (DFO), welcomed the Subcommittee members and the public to the teleconference. DFO Payne introduced the HUD staff present at the meeting. Guests were asked to introduce themselves. See Appendix A for a list of meeting attendees.

Approval of the Minutes

Motion to approve the minutes of the April 2, 2019 MHCC Regulatory Enforcement Subcommittee meeting.

Maker: Alan Spencer Second: Michael Moglia

The motion carried.

The AO reminded the Subcommittee about the task that they were assigned by the MHCC. At the April 30 – May 2, 2019 MHCC meeting, the MHCC assigned 90 Deregulation Comments (DRC) and seven Log Items for the Subcommittee to review and recommend actions. The AO explained how the DRCs are different from Log Items and the type of motions used to dispose the DRCs. See Appendix C on Basic Rules and Procedures for Deregulation Comments.

The Subcommittee Chair opened the floor to the public for the Public Comment period.

Public Comment Period AM

The public comments during this period focused on DRCs assigned to the Subcommittee. Written public comments submitted prior to the teleconference can be found in Appendix D.

Bill Matchneer brought up the issue that there was a trend in the US of manufactured homes being restricted by local codes. During Mr. Matchneer's time at HUD, he had a letter writing campaign to the local jurisdiction to get the point of preemption across. HUD should reemphasize the preemption issues as it carries more weight if it came through HUD. Mr. Matchneer posed a question and a comment for the Subcommittee members: 1) why HUD officials aren't enforcing preemption? 2) 2010 Interpretive Rule regarding the statutory role of the MHCC should be repealed.

Mark Weiss, Manufactured Housing Association for Regulatory Reform (MHARR), presented a few MHARR proposal/DRCs and requested the Subcommittee to approve them. DRC 138 calls for the repeal of pre-2000 preemption guidance documents. These guidance documents are still out there and create unnecessary confusion. Mr. Weiss highlighted DRC 26 and DRC 139 that are regarding the reform of Subpart I and unnecessary regulatory burden. DRC 17 and DRC 89 call for the repeal of on-site final rule. The MHCC developed proposals for on-site completion, when the final rule came out it was way more complicated and created

unnecessary burdens. The existing rule, therefore, should be repealed and replaced with a new rule that confirms with the recommendations of the MHCC and provides for the on-site completion of manufactured homes in accordance with the federal standards with a minimum of additional regulatory compliance burdens.

Kara Beigay, Manufactured Housing Institute (MHI), asked the members to consider the matrix of MHI recommendation and the written public comment sent to the committee. Ms. Beigay stated that the Subpart I section is overly burdensome and should be revised. And the alternative construction process should also be revised such that it allows for unlimited number of homes for each Alternative Construction (AC) letter, and no time limit.

Devin Leary-Hanebrink, Manufactured Housing Institute (MHI), provided comments on Log 182, Log 194 and Log 198. All three log items propose amending definitions in the HUD code, MHI agrees with these recommendations. This is part of an effort and a broader push to change things at the policy level. Some of these terms in the Manufactured Home Construction Safety Standards Act are very outdated. MHI wants the Subcommittee to send a message to Congress. MHI is looking for support from the Subcommittee and then from the MHCC to show Congress that these items need to be changed. HUD can't amend regulation language, but Congress can amend it and hopefully MHCC can forward that message to Congress.

J.D Harper asked for the full implementation of the pre-2000 guidance on preemption. It is being misused in the field. MHIA created a new and enhanced preemption by including extra language for requirements that are not in the law.

Deregulation Comment Discussion

The Subcommittee worked on the assigned Deregulation Comments in a predetermined order. Michael Moglia, the Subcommittee chair, introduced each Deregulation Comment and Log Items, and opened the floor for discussion and motion. A summary of motions on the Deregulation Comments can be found in Appendix B. On this call, the Subcommittee discussed the following categories: On-site Completion, Procedural and Enforcement Regulations, Alternative Construction Requirements, Consumer Complaint Handling and Remedial Actions, Preemption, HUD Regulation, Dispute Resolution, and Multifamily vs. Single-Family Homes.

The Subcommittee referred a few DRCs related to the elimination of the dispute resolution program, reemphasizing authority of preemption and reissuing an updated policy statement on preemption to HUD to consider.

Subcommittee members were encouraged to work independently to come up with language for Subpart I and Subpart M before the next teleconference.

Public Comment Period PM

Lesli Gooch, MHI, thanked the Subcommittee for their hard work and sending DRCs to HUD for consideration. Ms. Gooch encouraged the members to move forward on the edits to Subpart M and I. She thanked the Subcommittee again for the emphasis on preemption and addressing Log 198. With respect to the dispute resolution program, it is helpful to have the Subcommittee's input on those topics even though the topic might be outside the scope of the MHCC. MHI is excited to hear from the members and see steps taken to move the industry forward.

Bill Matchneer stated that the HUD general council will come up against jurisdiction that refuse to abide by the preemption. Therefore, HUD really has to ensure that these policies are properly enforced.

Mark Weiss, MHARR, noted that the proponent of DRC and Log Items should get an opportunity to speak during the meeting. Mr. Weiss also stated that HUD takes forever implementing changes and for it to complain about time was disingenuous.

JD Harper pointed out that there are couple of documents that need to be updated and reworked – for examples a lot of 1997 interpretation and notice of internal guidance documents. Mr. Harper thanked the Subcommittee for their time and work

DFO Payne thanked the Subcommittee members and the Subcommittee chair – Michael Moglia – for a productive meeting. The MHCC Regulatory Enforcement Subcommittee adjourned at 4:00 p.m. (EDT).

REGULATORY ENFORCEMENT SUBCOMMITTEE TELECONFERENCES

AUGUST 14, 2019

Teleconference

Call to Order

The Manufactured Housing Consensus Committee (MHCC) Regulatory Enforcement Subcommittee meeting was held via teleconference on Wednesday, August 14, 2019 at 10:00 a.m. (EDT). Chairman, Michael Moglia, called the meeting to order at 10:03 a.m. Kevin Kauffman, Administering Organization (AO) Home Innovation Research Labs, called the roll and announced that a quorum was present. Teresa Payne, Acting Administrator of the Office of Manufactured Housing Programs and Designated Federal Official (DFO), welcomed the Subcommittee members and the public to the teleconference. DFO Payne introduced the HUD staff present at the meeting. Guests were asked to introduce themselves. See Appendix A for a list of meeting attendees.

Public Comment Period AM

Leslie Gooch, MHI, reminded the Subcommittee members about MHI's submitted recommendations for the DRCs, and updates to Subpart I and Subpart M. Ms. Gooch requested Subpart I updates to 1) reduce administration burden and paperwork on items that have no consumer benefits; 2) eliminate class determination of non-compliance; and 3) clarify that the actions where there is a defect are applicable for class determination for defects that are not obvious. The role of In Plant Inspection Agency (IPIA) needs to be reevaluated also.

Mark Weiss, MHARR, reminded the Subcommittee that MHARR has submitted a proposal to edit Subpart I in 2001 and was acted upon by the MHCC. Mr. Weiss looked forward to subcommittee recommendation to reduce unnecessary paperwork and burden during this teleconference. Mr. Weiss cautioned that Subpart I is intricate and complicated and is tied closely to the law therefore changes to the regulation could have unintended consequences.

Deregulation Comment Discussion

The Subcommittee worked on the assigned Deregulation Comments in a predetermined order. The summary of motions on the Deregulation Comments can be found in Appendix B. The Subcommittee discussed the following topic on this call: Procedural and Enforcement Regulations, Carports, Model Manufactured Home Installation Standards, and RV Rule.

The Subcommittee deliberated on how to modify Subpart I and Subpart M. The Subcommittee approved as modified **Log 194 (Subpart I).** Appendix E has the approved as modified language for Log 194 (Subpart I). The Subcommittee also discussed regulatory language for **Log 195 (Subpart M)** however the Subcommittee was not able to finalize the regulatory language in the allotted time. Appendix F show the ongoing modifications to Log 195 (Subpart M).

For the 2019 October MHCC meeting, the Regulatory Subcommittee agreed to resolve and provide regulatory language for the remaining issue: **LOG 195 (Subpart M)**.

Public Comment Period PM

Leslie Gooch, MHI, thanked the Subcommittee for their work on the Subpart I and Subpart M and taking the consumers interested into consideration when making these changes.

Mark Weiss, MHARR, also thanked the Subcommittee and appreciated the opportunity to participate in the discussions.

Kevin Kauffman, AO, reminded the Subcommittee to come prepared to discuss Log 195 (Subpart M) at the next subcommittee meeting. DFO Payne thanked the Subcommittee members and the Subcommittee chair – Michael Moglia – for a productive meeting. The MHCC Regulatory Enforcement Subcommittee adjourned at 4:00 p.m. (EDT).

APPENDIX A:
Subcommittee Attendees

August 6, 2019

	Regulatory Enforcement Subcommittee	
	Name	**Attendance**
Users	Stacey Epperson	Y
	Loretta Dibble	Y
	Catherine Yielding	Y
	Dave Anderson	Y
Producers	Alan Spencer	Y
	Manuel Santana	Y
	Michael Wade	Y
	Cameron Tomasbi	Y
General Interest / Public Official	James Husom	Y
	Michael Moglia	Y
	David Tompos	N
	Mitchel Baker	Y

HUD Staff
Teresa Payne, DFO
Demetress Stringfield
Dennaire Anderson
Leo Houtt
Patricia McDuffie
Glorianna Peng
Barton Shapiro
Leo S. Huott
Jason McJury
Barry Ahuruonye
Dorian Hawkins

Other Participants
Mark Weiss, Manufactured Housing Association for Regulatory Reform (MHARR)
Devin Leary-Hanebrink, Manufactured Housing Institute (MHI)
Kara Beigay, Manufactured Housing Institute (MHI)
Leslie Gooch, Manufactured Housing Institute (MHI)
Russell Watson, MHCC member
Joseph Sadler, MHCC member
JD Harper
Tony Kovach
Bill Matchneer

AO Staff,

Home Innovation Research Labs
Kevin Kauffman
Nay Shah

Subcommittee Attendees

August 14, 2019

	Regulatory Enforcement Subcommittee	
	Name	**Attendance**
Users	Stacey Epperson	Y
	Loretta Dibble	Y
	Catherine Yielding	Y
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Producers	Alan Spencer	Y
	Manuel Santana	Y
	Michael Wade	Y
	Cameron Tomasbi	Y
General Interest / Public Official	James Husom	Y
	Michael Moglia	Y
	David Tompos	Y
	Mitchel Baker	N

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Teresa Payne, DFO
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Barton Shapiro
Leo S. Huott
Jason McJury
Barry Ahuruonye
Alan Field
Patricia McDuffie

Other Participants
Mark Weiss, Manufactured Housing Association for Regulatory Reform (MHARR)
Devin Leary-Hanebrink, Manufactured Housing Institute (MHI)
Kara Beigay, Manufactured Housing Institute (MHI)
Leslie Gooch, Manufactured Housing Institute (MHI)
Russell Watson, MHCC member
Joseph Sadler, MHCC member
Bill Matchneer
Dave Pinchard

AO Staff,
Home Innovation Research Labs
Kevin Kauffman
Nay Shah

APPENDIX B:

SUMMARY OF MOTIONS MADE BY REGULATORY ENFORCEMENT SUBCOMMITTEE ON THE ASSIGNED LOG ITEMS AND DERGULATION COMMENTS

LOG #	Motion	Vote Count	Makers of Motion (First | Second)
195	Tabled	11-0-0	N/A
163	Disapprove	11-0-0	Michael Moglia | Manuel Santana
182	Disapprove	11-0-0	Michael Moglia | Manuel Santana
194	Approve as Modified	11-0-0	Michael Moglia | Michael Wade
198	Approve	11-0-0	Manuel Santana | James Husom
206	Approve as Modified	11-0-0	Michael Moglia | Mitchel Baker
192	Disapprove	11-0-0	Michael Moglia | David Tompos

DRC #	Motion	Vote Count	Makers of Motion (First | Second)
2	Review and Consider – Refer to HUD	11-0-0	Michael Moglia | Mitchel Baker
4	Review and Consider – Pending regulatory language from Subcommittee	11-0-0	Michael Moglia | Catherine Yielding
17	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
18	Review and Consider – No Further Action	11-0-0	Michael Moglia | Catherine Yielding
28	Review and Consider – No Further Action	11-0-0	Michael Moglia | Manuel Santana
86	Review and Consider – No Further Action	11-0-0	Michael Moglia | Manuel Santana
87	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
88	Review and Consider – No Further Action	11-0-0	Michael Moglia | Manuel Santana
89	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
90	Review and Consider – No Further Action	11-0-0	Michael Moglia | Mitchel Baker
91	Review and Consider – No Further Action	11-0-0	Michael Moglia | Alan Spencer
92	Review and Consider – Reject premise and conclusion	11-0-0	Michael Moglia | Loretta Dibble
97	Review and Consider – No Further Action	11-0-0	Michael Moglia | Manuel Santana
98	Review and Consider – No Further Action	11-0-0	Manuel Santana | Michael Moglia
100	Review and Consider – No Further Action	11-0-0	Michael Moglia | Manuel Santana
101	Review and Consider – No Further Action	10-1-0	Michael Moglia | James Husom
108	Review and Consider – No Further Action	11-0-0	Manuel Santana | James Husom
109	Review and Consider – No Further Action	11-0-0	Catherine Yielding | Manuel Santana
110	Review and Consider – Reject premise and conclusion	11-0-0	Loretta Dibble | Catherine Yielding
111	Review and Consider – No Further Action	11-0-0	Manuel Santana | Michael Moglia
112	Review and Consider – No Further Action	11-0-0	Manuel Santana | Michael Moglia
113	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
114	Review and Consider – No Further Action	11-0-0	Manuel Santana | Michael Moglia
115	Review and Consider – Refer to Office of Single-Family Housing	11-0-0	Michael Moglia | Manuel Santana
116	Review and Consider – Reject premise and conclusion	11-0-0	Michael Moglia | Alan Spencer
117	Review and Consider – No Further Action	11-0-0	Michael Moglia | Mitchel Baker
118	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
63	Review and Consider – No Further Action	11-0-0	Michael Moglia | Mitchel Baker
80	Review and Consider – Reject Premise and conclusion	11-0-0	Michael Moglia | Mitchel Baker
81	Review and Consider – No Further Action	11-0-0	Michael Moglia | Manuel Santana

DRC #	Motion	Vote Count	Makers of Motion (First | Second)
123	Review and Consider – No Further Action	11-0-0	James Husom | Michael Moglia
124	Review and Consider – Reject Premise and conclusion	11-0-0	Michael Moglia | Mitchel Baker
127	Review and Consider – Reject Premise and conclusion	11-0-0	Michael Moglia | Mitchel Baker
128	Review and Consider – No Further Action	11-0-0	James Husom | Mitchel Baker
129	Review and Consider – Refer to HUD	11-0-0	Michael Moglia | Mitchel Baker
5	Review and Consider – Reject Premise and conclusion	11-0-0	Michael Moglia | James Husom
26	Review and Consider – No Further Action	11-0-0	Manuel Santana | Catherine Yielding
27	Review and Consider – Reject Premise and conclusion	11-0-0	James Husom | Michael Moglia
139	Review and Consider – Reject Premise and conclusion	11-0-0	Michael Moglia | James Husom
140	Review and Consider – No Further Action	11-0-0	Manuel Santana | Michael Moglia
141	Review and Consider – No Further Action	11-0-0	Manuel Santana | Michael Moglia
142	Review and Consider – Reject Premise and conclusion	10-0-1	Michael Moglia | Catherine Yielding
143	Review and Consider – Reject Premise and conclusion	11-0-0	Michael Moglia | Mitchel Baker
144	Review and Consider – No Further Action	11-0-0	Mitchel Baker | James Husom
145	Review and Consider – No Further Action	11-0-0	Loretta Dibble | Catherine Yielding
146	Review and Consider – No Further Action	11-0-0	Michael Moglia |Manuel Santana
147	Review and Consider – No Further Action	11-0-0	Manuel Santana | Michael Moglia
148	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Alan Spencer
149	Review and Consider – No Further Action	11-0-0	Alan Spencer | Mitchel Baker
130	Review and Consider – Refer to HUD	11-0-0	Manuel Santana | Michael Moglia
131	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
132	Review and Consider – No Further Action	11-0-0	James Husom | Manuel Santana
133	Review and Consider – No Further Action	11-0-0	James Husom | Mitchel Baker
134	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
135	Review and Consider – No Further Action	11-0-0	Michael Moglia | Alan Spencer
136	Review and Consider – No Further Action	11-0-0	James Husom | Mitchel Baker
137	Review and Consider – No Further Action	11-0-0	Mitchel Baker | James Husom
138	Review and Consider – No Further Action	11-0-0	Manuel Santana | Mitchel Baker
1	Review and Consider – Reject Premise and conclusion	11-0-0	Catherine Yielding | Stacey Epperson
184	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Alan Spencer
185	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Catherine Yielding
186	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Catherine Yielding
187	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Catherine Yielding
188	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Catherine Yielding
189	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Catherine Yielding
190	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Catherine Yielding
191	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Loretta Dibble

DRC #	Motion	Vote Count	Makers of Motion (First | Second)
192	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Catherine Yielding
193	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Catherine Yielding
194	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Catherine Yielding
195	Review and Consider – No Further Action	11-0-0	Michael Moglia | Loretta Dibble
196	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Michael Moglia
197	Review and Consider – No Further Action	11-0-0	Loretta Dibble | Mitchel Baker
6	Review and Consider – Refer to HUD	11-0-0	Mitchel Baker | Michael Moglia
249	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Michael Moglia
250	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Michael Moglia
251	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Michael Moglia
252	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Michael Moglia
253	Review and Consider – No Further Action	11-0-0	Mitchel Baker | Michael Moglia
16	Review and Consider – No Further Action	11-0-0	Manuel Santana | Catherine Yielding
126	Review and Consider – Reject premise and conclusion	11-0-0	Michael Moglia | David Tompos
220	Review and Consider – No Further Action	11-0-0	Michael Moglia | Manuel Santana
221	Review and Consider – No Further Action	11-0-0	Michael Moglia | Loretta Dibble
222	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
223	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
224	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
225	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
226	Review and Consider – No Further Action	11-0-0	Michael Moglia | James Husom
227	Review and Consider – Reject premise and conclusion	11-0-0	James Husom | Michael Moglia
228	Review and Consider – No Further Action	11-0-0	James Husom | Michael Wade

APPENDIX C:

BASIC RULES AND PROCEDURES FOR DEREGULATION COMMENTS

Basic Rules and Procedures for Deregulation Comments

1. Typically, for a Deregulation Comment, one primary Motion is used followed by a secondary Motion that disposes the Deregulation Comment:
    - **Primary Motion: Reviewed and Considered**

      Secondary Motion (examples):
        - **No Further Action Needed**
        - **Reject premise and conclusion of comment**
        - **Approve (choose one of two paths)**
            - **Non-Technical Change - Refer to HUD for consideration**
            - **Technical Change – Approve Pending Regulatory Language from the Subcommittee**
        - ***any other motions that dispose of the Deregulation Comment**
2. Reason Statement:

   <u>Deregulation Comments: A reason is required for all Deregulation Comment regardless of motion.</u>
3. Items can be re-opened following the Roberts Rules of Order.
4. See below more in-depth information on common motions and scenarios that may occur during the meeting.

List of Common Secondary Motions for Deregulation Comments and Resulting Actions

#	Secondary Motion on Deregulation Comments	Vote	Action on the Motion	Resulting Action
1	No Further Action Needed	≥1/2	Passes	**Deregulation Comment closed out on Subcommittee level. Recommendation will be presented to full committee via consent agenda.**
2	Reject premise and conclusion of comment	≥1/2	Passes	**Deregulation Comment closed out on Subcommittee level. Recommendation will be presented to full committee via consent agenda.**
3	Refer to HUD for consideration (non-technical comment)	≥2/3	Passes	**Deregulation Comment closed out on Subcommittee level. Recommendation will be presented to full committee via consent agenda.**
4	Approve Pending Regulatory Language from Subcommittee (technical comment)	≥2/3	Passes	**Deregulation Comment is set aside temporarily. Subcommittee to provide and approve regulatory language at a future subcommittee meeting. Once regulatory language is approved by Subcommittee, recommendation will be presented to full committee at next meeting, automatically removed from consent agenda.**
5	* any motions to dispose of the Deregulation Comment	Varies	Passes	**Deregulation Comment closed out on Subcommittee level. Recommendation will be presented to full committee via consent agenda.**
6	* any motions	N/A	Fails	**Open for a new motion.**

APPENDIX D:

WRITTEN PUBLIC COMMENTS FOR THE REGULATORY ENFORCEMENT SUBCOMMITTEE TELECONFERENCE

1. Public Comments by Manufactured Housing Association for Regulatory Reform
2. Public Comments by Manufactured Housing Institute

Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

August 1, 2019

Dear MHCC Members:

At its July 30, 2019 conference call meeting, the MHCC's General Subcommittee reserved, for additional information gathering and proposed regulatory language, an MHARR regulatory reform proposal denominated "DRC-281" by HUD. This proposal -- based on MHARR's February 20, 2018 comments to HUD pursuant to its "top-to-bottom" review of manufactured housing program regulations under Trump Administration Executive Orders 13771 and 13777 – calls for the repeal of a February 2010 HUD "Interpretive Rule" (issued without notice and comment), which undermines section 604(b)(6) of the Manufactured Housing Improvement Act of 2000. That section, by its express terms, requires prior MHCC review, as well as notice and comment rulemaking, for changes to HUD "policies," "procedures," or "practices" relating to the federal standards, enforcement regulations, "enforcement activities," inspections and monitoring. Section 604(b)(6) further provides that any change implemented without complying with these requirements is "void."

Similarly, DRC-2, scheduled for consideration by the MHCC's Regulatory Enforcement Subcommittee at its August 6 and/or August 14, 2019 meetings, addresses the same MHARR proposal seeking the repeal of the February 2010 Interpretive Rule and the restoration of the full role of the MHCC as explicitly stated by Congress, in order to ensure that substantive changes to the HUD program and/or the obligations of regulated parties do not evade MHCC consideration and proper rulemaking through the simple expedient of being labelled, by HUD, as "field guidance" "operating procedures," or some similar designation.

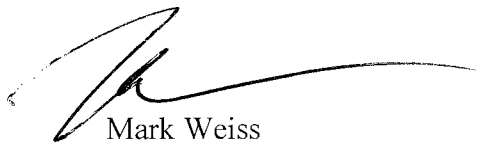
In order to facilitate proper consideration of this matter by the relevant subcommittees and the entire MHCC, MHARR is providing the following documents for your consideration:

1. The relevant excerpt from MHARR's February 20, 2018 comments (pp. 20-22) fully explaining this matter;
2. A copy of a June 1, 2004 communication (referenced by MHARR's comments) from the Coalition to Advance Manufactured Housing (MHARR and the Manufactured Housing Institute - MHI) to HUD explaining the broad nature of the MHCC's role under section 604(b)(6) of the 2000 reform law as enacted by Congress;
3. A 2004 MHCC resolution calling for the retraction of HUD limitations on the MHCC's role; and
4. A copy of the February 2010 Interpretive Rule.

MHARR stands ready to assist the MHCC and its subcommittees in their review and consideration of this critical matter.

Thank you.

Sincerely,



Mark Weiss
President and CEO

Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

February 20, 2018

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

Regulations Division
Office of General Counsel
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Room 10276
Washington, D.C. 20410-0500

Re: Regulatory Review of Manufactured Housing Rules -- Docket No. FR-6075-N-01

Dear Sir or Madam:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade association representing the views and interests of producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.) (1974 Act) as amended by the Manufactured Housing Improvement Act of 2000 (2000 reform law). MHARR was founded in 1985. Its members include mostly smaller and medium-sized independent manufactured housing businesses from all regions of the United States.[1]

I. INTRODUCTION

On January 26, 2018, HUD published a Notice and Request for Comment (Notice) in the Federal Register[2] seeking public comment regarding a HUD review "of all current and planned federal regulation of manufactured housing" pursuant to Executive Order (EO) 13771 ("Reducing Regulation and Controlling Regulatory Costs"), issued by President Trump on January 30, 2017 and Executive Order 13777 ("Enforcing the Regulatory Reform Agenda") issued on February 24, 2017. By the express terms of the HUD Notice, this review includes and embraces not only "all"

[1] All MHARR members are "small businesses" as defined by the U.S. Small Business Administration (SBA) and are "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

[2] See, 83 Federal Register No. 18, January 26, 2018 at pp. 3635, et seq.

and uncertainty, affecting a significant number of diverse stakeholders and government officials at the state and local level. Accordingly, MHARR urges HUD to complete this rulemaking – which would advance the objectives of EOs 13771 and 13777 – in an expeditious manner.

C. HUD SHOULD WITHDRAW ITS 2010 "INTERPRETIVE RULE" REGARDING THE STATUTORY ROLE OF THE MHCC

The Manufactured Housing Consensus Committee, as recommended by the National Commission on Manufactured Housing, was established by Congress as the centerpiece program reform of the 2000 law. The MHCC was designed to have presumptive authority to review and comment on virtually all HUD actions affecting the federal standards and enforcement regulations, and their interpretation, and to develop its own standards and enforcement proposals.[42] The 2000 law thus includes specific statutory mandates as to the types of matters that must be brought before the MHCC (i.e., proposed new or revised standards or enforcement regulations, interpretations, and changes to enforcement-related policies and practices) and when those matters must be brought to the MHCC (i.e., in advance, or be deemed "void" under section 604(b)(6)). It also establishes specific substantive (i.e., section 604(e)) and procedural requirements (i.e., section 604(a)) for MHCC consideration of those matters, as well as actions the Secretary must take with regard to MHCC recommendations (i.e., sections 604(a)(5) and 604(b)(3)-(4)), which can only become operative with the approval of the Secretary.

HUD, however, has consistently attempted to limit and/or erode the substantive role of the MHCC through an unduly narrow interpretation of the 2000 reform law. First, in a May 7, 2004 opinion letter, HUD interpreted the 2000 law to limit the review and comment authority of the MHCC solely to the federal standards and those enforcement regulations that "seek to assure compliance with the construction and safety standards." Thus, by unilateral interpretation of the 2000 reform law, HUD sought to emasculate the statutory authority of the MHCC to consider and address crucial program matters such as regulations related to the program user fee, payments to the states, program budgeting, the use of contractors and the use of separate and independent contractors, among others things, together with a host of other decisions, policies and practices affecting the cost and availability of manufactured housing, but not constituting a formal standard, regulation or Interpretive Bulletin.

Subsequently, on February 5, 2010, HUD issued an "interpretive rule," without prior notice or opportunity for public comment, which effectively divested the MHCC of nearly all its authority under section 604(b)(6) of the 2000 reform law, to review and comment on a wide range of HUD actions involving enforcement policies and practices that do not fall under the formal Administrative Procedure Act (APA) definition of a "rule."[43]

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[42] This expansive view of the authority and jurisdiction of the MHCC was embraced by all the program stakeholder groups represented on the MHCC (see, February 17, 2004 MHCC letter to HUD Secretary Alphonso Jackson, paragraph 2 and related August 11, 2004 MHCC Resolution) and the entire manufactured housing industry (see, June 1, 2004, Coalition to Advance Manufactured Housing, "Analysis of HUD's Interpretation of the Role and Authority of the Manufactured Housing Consensus Committee" generally and at pp.7-8).

[43] See, 75 Federal Register No. 24, February 5, 2010, "Federal Manufactured Home Construction and Safety Standards and Other Orders: HUD Statements That Are Subject to Consensus Committee Processes."

In addition to these sham limitations on the role of the MHCC, HUD has also sought to manipulate the composition of the MHCC to achieve the substantive results that it prefers. In addition to appointing single-issue advocates to the MHCC, and individuals with no "background and experience" in manufactured housing, as required by the 2000 reform law,[44]HUD, for nearly a decade, has totally excluded collective industry representation on the MHCC, at the same time that it has appointed multiple collective-consumer organization representatives. This not only constitutes overt discrimination against the industry – denying it the benefit of its collective and institutional memory, knowledge, know-how and expertise within a uniquely complex regulatory system and framework – but lacks any substantive or supporting basis in applicable law or policy.

Through all of these actions, HUD has effectively excluded from MHCC consensus review and comment, significant program decisions concerning enforcement, inspections and monitoring (such as its entire program of expanded in-plant regulation and the delegation of de facto governmental authority to its program monitoring contractor) which substantially impact the cost and affordability of manufactured housing for consumers – contrary to the letter of the 2000 reform law and to the ultimate detriment of consumers and other program stakeholders.

HUD has claimed, in support of these actions, that "as a private advisory body not composed of federal employees, the MHCC does not have HUD's responsibilities for public safety and consumer protection." Thus, according to HUD, "the Department must ... remain free of the MHCC process to make program decisions that would not be considered rules under the Administrative Procedure Act." This issue, however, was fully addressed during the legislative process leading to the 2000 reform law and is precisely why the MHCC issues recommendations that do not have the force of law unless they are approved by the Secretary and promulgated through notice and comment rulemaking.

Since the power of the MHCC is statutorily confined to recommendations, the law is very broad in identifying the types of HUD actions that must be brought to the MHCC for prior review and comment. In addition to standards, enforcement regulations and interpretations of both, as addressed by sections 604(a) and 604(b) respectively, the "catchall" section of the 2000 reform law, 604(b)(6), was designed to ensure that virtually all quasi-legislative actions of the Department -- as contrasted with quasi-judicial enforcement activities -- whether characterized as a "rule" or not, to establish or change existing standards, regulations and inspection, monitoring and enforcement policies or practices, would be subject to review, consideration and comment, prior to implementation, by the MHCC. This section, which deems any such action "void" without prior MHCC review, was specifically included in the law – and broadly stated -- as a remedy for past abuses where major changes to enforcement procedures and the construction of the standards were developed behind closed doors and implemented without rulemaking or other safeguards.

The 2000 reform law, consequently, addresses the claims made in HUD's 2004 opinion letter by limiting the power of the MHCC to recommendations, not by severely limiting the actions subject to MHCC review as HUD claims. Moreover, to construe section 604(b)(6) to apply only to formal rules – as in HUD's 2010 "interpretive rule" -- makes no sense, because such rules are, by definition, already subject to rulemaking and public comment anyway under the Administrative Procedure Act ("APA"). Further, such a construction, effectively construing section 604(b)(6) to simply be a restatement of sections 551 and 553 of the APA, violates basic cannons of statutory

[44] See, 42 U.S.C. 5403(a)(3)(B)(i).

construction. Given that Congress, in enacting the 2000 reform law, is presumed to have been aware of the relevant, pre-existing APA sections, such a construction: (1) improperly renders section 604(b)(6) mere surplusage; (2) fails to give (the common and ordinary) meaning to every word and provision of the 2000 reform law; and (3) fails to broadly and liberally interpret a clearly remedial statutory provision.

Both the plain language of the relevant provisions and the structure of section 604, show that section 604(b)(6) was designed to ensure a broad opportunity for stakeholder review and comment on program actions through the MHCC consensus process. HUD's attempt to restrict that opportunity through its 2010 "Interpretive Rule," accordingly, has misconstrued the law and has unlawfully limited the role of the MHCC as envisaged by Congress. As a result, the February 5, 2010 HUD "Interpretive Rule," is a regulatory action that should be repealed pursuant to EOs 13771 and 13777. Moreover, the collective representation of the industry on the MHCC should be restored with the appointment of full-time staff representatives to the MHCC from both MHARR and MHI.

D. HUD SHOULD WITHDRAW AND REPEAL CERTAIN "OPERATING PROCEDURES" AND RELATED MEMORANDA

1. HUD SHOULD WITHDRAW ALL "OPERATING PROCEDURES" MEMORANDA AND MATERIALS RELATING TO EXPANDED IN-PLANT REGULATION

HUD's program of expanded in-plant manufactured housing regulation, initiated in 2008 with no evidence of systemic deficiencies in the then-existing regulatory model (seemingly designed to sustain and generate substantial additional revenues for the program's entrenched, 40-year, de facto sole-source monitoring contractor in the face of a significant decline in manufactured housing production), and implemented in all phases by HUD in 2014, is a premier illustration of the Department's regulatory over-reach and violation of key reform provisions of the 2000 law – and resulting harm to the program, the industry and consumers of affordable housing.

Originally characterized as "cooperative" and "voluntary" by HUD,[45] this program which, according to the Department itself, fundamentally changed the focus, basis and emphasis of HUD in-plant production regulation,[46]was subsequently re-characterized as "not voluntary" by the Department, with no public process – in violation of both the 2000 reform law and the Administrative Procedure Act (APA) -- in 2010.[47] Since August 2014, this program has been enforced on a mandatory basis through arbitrary, subjective and costly in-plant "audits" conducted by HUD's "monitoring" contractor,[48] based on criteria exceeding the existing HUD Manufactured

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[45] See, MHARR March 4, 2010 letter to William W. Matchneer, III, Associate Deputy Secretary for Regulatory Affairs and Manufactured Housing.

[46] See, Minutes, Manufactured Housing Consensus Committee meeting, June 17, 2008 at p. 2. "Inspectors currently look at number of errors rather than a quality system. HUD will be directing their resources to be aimed at quality control system[s]."

[47] See, HUD (William W. Matchneer, III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing) Memorandum dated March 3, 2010.

[48] The Institute for Building Technology and Safety (IBTS) has held the HUD manufactured housing program "monitoring" contract (albeit under differing corporate names) continuously since the inception of federal regulation

COALITION TO ADVANCE MANUFACTURED HOUSING

June 1, 2004

ANALYSIS OF HUD'S INTERPRETATION OF THE ROLE AND AUTHORITY OF THE MANUFACTURED HOUSING CONSENSUS COMMITTEE

I. INTRODUCTION

On February 17, 2004, the Manufactured Housing Consensus Committee ("MHCC" or "Committee") established by the Manufactured Housing Improvement Act of 2000 ("2000 Act") wrote to the Secretary of the Department of Housing and Urban Development ("HUD" or "Department") seeking the Department's opinion regarding the scope and extent of the Committee's jurisdiction to initiate or review actions of the Secretary pertaining to the federal regulation of manufactured housing pursuant the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended ("Act"). In relevant part the Committee's letter stated:

> "It is the Committee's opinion that the terms 'procedural and enforcement regulations' cited in subsections 604(b)(1) and (2) and 'procedural or enforcement regulations' cited in subsection (b)(3) refer to "any...regulations, inspections, monitoring or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary," as stipulated in subsection (b)(6), and as such, must be submitted to the Committee as per subsection 604(b)(3). * * * The Committee members desire this issue to be resolved and hereby formally request that a definitive interpretation be made by HUD."

(Emphasis in original).

On May 7, 2004, HUD responded to this request with an opinion letter setting forth its official construction of the 2000 Act with respect to the authority of the Committee. The essential thrust of HUD's interpretation is that the jurisdiction of the MHCC is limited to the consideration of (i) construction and safety standards; (ii) procedural and enforcement regulations that "seek to assure compliance with the construction and safety standards;" and (iii) interpretative bulletins construing either the standards or "procedural and enforcement regulations" as defined by HUD under category (ii). HUD's rationale for this interpretation is summarized in its letter as follows:

> "Not all manufactured housing program activities are subject to MHCC review under the section 604 procedures. The scope of section 604 is necessarily limited, since a private body cannot by law perform inherently governmental functions, such as making operational and administrative judgments related to budget requests program expenditures, particular enforcement cases, and procurement decisions. In section 604, Congress provided ... extra-APA [Administrative Procedure Act] procedures only for construction and safety standards, procedural and enforcement regulations, and interpretative bulletins issued to clarify the meaning of any construction and safety standard or procedural and enforcement regulation. * * * Congress did not expressly define 'procedural and enforcement regulations' in section

Manufactured Housing Institute
2101 Wilson Blvd. · Suite 610
Arlington · VA · 22201
703.558.0400 · FAX 703.558.0401
www.mfghome.org

Manufactured Housing Association
For Regulatory Reform
1331 Pennsylvania Avenue · NW · Suite 508
Washington · DC · 20004
202.783.4087 · FAX 202.783.4075

604(b) of the Act or elsewhere. With respect to the manufactured housing program, though, the term 'procedural and enforcement regulations' has historically referred to regulations that seek to assure compliance with the construction and safety standards. It is consistent with the [2000 Act ... to continue to apply the term 'procedural and enforcement regulations' to regulations assuring compliance with the construction and safety standards."

(Emphasis added).

HUD's response, accordingly, construes the role and authority of the MHCC much more narrowly than the Committee itself, as expressed in its inquiry letter of February 17, 2004. HUD asserts that this constrained jurisdiction is consistent with the language and structure of the 2000 Act. A careful analysis of the 2000 Act, however, based on the rules of statutory construction that a court would actually apply in resolving this issue, demonstrates that HUD's interpretation is plainly erroneous and would strip the Committee of authority that Congress clearly intended it to have. Because the Consensus Committee is the cornerstone of the reforms that Congress sought to achieve in the 2000 Act, it is absolutely essential that this matter be addressed properly by HUD.

II. ANALYSIS

As a statutory creation of Congress, the role and jurisdiction of the MHCC is wholly defined by the Act by which it was established. The scope of its jurisdiction is thus determined by the express language of the 2000 Act, according to its plain meaning. See, O'Kane v. Apfel, 224 F.3d 686 (7th Cir. 2000) (When interpreting congressional statutes, Court looks first at the plain language of the statute.) There are, however, judicially-recognized rules of construction that guide the basic analysis of any statute -- several of which are applicable in this instance.

At the outset, courts have universally recognized that a statute must be construed in such a fashion that every word is given effect. See, e.g., United States v. Nordic Village, Inc., 112 S.Ct. 1011, 117 L.Ed. 2d 181 (1992)(Statute must, if possible, be construed in such a fashion that every word has some operative effect); Beisler v. Commissioner of Internal Revenue, 814 F.2d 1304 (9th Cir. 1987)(Court must give effect to all words used by Congress). Furthermore, remedial legislation, such as the 2000 Act, is to be construed liberally, in order to fully effectuate its statutory purpose. See, e.g., Hull Co. v. Hauser's Foods, Inc., 924 F.2d 777 (8th Cir. 1991). Indeed, where a statute, such as the 2000 Act, is passed by Congress to cure a perceived defect in a prior law, such as the non-mandatory nature of the former Advisory Council -- the statutory predecessor to the MHCC -- and HUD's failure to properly consult with it, the curative legislation is entitled to "particular deference." See, Counsel v. Dow, 849 F.2d 731, 738 (2d Cir. 1988). It does not appear, however, that HUD's construction of the 2000 Act comports with any of these requirements.

Insofar as there is no dispute as to the Committee's authority to initiate and review proposed standards, this analysis will focus exclusively on the MHCC's jurisdiction with respect to matters other than federal manufactured home construction and safety standards.[1]

As HUD correctly notes in its document, the jurisdiction of the Consensus Committee regarding matters other than standards, per se, is primarily defined by sections 604(b)(1), (b)(2), (b)(3) and (b)(6) of the 2000 Act. Those sections provide, in relevant part:

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[1] There can be no dispute, as set forth in greater detail below, that the model installation standard being designed by the Consensus Committee is in fact a "manufactured home construction and safety standard" as defined by the Act and that the MHCC has continuing authority to submit proposals within this area.

"(1) Regulations -
The Secretary may issue procedural and enforcement regulations and revisions to existing regulations as necessary to implement the provisions of this chapter. The consensus committee may submit to the Secretary proposed procedural and enforcement regulations and recommendations for the revision of such regulations.

(2) Interpretative Bulletins -
The Secretary may issue interpretative bulletins to clarify the meaning of any Federal manufactured home construction and safety standard or procedural and enforcement regulation. The consensus committee may submit to the Secretary proposed interpretative bulletins to clarify the meaning of any Federal manufactured home construction and safety standard or procedural and enforcement regulation.

(3) Review by Consensus Committee -
Before issuing a procedural or enforcement regulation or an interpretative bulletin -

(A) The Secretary shall -

(i) submit the proposed procedural or enforcement regulation or interpretative bulletin to the consensus committee; and

(ii) provide the consensus committee with a period of 120 days to submit written comments to the Secretary on the proposed procedural or enforcement regulation or the interpretative bulletin.

(4) Changes -
Any statement of policies, practices, or procedures relating to construction and safety standards, regulations inspections, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret or prescribe law or policy by the Secretary is subject to subsection (a) of this subsection or this subsection. Any change adopted in violation of Subsection (a) of this section or this subsection is void."
(Emphasis added).

It is important to note that nowhere under section 604 -- (a) or (b) -- may any proposal, recommendation or comment of the MHCC become law or official policy without some further action by the Secretary -- either via approval or modification.

A. The Scope of Section 604 is Not Limited by the Doctrine of Delegation of Governmental Functions

HUD's first argument to constrain the jurisdiction of the Consensus Committee is presented without support as a fait accompli, as follows: "The scope of section 604 is necessarily limited, since a private body cannot by law perform functions, such as making operational and administrative judgments related to budget requests, program expenditures, particular enforcement cases, and procurement decisions."

At the outset, it is inaccurate to characterize the Consensus Committee as a "private body." The Consensus Committee is a statutory Federal advisory committee established by Congress. As an advisory committee, the Consensus Committee is bound not only by the provisions of the 2000 Act, but by the Federal Advisory Committees Act ("FACA") as well, and is not purely "private" in nature.

Regardless of whether the Consensus Committee is "private" or quasi-governmental, however, it is erroneous to assert that the Consensus Committee's authority must be limited under section 604 in order to avoid an improper delegation of governmental authority. The reason, quite simply, is because section 604 does not delegate any final authority to the Consensus Committee on any issue. Even with respect to

construction and safety standards under section 604(a), the role of the Consensus Committee is to submit either its own proposals or comments on proposals made by the Secretary. None of the proposals or comments of the Consensus Committee get to be law or official HUD policy unless they are approved -- either as submitted or modified -- by the Secretary. All final decision-making authority remains with the Secretary. The same is true under section 604(b). All final decision-making authority remains with the Secretary.

Because all final decision-making authority under section 604 is vested in the Secretary, restrictions on the jurisdiction of the Consensus Committee are not necessary to prevent an un-constitutional delegation of inherently governmental authority. The product of the consensus process in all cases is a recommendation to the Secretary, which the Secretary, a governmental official, is free to accept, modify, or reject. Because the Secretary retains this ultimate authority, there is no delegation-based reason to limit the role of the Consensus Committee as HUD attempts to do now. Indeed, at the time the 2000 Act was being crafted by Congress, HUD lobbied against the automatic adoption of MHCC proposals after a set period of time, precisely on the basis of improper delegation. Having succeeded in retaining full final authority, however, HUD now wants to argue that allowing the MHCC to present consensus-developed recommendations regarding budgets, expenditures and contracting, among others, would result in an improper delegation. As long as the Act provides for final HUD authority, though -- which it does -- there is no possibility of an improper delegation on any issue.

Thus, while the Consensus Committee has no proper role within quasi-judicial proceedings conducted by HUD, there is no delegation-based reason for the Committee to be excluded from reviewing or commenting on any of the other quasi-legislative tasks mentioned by HUD, such as budgets, expenditures and procurement issues.

B. The Consensus Committee has Broad Authority Under the 2000 Act to Submit Proposed Regulations and Provide Pre-Promulgation Review and Comment to HUD

Once HUD's unwarranted delegation argument is dispensed with, the authority of the Consensus Committee becomes a pure question of the meaning and construction of the 2000 Act, aided by the judicial cannons of statutory construction.

HUD maintains in its letter that Congress did not expressly define the term "procedural and enforcement regulations" for purposes of section 604(b). In the absence of such a definition, HUD simply declares that "the term 'procedural and enforcement regulation' has historically referred to regulations that seek to assure compliance with the construction and safety standards." HUD buttresses its contention that the Committee may only address regulations seeking to assure compliance with the standards by noting that section 604 is titled "Federal Manufactured Home Construction and Safety Standards." These arguments, however, ignore both the structure of the 2000 Act as well as the impact of seemingly minor, yet significant, language variations in the 2000 Act.

Under section 604(b), the MHCC has two types of powers. The first is the power to propose "procedural and enforcement regulations" and interpretative bulletins. The second is the power to review and comment upon a broad range of program matters (as more fully described below) prior to any official action by HUD regarding such matters.

(1). Power to Propose

Under 604(b)(1) and (b)(2), the MHCC has the authority to propose "procedural and enforcement regulations" and interpretative bulletins clarifying either a standard or a "procedural and enforcement regulation." While the term "procedural and enforcement regulation" is not defined within the 2000 Act, "Manufactured Home Procedural and Enforcement Regulations" is the precise title of the regulations promulgated by HUD at 24 C.F.R. 3282. Congress, under pertinent judicial authority, is presumed to have

had knowledge of these regulations -- and their contents -- when it adopted the 2000 Act. See, Flora-Miramontes v. I.N.S., 212 F.3d 1133 (9th Cir. 2000) (In interpreting statutes, Court of Appeals assumes that Congress knows the law). By using words that are identical to the title of Part 3282, Congress plainly intended for the Consensus Committee to be able to propose regulations concerning any topic or subject addressed by Part 3282, or that properly should be included within Part 3282[2], including, but not limited to: federal preemption; alternative construction; inspection and certification requirements; dealer and distributor (now retailer) responsibilities; State Administrative Agencies; payments to the states; Primary Inspection Agencies; consumer complaint handling; and monitoring, among others. Conversely, there is nothing whatsoever in the 2000 Act which states -- or even suggests -- that Congress intended for the Consensus Committee to be precluded from proposing any regulation that would fall within the scope and purview of the existing "procedural and enforcement regulations," or that Congress when it referred to "procedural and enforcement regulations," intended to refer to anything more restricted than the Part 3282 procedural and enforcement regulations and regulations of the same type implementing new areas of responsibility assigned to HUD and the MHCC under the 2000 Act.

(2). Power of Pre-Promulgation Review and Comment

The second power provided to the MHCC under 604(b) is the pre-promulgation power to review and comment on certain proposed actions of the Secretary. Section 604(b)(3) provides that the Secretary must submit any proposed "procedural or enforcement regulation" or proposed interpretative bulletin to the Committee for review and comments that the Secretary must then consider. Although the Committee in its inquiry letter to HUD noted the distinction between the terms "procedural and enforcement regulations" in 604(b)(1) and (b)(2), and procedural or enforcement regulations" in 604(b)(3), HUD's response letter ignores the distinction between the exact conjunctive reference to Part 3282 "procedural and enforcement regulations" in the sections governing the types of proposals the Committee may submit to the Secretary, and the disjunctive "or" reference to the types of regulations that the Secretary must present to the Committee for review.

One cannot, consistent with the rules of statutory interpretation, simply ignore the distinction between the "and" and "or" language. Significantly, the term "procedural and enforcement" is used in both sections (b)(1) and (b)(2), dealing with proposals that the Committee can initiate, while "procedural or enforcement is used twice in section (b)(3), dealing with regulations and interpretations that must be submitted to the Committee for pre-promulgation review and comment. The use of "and" in two different places and the use of "or" in two different places in 604(b)(3) -- defining a different type of power from 604(b)(1) and (b)(2) -- cannot be presumed to be an accidental drafting error, or somehow irrelevant or meaningless. Rather, the "or" language in section 604(b)(3) must be given its common and ordinary meaning. See, Ruben v. Department of Health and Human Services, 22 Cl. Ct. 264 (1991)(Ordinarily, unless strict grammatical construction frustrates legislative intent, the term "or" in a statute is given a disjunctive interpretation, so that portions of the statute before and after the word "or" are treated as disconnected).

In order to give the word "or" meaning, the necessary conclusion is that the Committee's pre-promulgation review and comment jurisdiction under section 604(b)(3) is broader than its power to propose under sections 604(b)(1) and (b)(2). Under the plain meaning of the word "or," section 604(b)(3) requires the Secretary to submit any proposal dealing with either procedural or enforcement matters to the Committee for review and comment. The Committee's review power, accordingly, is not limited merely to those topics and subjects embraced by the 3282 procedural and enforcement regulations. Rather, it extends to all

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[2] Congress must be presumed to have anticipated that new regulations -- of the same type as already contained in Part 3282 -- designed to implement the new areas of responsibility assigned to HUD by the 2000 Act including, but not limited to, installation and dispute regulation, would likewise be included in Part 3282. Any effort by HUD to codify such procedural and enforcement regulations outside of Part 3282, in order to defeat the jurisdiction of the Consensus Committee, should be rejected by the Committee as contrary to the letter and spirit of the 2000 Act.

regulations relating either to program procedures or enforcement matters. Thus the Committee is entitled to review regulations pertaining to such matters as payments to the states (affects enforcement); installation programs (affects enforcement); dispute resolution (procedural); and the program budget (affects enforcement), among others.

This broad construction of section 604(b)(3) review and comment authority is bolstered and supported by section 604(b)(6), not limited by that section as HUD suggests. HUD asserts that: "The phrase 'construction and safety' at the beginning [of 604(b)(6)] and the phrase "or other enforcement activities at the end...limit the statements that are subject to the section 604(a) or (b) procedures. This limiting language and the context and placement of this section...subject only statements on the construction and safety standards and the enforcement of construction and safety standards to being found void if they are not issued in accordance with the applicable procedures." Once again, in relevant part, 604(b)(6) states:

> "Any statement of policies, practices, or procedures relating to construction and safety standards, regulations, inspections, monitoring or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject to subsection (a) of this section or this subsection [(b)]. Any change adopted in violation [of this requirement] is void."

(Emphasis added).

Section (b)(6) was included in 604 to act as a catchall provision. It was intended -- as discussed in negotiations (described in the legislative history of the 2000 Act) that industry and consumer representatives participated in -- to make certain that virtually any change in the policies, practices or procedures of the federal program would be subject to pre-promulgation MHCC review and comment. This addition to the 2000 Act was designed to avoid the repetition of situations in the past that had seen HUD routinely adopt policy and practice changes without public notice or comment. It was intended to ensure at least some level of balanced input by program participants in a broad range of program decisions. Because of this intent, the wording of section (b)(6) is necessarily broad. Its reach extends beyond formal regulations and interpretative bulletins, as addressed in sections (b)(1)-(b)(3), to deal with program "policies, practices and procedures."

HUD makes much of this section as being a limitation, but when reviewed in context, it is extremely broad. Under 604(b)(6) the "policies, practices and procedures" subject to MHCC review need only "relate to" the categories that follow. Put differently, the policy, practice or procedure need only pertain to, impact, affect, or concern the categories that follow. And the categories that follow are broader than the prior language of (b)(1)-(b)(3). Thus, 604(b)(6) refers not to "procedural and enforcement regulations" as in 604(b)(1) and (b)(2) or "procedural or enforcement regulations," as in 604(b)(3), but all regulations, as well as "standards...inspections, monitoring, or other enforcement activities."

Clearly, if Congress had wanted to limit the scope of 604(b)(1)-(b)(3), as HUD contends, it would have placed the limitations within those sections, not in a later section that is clearly designed to be a catchall for various administrative actions that might not fall within the precise definitions of (b)(1)-(b)(3), but that Congress nevertheless believed should be reviewed and commented upon by the MHCC. To suggest that the catchall somehow limits previous sections effectively turns the 2000 Act on its head and subverts its plain language and intent.

C. Limitations on the Committee's Authority Are Not Implicit in Sections 605, 607 or 625

HUD also asserts that Congress' direction to the MHCC in section 605(b)(1) to develop a model installation standard somehow limits its authority. HUD thus states: "Specific statutory authorization for the MHCC's involvement would be unnecessary if Congress intended the MHCC to have a role in every activity under the Act."

The rejoinder to this argument is simple. Installation standards are, by their nature, "standards" pertaining to the performance of a manufactured home. Under section 604(a), the MHCC could have

proposed installation standards on its own irrespective of section 605. Section 605 was included because Congress envisioned a specific timetable and federalism-based approach to the development and implementation of State and federal installation programs that it felt it needed to set out in exacting detail. Again, industry and consumer representatives participated in these discussions. In no way, however, does the specific mandate to the MHCC to develop a model installation standard somehow limit the scope of its authority to propose any new federal standard that it wishes within the statutory definition of "federal manufactured home construction and safety standard." Nor does it have anything to do with the scope of the Committee's pre-promulgation review and comment authority.

HUD similarly contends that the scope of the Committee's authority is limited by section 607(a) of the Act, which states in relevant part:

> "Whenever any manufacturer is opposed to any action of the Secretary under section [604] of this title or under any other provisions of this chapter on the grounds of increased cost or for other reasons, the manufacturer shall submit to the Secretary such cost and other information ... as may be necessary in order to properly evaluate the manufacturer's statement. The Secretary shall submit such cost and other information to the consensus committee for evaluation."

(Emphasis added).

It is difficult to understand HUD's argument on this score because this section requires HUD to convey cost and other information received from manufacturers objecting to an action of the Secretary under section 604 "or any other provision of this chapter" -- that is, to any other provision of the entire Act. If the Consensus Committee did not have broad review and comment jurisdiction, over virtually all program activities, it would have no need for any information pertaining any provision of "this chapter" other than section 604, which addresses standards, regulations and interpretative bulletins. The fact that the Secretary is required to convey information to the Consensus Committee concerning all provisions of the Act is confirmation of the MHCC's broad jurisdiction, not a limitation.

Finally, HUD maintains that Congress' failure to amend section 625 of the Act proves that "Congress did not intend the enhanced rulemaking procedures established in section 604 to apply to every rule issued under the program."

Section 625 simply states: "The Secretary is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out this chapter." Congress did not amend this section because it did not have to. The plain meaning of this section is entirely consistent with section 604 as amended. As noted previously, section 604 vests all final decision-making authority in the Secretary, as it must. The Secretary thus has the final authority to issue amend or revoke every standard or regulation that is part of the program. The Secretary has the power to accept, reject or modify any Committee proposal. All the final authority is the Secretary's, but the Secretary, in exercising that power, must comply with section 604, including, but not limited to, allowing for consensus-developed comments to be presented for his consideration. The power provided to the Secretary in section 625, accordingly, is still there and does not need to be amended. Indeed it cannot be amended. It is simply subject to the procedural requirement of the consensus process. Section 625 contains nothing that is inconsistent with that process.

III. CONCLUSION

The proper functioning of the MHCC is a critical component of the reforms that Congress intended to implement through the 2000 Act. That Act, as demonstrated above, gave the Consensus Committee broad authority, as a balanced representative group, comprised of all interests affected by the federal program, to submit proposals, recommendations and pre-promulgation expert comments to the Secretary. In many respects, the Consensus Committee is the statutory guardian of the national policy objectives that Congress set forth in the new Statement of Purpose contained in the 2000 Act. To restrict the jurisdiction of the Consensus Committee would undermine the fundamental purpose of the 2000 Act -- to transform the

respects, the Consensus Committee is the statutory guardian of the national policy objectives that Congress set forth in the new Statement of Purpose contained in the 2000 Act. To restrict the jurisdiction of the Consensus Committee would undermine the fundamental purpose of the 2000 Act -- to transform the original Manufactured Housing Act from a law designed to regulate "trailers," as a type of specialty vehicle, to a law for housing. The Consensus Committee was designed to open HUD's program activities, standards, regulations, procedures, enforcement, contracting, monitoring, inspections and other facets -- to the maximum extent possible -- to the transparency and accountability of direct participant and public involvement, something that had been largely absent during its first quarter century.

HUD's interpretation of the Committee's authority threatens to undermine its fundamental role as envisioned by Congress. It threatens to remove significant aspects of the program from even so much as the Committee's ability to provide pre-promulgation comments to the Secretary.

HUD should withdraw its interpretation, before it undermines the role and authority of the Consensus Committee and damages the legitimacy of the program itself. Instead, HUD should implement the 2000 Act in the broad and liberal spirit that was intended by Congress.

June 1, 2004

RESOLUTION

WHEREAS, the Manufactured Housing Consensus Committee ("MHCC") requested by letter dated February 17, 2004 that HUD clarify the scope of the MHCC's authority under section 604(b) of the Manufactured Housing Improvement Act of 2000 ("2000 Act") regarding consensus consideration of proposed regulations and other matters affecting the federal regulatory program for manufactured housing; and

WHEREAS, HUD, on May 7, 2004, issued a written interpretation of the 2000 Act limiting the MHCC's authority to the consideration of proposed standards and regulations directly affecting the enforcement of the standards, but simultaneously stating that HUD would voluntarily consult the MHCC on certain other matters; such as the development of a model national installation standard; and

WHEREAS, the MHCC believes that HUD and the federal manufactured housing program would benefit from consensus-developed recommendations regarding other regulations and other matters as envisioned by Congress, such as budgeting, contracting, priorities for services and updating regulations, among others; and

WHEREAS, the MHCC believes that there is a clear congressional intent and legal basis in the 2000 Act for the MHCC to participate in reviewing HUD proposals and providing consensus-developed recommendations concerning such other regulations and matters;

NOW BE IT RESOLVED by the MHCC that the Department of Housing and Urban Development should withdraw its May 7, 2004 interpretation of the scope of the MHCC's authority and issue a revised interpretation that is consistent with the 2000 Act and Congress' intent regarding the full scope of that authority.

& Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 141–301 for use of TOPMAX (ractopamine hydrochloride) and COBAN (monensin, USP) single-ingredient Type A medicated articles to formulate two-way combination Type C medicated feeds for finishing hen and tom turkeys. The NADA is approved as of December 11, 2009, and the regulations in 21 CFR 558.500 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.500, add paragraphs (e)(3)(iii) and (e)(3)(iv) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(e) * * *

(3) * * *

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(iii) 4.6 to 11.8 (5 to 13 ppm)	Monensin 54 to 90	Finishing hen turkeys: As in paragraph (e)(3)(i) of this section; and for the prevention of coccidiosis in growing turkeys caused by *Eimeria adenoeides*, *E. meleagrimitis* and *E. gallopavonis*.	Feed continuously as sole ration during the last 7 to 14 days prior to slaughter. See § 558.355(d).	000986
(iv) 4.6 to 11.8 (5 to 13 ppm)	Monensin 54 to 90	Finishing tom turkeys: As in paragraph (e)(3)(ii) of this section; and for the prevention of coccidiosis in growing turkeys caused by *Eimeria adenoeides*, *E. meleagrimitis* and *E. gallopavonis*.	Feed continuously as sole ration during the last 14 days prior to slaughter. Feeding ractopamine to tom turkeys during periods of excessive heat can result in increased mortality. See § 558.355(d).	000986

Dated: February 1, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–2427 Filed 2–4–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280 and 3282

[Docket No. FR–5343–IN–01]

RIN 2502–AI77

Federal Manufactured Home Construction and Safety Standards and Other Orders: HUD Statements That Are Subject to Consensus Committee Processes

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

ACTION: Interpretive rule.

SUMMARY: The National Manufactured Housing Construction and Safety Standards Act of 1974 provides that certain classes of statements by HUD relating to manufactured housing requirements are subject to proposal, review, and comment processes involving a consensus committee. The consensus committee includes representatives of manufactured housing producers and users, as well as general interest and public officials. This rule interprets the statutory requirement to clarify the types of statements that are subject to the proposal, review, and comment processes.

DATES: *Effective Date:* February 5, 2010.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, 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 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) ("the Act"), as amended by the Manufactured Housing Improvement Act of 2000 (Title VI, Pub. L. 106–659), provides for the establishment and revision of Federal construction and safety standards for manufactured housing, as well as for procedural and enforcement regulations and interpretive bulletins related to implementation of these standards.

Section 604(a) of the Act provides, among other things, the process for the development, proposal, and issuance of revisions of Federal construction and safety standards, which govern the construction, design, and performance of a manufactured home. Section 604(a) establishes a consensus committee, which is comprised of representatives of manufactured housing producers and

users, as well as general interest and public officials. Section 604(a)(3)(A) provides that the consensus committee shall:

(i) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;

(ii) Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b) of this section;

(iii) Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation; and

(iv) Be deemed to be an advisory committee not composed of Federal employees. HUD has by regulation expanded the role of the consensus committee beyond that required under the Act. Although the Act provided that the consensus committee was to develop the original proposed model installation standards for manufactured housing, HUD has provided in 24 CFR 3285.1(c) that whenever HUD proposes to revise the model installation standards, it will also seek input and comment from the consensus committee. Similarly, HUD has provided in 24 CFR 3288.305 that it will seek input from the consensus committee whenever it proposes to revise the manufactured housing dispute resolution regulations.

In accordance with section 604(a) of the Act, the consensus committee may submit to HUD proposals to revise the Federal construction and safety standards, and HUD may either publish recommended standards for notice and public comment, or publish a standard along with its reasons for rejecting the standard. Upon consideration of any public comments, the consensus committee must provide HUD with any proposed revised standards, which HUD must in turn publish with either a description of the circumstances under which the proposed revised standard could become effective or, alternatively, HUD's reasons for rejecting the proposed revised standard. HUD must then adopt, modify, or reject any proposed standards through procedures and within the time frames specified in subsection 604(a).

Section 604(b) of the Act provides, among other things, the process for issuance of "other orders," which consist of procedural and enforcement regulations and interpretive bulletins. Interpretive bulletins clarify the meaning of Federal manufactured home construction and safety standards, procedural regulations, and enforcement regulations. Before HUD issues a procedural regulation, enforcement regulation, or interpretive bulletin, it must submit its proposed regulation or interpretive bulletin to the consensus committee for review and comment. HUD may accept or reject any consensus committee comments, but upon doing so, it must publish for public notice and comment the proposed regulation or interpretive bulletin, along with the consensus committee's comments and HUD's responses to the consensus committee's comments. The consensus committee may also submit its own proposed procedural regulations, enforcement regulations, and interpretive bulletins to HUD. Upon receiving such a proposal from the consensus committee, HUD must either approve the proposal and publish it for public notice and comment, or reject the proposal and publish it along with its reasons for the rejection and any recommended modifications.

Section 604(b)(6) of the Act is entitled "Changes" and reads in its entirety as follows:

> Any statement of policies, practices, or procedures relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities that constitutes a statement of general or particular applicability to implement, interpret, or prescribe law or policy by the Secretary is subject to [section 604(a)] or this [section 604(b)]. Any change adopted in violation of [section 604(a)] or this [section 604(b)] is void.

Some questions have arisen within the consensus committee over what statements by HUD fall within the scope of section 604(b)(6). For example, some have asserted that the consensus committee has broad jurisdiction and authority over all aspects of HUD's manufactured housing program, such that HUD's internal budgets, contract decisions, and determinations whether to take enforcement action must be made or approved in advance by the consensus committee. HUD is concerned that such assertions may lead to confusion among members of the public, which is routinely invited to attend consensus committee meetings, with regard to the consensus committee's role. Accordingly, HUD is issuing this interpretive rule to clarify the scope of section 604(b)(6)'s coverage.

II. This Interpretive Rule

This rule interprets the scope of section 604(b)(6) to clarify the types of statements by HUD to which the section applies. HUD notes that in specifying which statements "relating to construction and safety standards, regulations, inspections, monitoring, or other enforcement activities" are subject to section 604(a) or (b), section 604(b)(6) uses language that is nearly identical to that found in the Administrative Procedure Act's (5 U.S.C. 551 *et seq.*) (the APA) definition of a "rule." The APA definition states, in pertinent part:

> "Rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." (5 U.S.C. 551(4))

Over the 63 years since enactment of the APA, courts have developed extensive case law interpreting the APA's definition of a rule. (*See, e.g.*, Jeffery S. Lubbers, *A Guide to Federal Agency Rulemaking*, 4th ed., (2006), pp. 49–126.) HUD will not attempt to summarize this case law in this interpretive rule, but views section 604(b)(6) as demonstrating Congress's intent to incorporate the APA's definition of a rule as developed by the courts, except to the extent that section 604(b)(6) deviates substantively from the APA definition. HUD notes that the only substantive difference between the scope of section 604(b)(6) and the APA's definition of a rule is that section 604(b)(6) excludes from coverage statements describing agency organization. Although section 604(b)(6) does not repeat the APA definition's express provision that the statement be one "of future effect," HUD does not interpret this difference as a substantive one, since virtually any statement that "implements, interprets, or prescribes law or policy" is necessarily a statement of future effect. Finally, the scope of section 604(b)(6) is limited by its own terms to statements relating to manufactured housing "construction and safety standards, regulations, inspections, monitoring, or other enforcement activities" that amount to a "change." Statements relating to other matters, including interpretation of other matters covered by the Act, statements that merely summarize or repeat the substance of prior statements or practices, and statements that merely provide guidance, are beyond the scope of section 604(b)(6).

Accordingly, HUD interprets the scope of section 604(b)(6) to include only statements by HUD that:

(1) Relate to manufactured housing construction and safety standards, regulations, inspections, monitoring, or other enforcement activities;

(2) Meet the definition of a "rule" under the APA and applicable case law, except that statements describing agency organization are not included; and

(3) Constitute a change from prior HUD statements or practice on the same subject matter.

III. Findings and Certifications

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards.

24 CFR Part 3282

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

Dated: January 27, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–2571 Filed 2–4–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8115]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

APPENDIX E:

SUBCOMMITTEE'S APPROVED AS MODIFIED REGULATORY LANGUAGE FOR LOG 194 (SUBPART I)

August 2, 2019

The Honorable Ben Carson
Secretary
U.S. Department of Housing and Urban Development 451
7th Street SW
Washington, D.C. 20410

RE: Notice of a Federal Advisory Committee Meeting; Manufactured Housing Consensus Committee: Regulatory Enforcement Subcommittee (Docket No. FR-6141-N-05 | 84 Fed. Reg. 29541)

Dear Secretary Carson,

The Manufactured Housing Institute (MHI) is pleased to provide feedback to the U.S. Department of Housing and Urban Development (HUD or the Department) and the Manufactured Housing Consensus Committee (MHCC) in response to the request for public comments in preparation for the MHCC's upcoming Regulatory Enforcement Subcommittee (the Subcommittee) teleconferences. MHI appreciates HUD's effort to complete a comprehensive review of its regulation of manufactured housing and implement the numerous recommendations and updates to the HUD Code that have already been approved by the MHCC. Detailed below are MHI's recommendations in response to the topics on the MHCC's agenda that were delegated to the Regulatory Enforcement Subcommittee.

MHI is the only national trade association that represents every segment of the factory-built housing industry. Our Members include home builders, suppliers, retail sellers, lenders, installers, community owners, community operators, and others who serve the industry, as well as 49 affiliated state organizations. In 2018, our industry produced nearly 100,000 homes, accounting for approximately 10 percent of new single-family home starts. These homes are produced by 34 U.S. corporations in 130 plants located across the country. MHI's members are responsible for close to 85 percent of the manufactured homes produced each year.

Manufactured homes are built almost entirely in a controlled manufacturing environment in accordance with the HUD Code, which provides a single regulatory framework for the design and construction of manufactured homes, including standards for health, safety, energy efficiency, and durability. This federal building code allows manufacturers to ship homes across state lines and achieve economies of scale that have brought high-quality, affordable homes to millions of Americans nationwide. However, if the HUD Code is not updated on a consistent basis, manufactured home builders will be prohibited from providing the latest innovations, technologies, and features that consumers demand.

Ensuring that the HUD Code is updated and supports innovative housing solutions has never been more important, especially as the industry launches a new class of manufactured homes that are indistinguishable from site-built homes. Market data and research indicate that consumers want homes with the latest innovative features. Now, HUD must ensure that the HUD Code is kept up to date, so it can support the features, innovations, and amenities consumers want.

During the MHCC's most recent meeting this past spring, it referred six Log Items and 90 Deregulation Comments (DRCs) to the Subcommittee for further discussion. In order to move forward with HUD's comprehensive review and expedite updates to the HUD Code, MHI has prepared several proposals that the Subcommittee can utilize to address most DRCs on the agenda. These proposals translate the DRC comments

1655 Fort Myer Drive, Suite 200, Arlington, VA 22209
(703) 558-0400 | info@mfghome.org
www.manufacturedhousing.org

into action items that HUD can implement to refine the HUD Code and improve the Department's oversight of the manufactured housing program. In addition, to assist the Subcommittee during its teleconference meetings, the attached chart summarizes MHI's recommendation for every DRC on the Subcommittee's agenda.

A. Deregulation Comments

Detailed below are MHI's five proposals for the remaining DRCs on the Subcommittee's agenda that were not addressed previously. Each proposal below satisfies all of the DRCs under the following categories on the Subcommittee's agenda: On-site Completion, Consumer Complaints, Alternative Construction, Dispute Resolution, and Preemption.

1) HUD Must Reduce Unnecessary Paperwork Burdens Under the Consumer Complaints Handling and Remedial Actions Provisions (see 24 C.F.R. Part 3282, Subpart I)

MHI proposes that HUD: (1) work with the MHCC to completely overhaul its Complaint Program; (2) eliminate the requirement to document determinations on non-compliances and preclude any class or notification and correction requirements; and (3) clarify that actions for "defect" are limited to those items solely related to the standard and not random home components.

HUD's imposition of unnecessary compliance burdens is best exemplified by its application of the "lemon law" to consumer complaints involving manufactured homes. As referenced in Log Items 182 and 194, when the consumer complaint program for manufactured homes was first proposed, it was inspired by the National Highway Traffic Safety Administration's (NHTSA) federal motor vehicle safety standards and its motor vehicle recall program.[1] Several components of the NHTSA's program are either not included in the manufactured home program or not appropriately tailored for today's modern manufactured homes. Like site-built homes, these issues can and should be addressed through home warranties. The industry supports measures that ensure manufactured homes are safe; however, the Complaint Program has become a de facto government-regulated extended warranty program that contributes to higher home prices by requiring unnecessary paperwork and records. Adoption of MHI's below recommendations would address the following DRCs: 26, 27, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, and 149.

MHI strongly agrees that defects impacting consumer safety and risk of unreasonable property damage should be avoided and addressed completely. However, manufacturers are currently tasked with tracking and monitoring serious defects and imminent safety hazards with nearly the same level of dedication as non-critical defects that are cosmetic in nature. This entails an extensive administrative process including class searches, consumer notifications, and hours of additional paperwork. The overhead costs associated with this administrative burden are passed to homebuyers, which affects affordability. HUD's monitoring and compliance efforts should focus on areas where there is empirical evidence that a life-safety or property damage risk exists. The Complaint Program should not focus on minor noncompliance issues.

Further, the definition of a class of homes under the Complaint Program is "more than one home."[2] Because of this definition, even one repeat issue with a component in a home, even if it is not a health or life-safety matter, can constitute a "class of homes," and the manufacturer must then prepare consumer notifications, develop a corrective action plan, and submit reports to HUD or the appropriate State Administrative Agency (SAA), depending on where the homes were manufactured. It is unreasonable to expect this type of regulatory-imposed response where a single factory can produce hundreds of units in a single month, all under the oversight of federally-mandated inspectors. Making oversight worse, HUD recently started

[1] 78 Fed. Reg. 60193 (October 1, 2013).
[2] 24 C.F.R. § 3282.404(b).

requiring Production Inspection Primary Inspection Agencies (IPIA) to complete monthly reviews of manufacturer's service files. HUD and the SAAs are already responsible for monitoring a manufacturer's service performance. This added paperwork only increases the cost of a manufactured home, which is then passed along to homebuyers.

The manufactured housing industry will always support regulations that ensure manufactured homes are safe for consumers. However, after years of regulatory expansion, the Complaint Program has morphed into an extended warranty plan that places an excessive burden on manufacturers and retailers with consumer benefits that fail to offset the costs of compliance. While NHTSA's federal motor vehicle safety standards and its motor vehicle recall program continue to focus on imminent life-safety issues, such as air bags, rollover protection, and other passenger restraints, the Complaint Program includes thousands of issues that are not health or life-safety concerns. Unfortunately, the HUD Code's Complaint Program continues to include issues that are well-beyond those applicable to any other type of housing. Therefore, MHI proposes that HUD: (1) work with the MHCC to completely overhaul its Complaint Program; (2) eliminate the requirement to document determinations on non-compliances and preclude any class or notification and correction requirements; and (3) clarify that actions for "defect" are limited to those items solely related to the standard and not random home components.

2) HUD Must Eliminate Production Restrictions from the Alternative Construction of Manufactured Homes Process (see 24 C.F.R. Part 3282, Subpart A)

MHI recommends that HUD: (1) permit an unlimited number of homes to be built under a given Alternative Construction letter; (2) allow Alternative Construction letters to apply indefinitely, rather than specify a limited timeframe during which approval is granted; and (3) stop requiring Alternative Construction approval for each nonconforming model when the approved component or feature is commonly installed and not model specific.

The arbitrary and repetitive nature of the Alternative Construction (AC) process is unnecessarily burdensome for manufacturers who are simply trying to provide consumers with in-demand amenities. When HUD issues an AC letter for a manufacturer to produce homes with a certain feature, HUD specifies the maximum number of homes that can be produced under the given letter, the timeframe during which those homes must be produced, and will periodically limit approval to a single home model even for AC items that are not model specific. This process forces manufacturers to then repeatedly reapply for approval for the exact same AC feature or features once they have produced the maximum number of homes, whenever the timeframe has expired, or if they want to use the same commonly installed component during the production of a different model home. This cyclical process is unnecessary, time consuming, and provides limited benefit to the manufacturer or the consumer. Adoption of MHI's recommendations would address the following DRCs: 63, 80, 81, 123, 124, 127, 128, and 129.

There is no regulation or statute that requires these limitations for AC approvals. It is entirely within HUD's purview to revise the AC process to better accommodate modern production requirements. Moreover, Congress included in its 2018 omnibus package a directive to review the AC process, and "develop a solution that ensures the safety of consumers and minimizes costs and burdensome requirements on manufacturers and consumers." HUD should also reevaluate its utilization of the AC letter process to ensure it only addresses items that do not already conform with the HUD Code's requirements. With respect to carports and garages, these add-on structures are already addressed by the HUD Code, so the AC provisions are duplicative and unnecessary. When AC letters are genuinely required, the approval should not expire, as the reapplication process is time consuming.

Further, if the HUD Code is updated on a consistent basis to account for developments, innovations, and practices that have become industry standard, many construction features would no longer require AC

approval. But since the HUD Code is outdated, manufacturers must repeatedly request AC approvals to build homes with common features that consumers want. It is unjustifiable that manufacturers bear the brunt of impact for an inefficient regulatory process that rests on outdated and archaic standards by requiring them to complete arbitrary administrative tasks, which delay production, impede business development, and hurt consumers.

Therefore, MHI recommends that when issuing AC approvals, HUD: (1) allow an unlimited number of homes to be built under a given Alternative Construction letter; (2) allow Alternative Construction letters to apply indefinitely, rather than specify a limited timeframe during which approval is granted; and (3) stop requiring Alternative Construction approval for each nonconforming model when the approved component or feature is commonly installed and not model specific.

3) HUD Must Amend its On-Site Completion of Construction of Manufactured Homes Requirements (see 24 C.F.R. Part 3282, Subpart M)

MHI proposes that HUD work with the MHCC to streamline Subpart M by: (1) consolidating the required on-site inspections into the final installation inspection; and (2) reevaluating the role that the Production Inspection Primary Inspection Agency plays in the on-site approval process.

The On-Site Completion of Construction Rule (SC Rule), which was implemented fewer than three years ago, established procedures for the limited on-site completion of some aspects of construction that are not completed in the factory.[3] While described as giving manufacturers greater flexibility in the construction of homes that have features consumers demand (e.g., dormers, gabled or high-pitched roofs, eaves, or brick siding), in practice the SC Rule has created new layers of bureaucracy. Most notably, the cumbersome inspection and approval procedures are expensive and time-consuming with limited consumer benefit. In finalizing the SC Rule, HUD did not sufficiently assess the costs associated with the expanded design and on-site inspection requirements for homes that are substantially complete when they leave the factory.

Because of the lack of clarity about what features are subject to the rule, HUD has had to issue numerous clarifications. Despite these efforts, many manufacturers no longer offer popular consumer amenities that may fall under the SC Rule, which negatively affects prospective homebuyers. Prior to the SC Rule, the following items were installed and inspected on-site: tile showers or surrounds, windows, French doors, fireplaces, and fixtures (such as lighting and other design elements). Following implementation of the SC Rule, additional IPIA inspections and manufacturer inspections are now required if such features are installed on-site. To avoid these additional on-site inspection requirements, several manufacturers simply stopped offering many of these consumer features.

The SC Rule has increased costs and reduced the number of features available to consumers, but it does not cite any problems, safety concerns, or consumer complaints that necessitate such onerous compliance requirements. In addition to this lack of evidence, during development of the SC Rule, HUD also failed to adequately assess the increased regulatory burdens and compliance costs imposed on manufacturers, retailers, and installers. The new recordkeeping, tracking, labeling, and quality assurance requirements for these popular home features not only increase a home's purchase price, but they also delay installation. It is not uncommon for the steps necessary to coordinate installation and the on-site inspections required under the SC Rule to add several days to the installation process, which only frustrates homebuyers.

Because of the lack of clarity, contradictions to the HUD Code, and lack of demonstrable need for the rule compared to increased costs and decreased home features, in March 2018 Congress included in its 2018 omnibus package a directive to HUD to review the on-site completion of construction rule and "develop a

[3] 24 C.F.R. Part 3282, Subpart M.

solution that ensures the safety of consumers and minimizes costs and burdensome requirements on manufacturers and consumers." MHI believes that reducing the number of inspections is the first step in reducing unnecessary administrative burdens on the industry and would address the following DRCs: 2, 4, 17, 18, 28, 86, 87, 88, 89, 90, 91, 92, 97, 98, 100, 101, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, and 118. Therefore, MHI proposes that HUD work with the MHCC to streamline Subpart M by: (1) consolidating the required on-site inspections into the final installation inspection; and (2) reevaluating the role that the Production Inspection Primary Inspection Agency plays in the on-site approval process.

4) HUD Should Discontinue its Dispute Resolution Program (see 24 C.F.R. Part 3288)

MHI believes that funds currently used to manage the Dispute Resolution Program should be reallocated to other programs overseen by the OMHP, which would free up Department resources for more frequent HUD Code updates. MHI calls on the MHCC—a non-partisan group of subject-matter experts who represent the entire industry, from manufacturers and inspectors to homeowners and community operators—to express support for reallocating funds currently dedicated to the Dispute Resolution Program.

The Dispute Resolution Program (DRP or the Program) was created to provide timely resolution of disputes between manufacturers, retailers, and installers regarding responsibility for correction or repair of alleged defects reported by the homeowner in the one-year period after initial installation of the home. The program is supposed to help address defects in construction, safety, and installation, rather than cosmetic issues and contractual agreements. However, according to the Savan Group, HUD's contractor that oversees the DRP, in 2017 there were no formal mediations. While the DRP received 13 requests in 2017, all the cases were resolved outside of the Program.[4] When compared with the almost 93,000 manufactured homes shipped in 2017, it is clear this costly program is unnecessary. Adoption of MHI's recommendations would address DRCs: 6, 249, 250, 251, 252, and 253.

While the industry supports measures to ensure manufactured homes are safe for consumers, the DRP does not provide a homeowner with any right of recourse for a home's structural defects. Instead, the DRP is nothing more than an intermediary between the parties involved who are trying to remedy the situation. There are already several HUD-approved warranty providers and service companies in the market that will not only protect consumers from structural or workmanship defects after the purchase of a new manufactured home, but also ensure that defects are repaired in a timely manner. These extended warranties can be purchased for as low as three dollars a month and are available to all parties—builders, manufacturers, retailers, and homebuyers. Unlike the DRP, these structural warranties protect all parties involved and ensure that known defects are addressed and repaired, not simply "resolved" in accordance with the DRP.

MHI believes that the non-use of the costly DRP clearly demonstrates that the manufactured housing industry provides consumers with a high-quality, well-built product and has an excellent track record of resolving complaints. Given that the DRP is expensive and time-consuming, with limited value or consumer benefit, MHI recommends that funds currently used to manage the Dispute Resolution Program should be reallocated to other programs overseen by the OMHP, which would free up Department resources for more frequent HUD Code updates. MHI calls on the MHCC—a non-partisan group of subject-matter experts who represent the entire industry, from manufacturers and inspectors to homeowners and community operators—to express support for reallocating funds currently dedicated to the Dispute Resolution Program.

[4] HUD Manufactured Home Dispute Resolution Program Webinar, Savan Group, October 24, 2017.

5) HUD Must Implement and Enforce its Enhanced Preemption Authority

MHI recommends that HUD issue a revised and updated policy statement regarding the Department's position concerning preemption and state and local zoning, planning, or development restrictions that either limit or prohibit manufactured housing.

HUD must exercise its preemption authority when local regulatory construction standards and zoning, planning, or development policies adversely affect the placement of quality, affordable manufactured housing. While HUD has pursued individual cases where local jurisdictions have introduced construction and safety standards that are not consistent with the HUD Code or have imposed zoning and planning requirements that exclude HUD-compliant manufactured homes, MHI believes HUD must play a much greater role in this effort and has a congressional mandate to do so.[5] HUD has jurisdictional authority to move beyond case-by-case enforcement and take an official policy position opposing state and local regulatory schemes that are inconsistent with Congressional intent.

In 1997, HUD determined it has authority under the MHCSS Act to issue a "Statement of Policy 1997-1 State and Local Zoning Determinations Involving HUD Code" (the 1997 Policy Statement) that summarizes the Department's policy position concerning preemption and certain zoning decisions being made by state or local governments.[6] Following passage of the Manufactured Housing Improvement Act of 2000 (the Improvement Act), which significantly strengthened HUD's preemption authority, HUD clearly has the authority to make necessary updates to its original policy statement.[7] Consequently, MHI recommends that HUD update its 1997 Policy Statement because it was issued after enactment of the MHCSS Act, but before the passage of the Improvement Act. This would address issues raised in the DRCs 130 through 138. Given that the Improvement Act expanded HUD's authority, MHI believes it is only appropriate for the Department to update its policy statement. Further, updating the 1997 Policy Statement would galvanize HUD's pledge to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans.[8] Therefore, MHI recommends that HUD issue a revised and updated policy statement regarding the Department's position concerning preemption and state and local zoning, planning, or development restrictions that either limit or prohibit manufactured housing.

B. Log Items

Detailed below is MHI's recommendation for each of the six Log Items on the Subcommittee's agenda.

1) Log Item 163 – 24 C.F.R. § 3282.202 Definitions (Joe Sadler, North Carolina Department of Insurance Manufactured Building Division)

This Log Item suggests amending Part 3282 of the HUD Code to more thoroughly address situations where a manufacturer terminates its business relationship with its existing Primary Inspection Agency (PIA) and begins a relationship with a new one. MHI agrees that the transfer of responsibilities from one PIA to another is a critical event. However, MHI is not aware of any issues regarding IPIA changes–neither with the manufacturer nor the third party. All open items must be resolved by the originating IPIA. Further, MHI is not aware of manufacturers making IPIA changes to avoid regulatory action or enforcement of the HUD Code. Such a change would trigger a recertification of the plant, which is costly and burdensome. MHI recommends rejection of this log item.

[5] 42 U.S.C. § 5401(b).
[6] 62 Fed. Reg. 24337 (May 5, 1997).
[7] Pub. L. § 106-569.
[8] 42 U.S.C. § 5401(b)(2).

2) Log Item 182 – 24 C.F.R. § 3282.7 Definitions; 3282 Subpart I Consumer Compliant Handling and Remedial Actions (David Meunier, Arizona Department of Housing)
Log Item 194 – 24 C.F.R. § 3282.7 (j), (x). and adding (III) Definitions (Michael Wade, Cavalier Homes)

These Log Items both propose amending several terms under Part 3282 of the HUD Code, including "defect" and "imminent safety hazard," which would reduce the administrative burden of the consumer complaint program under Subpart I of the Manufactured Home Procedural and Enforcement Regulations. The terms "defect" and "imminent safety hazard" are defined in both the HUD Code and the MHCSS Act. When the consumer complaint program for manufactured homes was first proposed, it was inspired by the National Highway Traffic Safety Administration's (NHTSA) federal motor vehicle safety standards and its motor vehicle recall program. Several components of the NHTSA's program are either not included in the manufactured home program or not appropriately tailored for today's modern manufactured homes. Currently, manufacturers are tasked with tracking and monitoring serious defects and imminent safety hazards with nearly the same level of dedication as non-critical defects that are cosmetic in nature. The overhead costs associated with this administrative burden are passed to homebuyers, which affects affordability.

MHI strongly agrees that consumer safety and risk of unreasonable property damage should be avoided and addressed completely. However, burdensome, costly, time consuming investigations and determinations for innocuous items that pose no life-safety or property damage risk should not be part of the process under the regulations. MHI recommends that the Subcommittee vote to eliminate the requirement to document determinations on non-compliances and to preclude any class or notification and correction requirements. Actions for "defects" should be limited to those solely related to the standard and not random home components.

3) Log Item 192 – 24 C.F.R. § 3285.4(h)(2) Incorporation by Reference (IBR) (Henry Greene, State of California Department of Housing and Community Development)

This Log Item recommends revising the HUD Code to incorporate by reference the most current version of the National Fire Protection Association's (NFPA) National Electric Code (NEC), NFPA 70-2017. Currently, the HUD Code incorporates by reference NFPA 70-2005. The MHCC voted to update to NFPA 70-2014, which was Ballot V-15 and approved by the MHCC in December 2016. While MHI recognizes that the HUD Code cites to an older standard, this does not mean manufactured homes fail to meet industry standards for safety and reliability. MHI recommends that Log Item 192 be rejected for failure to submit a cost impact evaluation, especially as the cost impact of NFPA 70-2014 has yet to be determined.

4) Log Item 195 – 24 C.F.R. § 3282 Subpart M On-Site Completion of Construction of Manufactured Homes (Henry Greene, State of California Department of Housing and Community Development)

This Log Item recommends repealing in its entirety Subpart M of the Manufactured Home Procedural and Enforcement Regulations. This is consistent with MHI's prior recommendations and something several MHI members have suggested since Subpart M's implementation a few years ago. Because no replacement for Subpart M is suggested in this Log Item, MHI recommends that the Subcommittee adopt MHI's proposal for improving Subpart M. (See Section A, Number 3 above for additional information).

5) Log Item 198 – 24 C.F.R. § 3280.202 Definitions (Lesli Gooch, Manufactured Housing Institute)

This Log Item, which MHI submitted, proposes amending the HUD Code's definition of "manufactured home" to remove the permanent chassis requirement, among other updates. MHI encourages the MHCC to show support for a change to the statute.

Current law reflects the origin of manufactured housing in the United States: the trailer home. However, manufactured housing has changed dramatically since the first trailer homes were built, and most manufactured homes sold today are moved exactly once: when they leave the dealer's lot. The laws regulating manufactured housing have failed to keep pace with dramatic changes in the manufactured housing industry. Modern manufactured housing has little in common with a trailer; instead, a manufactured home can be nearly indistinguishable from a traditional site-built house next door. Manufactured home units may be combined into clusters or stacks that include multiple stories, vaulted ceilings, and attached garages.

Regulations first promulgated in 1976 by the U.S. Department of Housing and Urban Development require similar materials and construction standards as site-built housing, and the resulting life expectancy of a manufactured home is now the same as a comparable site-built model.

Permanent chassis are not necessary since most manufactured homes are never relocated and could readily be relocated without a chassis using equipment available today. MHI's goal is in line with the purposes of the MHCSS Act, to expand consumer access to affordable, attainable manufactured housing, and the federal definition of manufactured home—which is roughly 30 years old—is outdated and curtails innovation. Today's modern manufactured home can be built on a removeable chassis or frame that can be reinstalled, reused or recycled. MHI calls on the MHCC—a non-partisan group of subject-matter experts who represent the entire industry, from manufacturers and inspectors to homeowners and community operators— to express support for removing the chassis requirement from the definition of "manufactured home" in the MHCSS Act.

C. <u>Actions Already Taken by HUD That Address Remaining DRCs</u>

First, while MHI understands the importance of reviewing each DRC, there are several on the Subcommittee's agenda that need no further consideration because they have already been addressed by HUD. For example, 10 DRCs scheduled for review are categorized as "RV Rule" (see DRCs 219 to 228). On November 6, 2018, HUD issued a final rule modifying the exemption for recreational vehicles under the HUD Code's Manufactured Home Procedural and Enforcement Regulations.[9] This final rule has been in effect since January 15, 2019. Consequently, the 10 DRCs still suggesting changes to the RV Rule are no longer relevant. To preserve time, MHI recommends that the Subcommittee promptly resolve these DRCs as indicated on the attached chart.

Similarly, for the 15 DRCs scheduled for review that are categorized as "HUD Regulation" (see DRCs 001 and 184 to 197), there are no substantive recommendations. Instead, the commenters simply state that the quality of manufactured housing continues to improve and that it must remain affordable. MHI agrees that because manufactured housing is the most affordable homeownership option in the market today, it must remain a viable homeownership option for all Americans. Manufactured housing offers affordability and quality to consumers because of technological advancements, cost savings, and efficiencies associated with the factory-built process. This affordability enables first-time homebuyers, retirees and growing families to obtain housing that is cheaper than purchasing a site-built home and much of the time even more cost effective than renting an often smaller or older home or apartment unit. As indicated on the attached chart, all 15 DRCs can be decisioned as "Reviewed and considered. No further action. The Regulatory Enforcement Subcommittee agrees with the comment."

Finally, for the two DRCs scheduled for review that are categorized as "Carports" (see DRCs 16 and 126), on May 20, 2019, HUD published a memorandum titled "Revised Guidance Concerning the Design, Construction, and Installation Instruction Provisions of Carport-Ready Manufactured Homes" that addresses these issues. MHI is pleased that after advocating for years on this issue, HUD rescinded its 2017 carport letters

[9] 83 Fed. Reg. 57677 (Nov 16, 2018).

since they were contradictory to statute and current regulations and created an unnecessary and time-consuming hurdle to the production of carport-ready homes. The requirement that carport-ready home designs go through the AC approval process negatively impacted the availability of this feature, which is an extremely popular and sought-after amenity for many consumers. Both DRCs can be decisioned as indicated in the attached chart.

D. <u>Conclusion</u>

Manufactured homes remain the most affordable homeownership option available in the U.S. today. MHI looks forward to working with HUD to ensure that the MHCC's recommendations are integrated into the HUD Code as quickly as possible, which will not only encourage housing innovation, but also eliminate unnecessary regulatory barriers that impede consumer access to safe, affordable manufactured homes.

Sincerely,

Lesli Gooch, Ph.D.
Executive Vice President

Attachment: MHI DRC Recommendations Chart

Manufactured Housing Institute (MHI)
HUD MHCC Regulatory Enforcement Subcommittee (RES) Meeting Deregulation Comment (DRC) Chart

#	DRC No. (assigned by HUD)	DRC Category (from HUD's agenda)	MHI Recommendation to the Regulatory Enforcement Subcommittee		
			Primary Motion	Secondary Motion	Reason Statement
1	1	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
2	2	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	The RES recommends that HUD work with the MHCC to streamline Subpart M by: (1) consolidating the required on-site inspections into the final installation inspection; and (2) reevaluating the role the Production Inspection Primary Inspection Agency plays in the on-site approval process.
3	4	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
4	6	Dispute Resolution	Reviewed and considered.	Refer to HUD for consideration.	The RES recommends that funds currently used to manage the DRP be reallocated to other programs overseen by the OMHP, which would free up HUD resources for more frequent HUD Code updates.
5	16	Carports	Reviewed and considered.	No further action.	See HUD memorandum "Revised Guidance Concerning the Design, Construction, and Installation Instruction Provisions of Carport-Ready Manufactured Homes" (May 20, 2019).
6	17	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
7	18	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
8	26	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	The RES recommends that HUD: (1) work with the MHCC to overhaul its Complaint Program; (2) eliminate the requirement to document determinations on non-compliances and preclude any class or notification and correction requirements; and (3) clarify that actions for "defect" are limited to those items solely related to the standard and not random home components.
9	27	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
10	28	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
11	63	AC Requirements	Reviewed and considered.	Refer to HUD for consideration.	The RES recommends that HUD: (1) permit an unlimited number of homes to be built under a given Alternative Construction letter; (2) allow Alternative Construction letters to apply indefinitely, rather than specify a limited timeframe during which approval is granted; and (3) stop requiring Alternative Construction approval for each nonconforming model when the approved component or feature is commonly installed and not model specific.
12	80	AC Requirements	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 063.
13	81	AC Requirements	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 063.
14	86	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
15	87	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
16	88	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
17	89	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
18	90	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
19	91	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
20	92	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
21	97	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
22	98	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
23	100	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
24	101	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
25	108	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
26	109	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
27	110	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
28	111	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
29	112	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
30	113	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
31	114	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
32	115	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
33	116	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
34	117	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
35	118	Onsite Completion	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 002.
36	123	AC Requirements	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 063.
37	124	AC Requirements	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 063.
38	126	Carports	Reviewed and considered.	No further action.	See HUD memorandum "Revised Guidance Concerning the Design, Construction, and Installation Instruction Provisions of Carport-Ready Manufactured Homes" (May 20, 2019).
39	127	AC Requirements	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 063.

Manufactured Housing Institute (MHI)
HUD MHCC Regulatory Enforcement Subcommittee (RES) Meeting Deregulation Comment (DRC) Chart

#	DRC No. (assigned by HUD)	DRC Category (from HUD's agenda)	MHI Recommendation to the Regulatory Enforcement Subcommittee		
			Primary Motion	Secondary Motion	Reason Statement
40	128	AC Requirements	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 063.
41	129	AC Requirements	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 063.
42	130	Preemption	Reviewed and considered.	Refer to HUD for consideration.	The RES recommends that HUD issue a revised and updated policy statement regarding its position concerning preemption and state and local zoning, planning, or development restrictions that either limit or prohibit manufactured housing. In 1997, HUD issued a "Statement of Policy 1997-1 State and Local Zoning Determinations Involving HUD Code" that summarizes HUD's policy position concerning preemption and certain zoning decisions being made by state and local governments. The RES requests that HUD update its statement.
43	131	Preemption	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 130.
44	132	Preemption	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 130.
45	133	Preemption	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 130.
46	134	Preemption	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 130.
47	135	Preemption	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 130.
48	136	Preemption	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 130.
49	137	Preemption	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 130.
50	138	Preemption	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 130.
51	139	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
52	140	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
53	141	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
54	142	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
55	143	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
56	144	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
57	145	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
58	146	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
59	147	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
60	148	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
61	149	Consumer Complaint Handling & Remedial Actions	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 026.
62	184	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
63	185	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
64	186	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
65	187	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
66	188	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
67	189	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
68	190	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
69	191	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
70	192	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
71	193	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
72	194	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
73	195	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
74	196	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
75	197	HUD Regulation	Reviewed and considered.	No further action.	The RES agrees with comment.
76	219	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).
77	220	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).
78	221	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).
79	222	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).

Manufactured Housing Institute (MHI)
HUD MHCC Regulatory Enforcement Subcommittee (RES) Meeting Deregulation Comment (DRC) Chart

#	DRC No. (assigned by HUD)	DRC Category (from HUD's agenda)	MHI Recommendation to the Regulatory Enforcement Subcommittee		
			Primary Motion	Secondary Motion	Reason Statement
80	223	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).
81	224	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).
82	225	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).
83	226	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).
84	227	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).
85	228	RV Rule	Reviewed and considered.	No further action.	See HUD's final rule clarifying the RV exemption. 83 Fed. Reg. 57677 (Nov 16, 2018).
86	249	Dispute Resolution	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 006.
87	250	Dispute Resolution	Reviewed and considered.	Reject premise and conclusion.	Refer to action on DRC 006.
88	251	Dispute Resolution	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 006.
89	252	Dispute Resolution	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 006.
90	253	Dispute Resolution	Reviewed and considered.	Refer to HUD for consideration.	Refer to action on DRC 006.

24 CFR Subpart I – Consumer Complaint Handling and Remedial Actions

§ 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 failures to conform to 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, consumer abuse, or 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 d~~**Determinations.**

1. Not later than 30 days after a manufacturer receives information that it believes in good faith may indicate 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. If a manufacturer makes a ~~final~~ determination of noncompliance ~~for an individual home (see § 3282.412(b)) and a class of homes is not involved,~~ no further action is needed by the manufacturer other than to keep a record of its determination as required by § 3282.417. If the manufacturer determines that it is not the cause of the problem, but a problem still exists, the manufacturer must forward the information in its possession to the appropriate retailer (see § 3282.254), and, if known, to the installer (see §§ 3286.115 and 3286.811) for their consideration. ~~Alternatively, the manufacturer, retailer, or installer may choose to submit the issue for resolution under dispute resolution (see 24 CFR part 3288).~~

2. When a manufacturer makes a~~n 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 investigations~~, including, a review of service records, IPIA inspection records, and, as appropriate, inspections of homes in the class~~. 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 a~~n 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~~ the cause of the defect, ~~serious defect,~~ or imminent safety hazard has been identified.

2. Paragraph (c) of this section sets out methods ~~for~~ that a manufacturer ~~to~~ may 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~~ 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, as a result of the same cause, 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~~ Information 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 the manufacturer must determine the class of homes pursuant to paragraph (b) of this section, 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.

5. The manufacturer must forward all information related to the class to the SAA of the state of manufacture OR the Secretary if no SAA is present in the state of manufacture.

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 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 visible to and 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.~~ Notification of a noncompliance is not required.

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 and the nature of the defect is such that it is not readily visible or obvious to the occupant, the manufacturer must prepare a plan for notification in accordance with § 3282.408 and must provide notification with respect to each manufactured home in the class of manufactured homes.

3. ~~**Serious defects and**~~ **imminent safety hazards.** When a manufacturer has made a~~n initial~~ determination in accordance with § 3282.404(a) that ~~a serious defect or~~ an 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 that provides a receipt 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 mail or other more expeditious means that provides a receipt 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 mail or other more expeditious means that provides a receipt 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, "Manufactured Home Dispute Resolution Program," of this chapter, the manufacturer, retailer, or installer of a manufactured home deemed responsible for correction of repairs or defects 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 (see § 3286.115).

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~~ chooses 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~~30-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, state what corrective actions were taken, and 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~~10 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~~30 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 within 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 show 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 an ~~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, 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(c); 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)~~(d)(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 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 correct or remove 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)(3), 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 and conditions specified in § 3282.252 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(f) 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. Conduct, at least ~~monthly~~ once per calendar quarter, a 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 in a printed or electronic format all of the information required by paragraphs (b), (c), and (d) of this section, 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 homes 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 purchaser's 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 setup 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 numbers 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.

§ 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.

APPENDIX F:

SUBCOMMITTEE'S ONGOING REGULATORY LANGUAGE FOR LOG 195 (SUBPART M)

24 CFR Subpart M – On-Site Completion of Construction of Manufactured Homes

§3282.601 Purpose and applicability.

(a) *Purpose of section*. Under HUD oversight, this section establishes the procedure for limited on-site completion of some aspects of construction that ~~cannot be~~ are not completed at the factory.

(b) *Applicability*. This section may be applied when all requirements of this subpart are met. To be applicable a manufactured home must:

(1) Be substantially completed in the factory;

(2) Meet the requirements of the Construction and Safety Standards upon completion of the site work; and

(3) Be inspected by the manufacturer's IPIA as provided in this subpart, unless specifically exempted as installation under HUD's Model Installation Standards, 24 CFR part 3285. This subpart does not apply to Alternative Construction (see §3282.14) that does not comply with the Manufactured Home Construction and Safety standards.

§3282.602 Construction qualifying for on-site completion.

~~(a) The manufacturer, the manufacturer's DAPIA acting on behalf of HUD, and the manufacturer's IPIA acting on behalf of HUD may agree to permit certain aspects of construction of a manufactured home to be completed to the Construction and Safety Standards on-site in accordance with the requirements of this subpart. The aspects of construction that may be approved to be completed on-site are the partial completion of structural assemblies or systems (e.g., electrical, plumbing, heating, cooling, fuel burning, and fire safety systems) and components built as an integral part of the home, when the partial completion on-site is warranted because completion of the partial structural assembly or system during the manufacturing process in the factory would not be practicable (e.g., because of the home design or which could result in transportation damage or if precluded because of road restrictions). Examples of construction that may be completed on-site include:~~

~~(1) Hinged roof and eave construction, unless exempted as installation by §3285.801(f) of the Model Manufactured Home Installation Standards and completed and inspected in accordance with the Manufactured Home Installation Program;~~

~~(2) Any work required by the home design that cannot be completed in the factory, or when the manufacturer authorizes the retailer to provide an add-on, not including an attached garage, to the home during installation, when that work would take the home out of conformance with the construction and safety standards and then bring it back into conformance;~~

~~(3) Appliances provided by the manufacturer, installer, retailer, or purchaser, including fireplaces to be installed on site;~~

~~(4) Components or parts that are shipped loose with the manufactured home and that will be installed on-site, unless exempted as installation by the installation standards;~~

~~(5) Exterior applications such as brick siding, stucco, or tile roof systems; and~~

~~(6) Other construction such as roof extensions (dormers), site-installed windows in roofs, removable or open floor sections for basement stairs, and sidewall bay windows.~~

(a~~b~~)The manufacturer or a licensed contractor or similarly qualified professional with prior authorization from the manufacturer may perform the on-site work in accordance with the DAPIA approvals and site completion instructions.

However, the manufacturer is responsible for the adequacy of all on-site completion work regardless of who does the work, and must prepare and provide all site inspection reports, as well as the certification of completion, and must fulfill all of its responsibilities and maintain all records at the factory of origin as required by §3282.609.

§3282.603 Request for approval. ~~DAPIA review, notification, and approval.~~

(a) *Manufacturer's request for approval.* The manufacturer must request, in writing, and obtain approval of its DAPIA for any aspect of construction that is to be completed on-site under this subpart. The manufacturer, its IPIA, and its DAPIA must work together to reach agreements necessary to enable the request to be reviewed and approved. The request must include:

1) A copy of the design or plan which a manufacturer plans to build;

(2) An explanation of the manner in which the design fails to conform with the Standards when a home leaves the factory, including a list of the specific standards involved;

(3) An explanation of how the design will result in homes that fully comply with the Standards upon completion;

(4) A copy of data adequate to support the request, including, but not limited to applicable test data, engineering calculations, installation instructions, or site and in-plant checklists;

(5) A list of all the manufacturing facilities and corresponding IPIAs to be allowed use of the approved letter;

(6) Include a unique site completion numeric identification for each approval for each manufacturer (i.e., manufacturer name or abbreviation, SC-XX);

(7) A copy of the proposed notice to be provided to home purchasers;

(8) Include a quality control checklist to verify that all required components, materials, labels, and instructions needed for site completion are provided in each home prior to shipment;

(9) Include an inspection checklist that is to be used by the final site inspectors;

(10) Include any other requirements and limitations that the DAPIA deems necessary or appropriate to accomplish the purposes of the Act.

(b) Letter sent to IPIA and Secretary. The DAPIA shall forward a copy of the letter to the manufacturer's IPIA (s) and Secretary along with a letter authorizing the IPIA to permit use of the site completion construction letter provided that the conditions set forth in the letter are met. ~~., added from 3282.14(b).~~

~~(b) *DAPIA notification*. The DAPIA, acting on behalf of HUD, must notify the manufacturer of the results of the DAPIA's review of the manufacturer's request, and must retain a copy of the notification in the DAPIA's records. The DAPIA shall also forward a copy of the approval to HUD or the Secretary's agent as provided under §3282.361(a)(4). The notification must either:~~
~~(1) Approve the request if it is consistent with this section and the objectives of the Act; or~~
~~(2) Deny the proposed on-site completion and set out the reasons for the denial.~~
~~(c) *Manner of DAPIA approval*. Notification of DAPIA approval must include, by incorporation or by listing, the information required by paragraph (d) of this section, and must be indicated by the DAPIA placing its stamp of approval or authorized signature on each page of the manufacturer's designs submitted with its request for approval. The DAPIA must include an~~

~~"SC" designation on each page that includes an element of construction that is to be completed on-site and must include those pages as part of the approved design package.~~
~~(d) *Contents of DAPIA approval*. Any approval by the DAPIA under this section must:~~
~~(1) Include a unique site completion numeric identification for each approval for each manufacturer (i.e., manufacturer name or abbreviation, SC-XX);~~
~~(2) Identify the work to be completed on-site;~~
~~(3) List all models to which the approval applies, or indicate that the approval is not model-specific;~~
~~(4) Include acceptance by the DAPIA of a quality assurance manual for on-site completion meeting the requirements of paragraph (e) of this section;~~
~~(5) Include the IPIA's written agreement to accept responsibility for completion of the necessary on-site inspections and accompanying records;~~
~~(6) Identify instructions authorized for completing the work on-site that meet the requirements of paragraph (f) of this section;~~
~~(7) Include the manufacturer's system for tracking the status of homes built under the approval until the on-site work and necessary inspections have been completed, to assure that the work is being performed properly;~~
~~(8) Include a quality control checklist to be used by the manufacturer and IPIA and approved by the DAPIA to verify that all required components, materials, labels, and instructions needed for site completion are provided in each home prior to shipment;~~
~~(9) Include an inspection checklist developed by the IPIA and manufacturer and approved by the DAPIA, that is to be used by the final site inspectors;~~
~~(10) Include a Consumer Information Notice developed by the manufacturer and approved by the DAPIA that explains the on-site completion process and identifies the work to be completed on-site; and~~
~~(11) Include any other requirements and limitations that the DAPIA deems necessary or appropriate to accomplish the purposes of the Act.~~
~~(e) *Quality assurance manual for on-site completion requirements*. The portion of the quality assurance manual for on-site completion required by paragraph (d)(3) of this section must receive the written concurrence of the manufacturer's IPIA with regard to its acceptability and applicability to the on-site completion of the affected manufactured homes. It must include a commitment by the manufacturer to prepare a final site inspection report that will be submitted to the IPIA for its review. When appropriate, this portion of the quality assurance manual for on-site completion will be deemed a change in the manufacturer's quality assurance manual for the applicable models, in accordance with §§3282.203 and 3282.361.~~
~~(f) *Instructions for completion on-site*. The DAPIA must include instructions authorized for completing the work on-site as a separate part of the manufacturer's approved design package. The manufacturer must provide a copy of these instructions and the inspection checklist required by paragraph (d)(9) of this section to the IPIA for monitoring and inspection purposes.~~

§3282.604 DAPIA responsibilities.

The DAPIA, acting on behalf of HUD, for any manufacturer proceeding under this section is responsible for:

(a) Verifying that all information required by § 3282.603 has been submitted by the manufacturer;

(b) Reviewing and approving the manufacturer's designs, quality control checklist, site inspection checklist, site completion instructions, and quality assurance manuals for site work to be performed;

(c) Maintaining all records and approvals for at least 5 years;

(d) Revoking or amending its approvals in accordance with § 3282.609; and

(e) Reviewing its approvals under this section at least every 3 years or more frequently if there are changes made to the Manufactured Home Construction and Safety Standards, 24 CFR part 3280, to verify continued compliance with the Standards.

§3282.605 Requirements applicable to completion of construction.

(a) Serial numbers of homes completed on-site. The serial number of each home completed in conformance with this section must include the prefix or suffix "SC".

(b) Labeling. A manufacturer that has received a DAPIA approval under §3282.604 may certify and label a manufactured home that is substantially completed in the manufacturer's plant at the proper completion of the in-plant production phase, even though some aspects of construction will be completed on-site in accordance with the DAPIA's approval. Any such homes or sections of such homes must have a label affixed in accordance with §3282.362(c)(2) and be shipped with a Consumer Information Notice that meets the requirements of §3282.606.

(c) Site inspection. ~~Prior to occupancy, the manufacturer must ensure that each home is inspected on-site by a qualified entity. The manufacturer is responsible for inspecting all aspects of construction that are completed on-site as provided in its approved designs and quality assurance manual for on-site completion.~~
Prior to occupancy, the manufacturer is responsible for ensuring that each home is inspected on-site and that all aspects of construction that are completed on-site as provided in its approved designs and quality assurance manual for on-site completion.

(d) Site inspection report.

(1) In preparing the site inspection report, the manufacturer must use the inspection checklist approved by the DAPIA in accordance with §3282.603(d)(9), and must prepare a final site inspection report and provide a copy to the IPIA. ~~within 5 business days of completing the report. Within 5 business days after~~ After the ~~date that the IPIA notifies the manufacturer of the~~ IPIA's approval of the final site inspection report, the manufacturer must provide a copy of the approved report to ~~the lessor or purchaser~~ the retailer prior to occupancy and, as applicable, ~~the appropriate retailer and~~ to any person or entity other than the manufacturer that performed the on-site construction work.

(2) Each approved final site inspection report must include:

(i) The name and address of the manufacturer;

(ii) The serial number of the manufactured home;

(iii) The address of the home site;

(iv) The name of the person and/or agency responsible for the manufacturer's final site inspection;

(v) The name of each person and/or agency who performs on-site inspections on behalf of the IPIA, the name of the person responsible for acceptance of the manufacturer's final on-site inspection report on behalf of the IPIA, and the IPIA's name, mailing address, and telephone number;

(vi) A description of the work performed on-site and the inspections made;

~~(vii) When applicable, verification that any problems noted during inspections have been corrected prior to certification of compliance; and~~

(vii~~i~~) Certification by the manufacturer of completion in accordance with the DAPIA-approved instructions and that the home conforms with the approved design or, as appropriate under §3282.362(a)(1)(iii), the construction and safety standards.

(3) ~~the~~The IPIA or the IPIA's agent must inspect all of the on-site work for homes completed using ~~an approval~~ documents approved under this section. ~~The IPIA must use the inspection checklist approved by the DAPIA in accordance with §3282.603(d)(9). (3) The IPIA must review each manufacturer's final on-site inspection report and determine whether to accept that inspection report.~~

~~(i) Concurrent with the manufacturer's final site inspection,~~

(i~~i~~) If the IPIA determines that the manufacturer is not performing adequately in conformance with the approval, the IPIA must red tag and reinspect until it is satisfied that the manufacturer is conforming to the conditions included in the approval. The home may not be occupied until the manufacturer and the IPIA have provided reports, required by this section, confirming compliance with the Construction and Safety Standards.

(ii~~i~~) The IPIA must notify the manufacturer of the IPIA's acceptance of the manufacturer's final site inspection report. The IPIA may indicate acceptance by issuing its own final site inspection report or by indicating, in writing, its acceptance of the manufacturer's site inspection report showing that the work completed on-site is in compliance with the DAPIA approval and the Construction and Safety Standards.

(4) ~~Within 5 business days of the date of~~ Upon the IPIA's notification to the manufacturer of the acceptance of its final site inspection report, the manufacturer must provide to ~~the purchaser or lessor,~~ the retailer ~~as applicable,~~ the manufacturer's final site inspection report. For purposes of establishing the manufacturer's and retailer's responsibilities under the Act and subparts F and I of this part, the sale or lease of the manufactured home will not be considered complete until the purchaser or lessor, as applicable, has been provided with the ~~report~~ certificate of completion.

(e) Report to HUD.

(1) The manufacturer must report to HUD through its IPIA, on the manufacturer's monthly production report required in accordance with §3282.552, the serial number and site completion numeric identification (see §3282.603(d)(1)) of each home produced under an approval issued pursuant to this section.

(2) The report must be consistent with the DAPIA approval issued pursuant to this section.

(3) The manufacturer must submit a copy of the report, or a separate listing of all information provided on each report for homes that are completed under an approval issued pursuant to this section, to the SAAs of the States where the home is substantially completed in the factory and where the home is sited, as applicable.

§3282.606 Consumer information.

(a) Notice. Any home completed under the procedures established in this section must be shipped with a temporary notice that explains that the home will comply with the requirements of the construction and safety standards only after all of the site work has been completed and inspected. The notice must be legible and typed, using letters at least 1/4 inch high in the text of the notice and 3/4 inch high for the title. The notice must read as follows:

IMPORTANT CONSUMER INFORMATION NOTICE

WARNING: DO NOT LIVE IN THIS HOME UNTIL THE ON-SITE WORK HAS BEEN COMPLETED AND THE MANUFACTURER HAS PROVIDED A COPY OF THE INSPECTION REPORT THAT CERTIFIES THAT THE HOME HAS BEEN INSPECTED AND IS CONSTRUCTED IN ACCORDANCE WITH APPROVED INSTRUCTIONS FOR MEETING THE CONSTRUCTION AND SAFETY STANDARDS.

This home has been substantially completed at the factory and certified as having been constructed in conformance with the Federal Manufactured Home Construction and Safety Standards when specified work is performed and inspected at the home site. This on-site work must be performed in accordance with manufacturer's instructions that have been approved for this purpose. The work to be performed on-site is [insert description of all work to be performed in accordance with the construction and safety standards].

This notice may be removed by the purchaser or lessor when the ~~manufacturer provides the~~ first purchaser or lessor is provided with a copy of the ~~manufacturer's final site inspection report, as required by regulation. This final report must include the~~ manufacturer's certification of completion. All manufactured homes may also be subject to separate regulations requiring approval of items not covered by the Federal Manufactured Home Construction and Safety Standards, such as installation and utility connections.

(b) Placement of notice in home. The notice required by paragraph (a) of this section must be displayed in a conspicuous and prominent location within the manufactured home and in a manner likely to assure that it is not removed until, or under the authorization of, the purchaser or lessor. The notice is to be removed only by the first purchaser or lessor. No retailer, installation or construction contractor, or other person may interfere with the required display of the notice.

(c) Providing notice before sale. The manufacturer or retailer must also provide a copy of the Consumer Information Notice to prospective purchasers of any home to which the approval applies before the purchasers enter into an agreement to purchase the home.

(d) When sale or lease of home is complete. For purposes of establishing the manufacturer's and retailer's responsibilities for on-site completion under the Act and subparts F and I of this part, the sale or lease of the manufactured home will not be considered complete until the purchaser or lessor, as applicable, has been provided with a copy of the ~~final site inspection report required under §3282.605(d) and a copy of the manufacturer's certification of completion required under §3282.609(k) and (l)~~certificate of completion. For 5 years from the date of the sale or lease of each home, the manufacturer must maintain in its records an indication that the final on-site inspection report and certification of completion has been provided to the lessor or purchaser and, as applicable, the appropriate retailer.

§3282.607 IPIA responsibilities.

The IPIA, acting on behalf of HUD, for any manufacturer proceeding under this section is responsible for:

~~(a) Working with the manufacturer and the manufacturer's DAPIA to incorporate into the DAPIA-approved quality assurance manual for on-site completion any changes that are necessary to ensure that homes completed on-site conform to the requirements of this section;~~

(~~b~~a) Providing the manufacturer with a supply of the labels described in this section, in accordance with the requirements of §3282.362(c)(2)(i)(A);

(~~c~~b) Overseeing the effectiveness of the manufacturer's quality control system for assuring that on-site work is completed to the DAPIA-approved designs, which must include:

(1) Verifying that the manufacturer's quality control manual at the installation site is functioning and being followed;

~~(2) Monitoring the manufacturer's system for tracking the status of each home built under the approval until the on-site work and necessary inspections have been completed;~~

(~~3~~2) Reviewing all of the manufacturer's final on-site inspection reports; and
(~~4~~3) Inspecting all of the on-site construction work for each home utilizing an IPIA inspector or an independent qualified third-party inspector acceptable to the IPIA and acting as the designee or representative:

~~(i) Prior to close-up, unless access panels are provided to allow the work to be inspected after all work is completed on-site; and~~

~~(ii) After all work is completed on-site, except for close-up;~~

(~~d~~c) Designating an IPIA inspector or an independent qualified third-party inspector acceptable to the IPIA, as set forth under §3282.358(d), who is not associated with the manufacturer and is not involved with the site construction or completion of the home and is free of any conflict of interest in accordance with §3282.359, to inspect the work done on-site for the purpose of determining compliance with:

(1) The approved design or, as appropriate under §3282.362(a)(1)(iii), the Construction and Safety Standards; and

(2) The DAPIA-approved quality assurance manual for on-site completion applicable to the labeling and completion of the affected manufactured homes;

(~~e~~d) Notifying the manufacturer of the IPIA's acceptance of the manufacturer's final site inspection report (see §3282.605(d)(3)(iii));

(~~f~~e) Preparing final site inspection reports and providing notification to the manufacturer of its acceptance of the manufacturer's final site inspection report ~~within 5 business days of preparing its report~~. The IPIA is to maintain its final site inspection reports and those of the manufacturer for a period of at least 5 years. All reports must be available for HUD and SAA review in the IPIA's central record office as part of the labeling records; and

(~~g~~f) Reporting to HUD, the DAPIA, and the manufacturer if one or more homes has not been site inspected prior to occupancy or when arrangements for one or more manufactured homes to be site inspected have not been made.

§3282.608 Manufacturer responsibilities.

A manufacturer proceeding under this section is responsible for:

(a) Obtaining DAPIA approval for completion of construction on-site, in accordance with §3282.603;

(b) Obtaining the IPIA's agreement to perform on-site inspections as necessary under this section and the terms of the DAPIA's approval;

(c) Notifying the IPIA that the home is ready for inspection;

(d) Paying the IPIA's costs for performing on-site inspections of work completed under this section;

(e) Either before or at the time on-site work commences, providing the IPIA with a copy of any applicable DAPIA-approved quality assurance manual for on-site completion, the approved instructions for completing the construction work on-site, and an approved inspection checklist, and maintaining this information on the job site until all on-site work is completed and accepted by the IPIA;

(f) Satisfactorily completing all on-site construction and required repairs or authorizing a licensed contractor or similarly qualified person to complete all site construction and any needed repairs;

(g) Providing a written certification to the lessor or purchaser, when all site construction work is completed, that each home, to the best of the manufacturer's knowledge and belief, is constructed in conformance with the Construction and Safety Standards;

(h) Ensuring that the consumer notification requirements of §3282.606 are met for any home completed under this subpart;

~~(i) Maintaining a system for tracking the status of homes built under the approval until the on-site work and necessary inspections have been completed, such that the system will assure that the work is performed in accordance with the quality control manual and other conditions of the approval;~~

(~~j~~i) Ensuring performance of all work as necessary to assure compliance with the Construction and Safety Standards upon completion of the site work, including §3280.303(b) of this chapter, regardless of who does the work or where the work is completed;

~~(k) Preparing a site inspection report upon completion of the work on-site, certifying completion in accordance with DAPIA-approved instruction and that the home conforms with the approved design or, as appropriate under §3282.362(a)(1)(iii), the construction and safety standards;~~

(~~l~~j) Arranging for an on-site inspection of each home upon completion of the on-site work by the IPIA or its authorized designee prior to occupancy to verify compliance of the work with the DAPIA-approved designs and the Construction and Safety Standards;

(~~m~~k) Providing its final on-site inspection report and certification of completion to the IPIA and, after approval, to ~~the lessor or purchaser and, as applicable,~~ the appropriate retailer, and to the SAA upon request;

(~~n~~l) Maintaining in its records the approval notification from the DAPIA, the manufacturer's final on-site inspection report and certification of completion, and the IPIA's acceptance of the final site inspection report and certification, and making all such records available for review by HUD in the factory of origin;

(om) Reporting to HUD or its agent the serial numbers assigned to each home completed in conformance with this section and as required by §3282.552; and

(~~p~~n) Providing cumulative quarterly production reports to HUD or its agent that include the site completion numeric identification number(s) for each home (see §3282.603(d)(1)); the serial number(s) for each home; the HUD label number(s) assigned to each home; the retailer's name and address for each home; the name, address, and phone number for each home purchaser; the dates of the final site completion inspection for each home; and whether each home was inspected prior to occupancy.

(~~q~~o) Maintaining copies of all records for on-site completion for each home, as required by this section, in

§3282.609 Revocation or amendment of DAPIA approval.

(a) The DAPIA that issued an approval or the Secretary may revoke or amend, prospectively, an approval notification issued under §3282.603. The approval may be revoked or amended whenever the DAPIA or HUD determines that:

(1) The manufacturer is not complying with the terms of the approval or the requirements of this section;

(2) The approval was not issued in conformance with the requirements of §3282.603;

(3) A home produced under the approval fails to comply with the Federal construction and safety standards or contains an imminent safety hazard; or

(4) The manufacturer fails to make arrangements for one or more manufactured homes to be inspected by the IPIA prior to occupancy.

(b) The DAPIA must immediately notify the manufacturer, the IPIA, and HUD of any revocation or amendment of DAPIA approval.

§3282.610 Failure to comply with the procedures of this subpart.

In addition to other sanctions available under the Act and this part, HUD may prohibit any manufacturer or PIA found to be in violation of the requirements of this section from carrying out their functions of this Subpart in the future, after providing an opportunity for an informal presentation of views in accordance with §3282.152(f). Repeated infractions of the requirements of this section may be grounds

§3282.611 Compliance with this subpart.

If the manufacturer and IPIA, as applicable, complies with the requirements of this section and the home complies with the construction and safety standards for those aspects of construction covered by the DAPIA approval, then HUD will consider a manufacturer or retailer that has permitted a manufactured home approved for on-site completion under this section to be sold, leased, offered for sale or lease, introduced, delivered, or imported to be in compliance with the certification requirements of the Act and the applicable implementing regulations in this part 3282 for those aspects of construction covered by the approval.