

(f) If the manufacturer wishes to obtain a waiver of the formal plan approval and notification requirements that would result from a determination under paragraph (b) of this section, the manufacturer may act under this paragraph. The plan approval and notification requirements shall be waived by either the SAA or the Secretary that would otherwise review the plan under paragraph (c) of this section if:

(1) The manufacturer, before the expiration of the time period determined under paragraph (c) of this section, shows to the satisfaction of the SAA or the Secretary, through such documentation as the SAA or the Secretary may require, that:

(i) The manufacturer has identified the class of possibly affected manufactured homes in accordance with § 3282.409.

(ii) The manufacturer will correct, at the manufacturer's expense, all affected manufactured homes in the class within 60 days of being informed that the request for waiver has been accepted; and

(iii) The proposed repairs are adequate to remove the failure to conform or imminent safety hazard that gave rise to the determination under paragraph (b) of this section; and

(2) The manufacturer corrects all affected manufactured homes within 60 days of being informed that the request for waiver has been accepted. The formal plan and notification requirements are waived pending final resolution of a waiver request under this paragraph (f) as of the date of such a request. If a waiver request is not accepted, the plan called for by paragraph (c) of this section shall be submitted within 5 days after the manufacturer is notified that the request was not accepted.

#### § 3282.405 SAA responsibilities.

(a) As set out at § 3282.302(b)(5), each SAA is responsible for overseeing the handling of consumer complaints by manufacturers within the state. As part of that responsibility, the SAA is required to monitor manufacturer compliance with this subpart, and particularly with § 3282.404. This monitoring will be done primarily by periodically checking the records that manufactur-

ers are required to keep under § 3282.404(b).

(b) If the SAA acting under paragraph (a) finds that a manufacturer has failed to comply with § 3282.404, or if the SAA finds that the manufacturer has decided not to act under § 3282.404(c) where the SAA believes the manufacturer is required to act, or if the manufacturer failed to fulfill the requirements of § 3282.404(f) after requesting a waiver under that paragraph, the SAA shall make such preliminary determinations as it deems appropriate under § 3282.407(b), except that if the affected manufactured homes were manufactured in more than one state or if it appears that the appropriate preliminary determination would be an imminent safety hazard or serious defect, the SAA shall refer the matter to the Secretary.

(c) Where an SAA that is reviewing a plan under § 3282.404(c) finds that the manufacturer is not acting reasonably in refusing to accept changes to a proposed plan, the SAA shall make such preliminary determinations as may be appropriate under § 3282.407, except that where it appears that it would be appropriate to make a preliminary determination of imminent safety hazard or serious defect, the SAA shall refer the matter to the Secretary.

#### § 3282.406 Required manufacturer correction.

A manufacturer required to furnish notification under § 3282.404 or § 3282.407 shall correct, at its expense, any imminent safety hazard or serious defect 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 in the manufactured home by the manufacturer.

#### § 3282.407 Notification and correction pursuant to administrative determination.

(a) *Preliminary determinations.* (1) Whenever the Secretary has information indicating the possible existence of an imminent safety hazard or serious defect in a manufactured home, the

Secretary may issue a preliminary determination to that effect to the manufacturer.

(2) Whenever the information referred to in paragraph (a)(1) of this section indicates that the manufacturer is required to correct the imminent safety hazard or serious defect under §3282.406, the Secretary may issue a preliminary determination to that effect to the manufacturer.

(3) Whenever an SAA has information indicating that a defect or noncompliance may exist in a class of manufactured homes that is identifiable because the cause of the defect or noncompliance is such that the same defect or noncompliance would probably have been systematically introduced into more than one manufactured home during the course of production, and all manufactured homes in the class appear to have been manufactured in that State, the SAA may issue a preliminary determination of defect or noncompliance to the manufacturer. Information on which an SAA may base a conclusion that an appropriate class of manufactured homes exists may include, but is not limited to, complaints that can be traced to the same cause, defects known to exist in supplies of components or parts, information related to the performance of a particular employee, and information indicating a failure to follow quality control procedures with respect to a particular aspect of the manufactured home. If, during the course of these proceedings, evidence arises that indicates that manufactured homes in the same identifiable class were manufactured in more than one state, the SAA shall refer the matter to the Secretary. The Secretary may make a preliminary determination of noncompliance or defect where there is evidence that a noncompliance or defect may exist.

(b) *Notice and request for presentation of views and evidence.* (1) Notice of the preliminary determination shall be sent by certified mail and shall include:

(i) The factual basis for the determination and

(ii) The identifying criteria of the manufactured homes known to be affected and those believed to be in the

class of possibly affected manufactured homes.

(2) The notice shall inform the manufacturer that the preliminary determination shall become final unless the manufacturer requests a hearing or presentation of views under subpart D of this part within 15 days of receipt of a Notice of Preliminary Determination of serious defect, defect, or noncompliance, or within 5 days of receipt of a Notice of Preliminary Determination of imminent safety hazard.

(3) Promptly upon receipt of a manufacturer's request, a Formal or an Informal Presentation of Views shall be held in accordance with §3282.152.

(4) Parties may propose in writing, at any time, offers of settlement which shall be submitted to and considered by the Secretary or the SAA that issued the Notice of Preliminary Determination. If determined to be appropriate, the party making the offer may be given an opportunity to make an oral presentation in support of such offer. If an offer of settlement is rejected, the party making the offer shall be so notified and the offer shall be deemed withdrawn and shall not constitute a part of the record in the proceeding. Final acceptance by the Secretary or an SAA of any offer to settlement shall automatically terminate any proceedings related thereto.

(c) *Final determinations.* (1) If the manufacturer fails to respond to the notice of preliminary determination within the time period established in paragraph (b)(2) of this section, or if the SAA or the Secretary decides that the views and evidence presented by the manufacturer or others are insufficient to rebut the preliminary determination, the SAA or the Secretary, as appropriate, shall make a final determination that an imminent safety hazard, serious defect, defect, or noncompliance exists. In the event of a final determination that an imminent safety hazard, serious defect, defect or noncompliance exists, the SAA or the Secretary shall issue an order directing the manufacturer to furnish notification. If the Secretary makes a final determination that the manufacturer is required to correct, the Secretary shall issue an order directing the manufacturer to provide correction.

(2) *Appeals.* When an SAA has made a final determination that a defect or noncompliance exists, the manufacturer may, within 10 days after receipt of the notice of such final determination, appeal to the Secretary under § 3282.309.

(d) Where a preliminary determination of defect or noncompliance has been issued, the manufacturer may, at any time during the proceedings called for in this section or after the issuance of a Final Determination and Order, request a waiver of the formal notification requirements. The manufacturer may request such a waiver from the SAA that is handling the proceedings, or if the Secretary is handling the proceedings, from the Secretary. When requesting such a waiver, the manufacturer shall certify and provide assurances that:

(1) The manufacturer has identified the class of possibly affected manufactured homes in accordance with § 3282.409;

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

(3) The proposed repairs are adequate to remove the failure to conform or imminent safety hazard that gave rise to the issuance of the Preliminary Determination.

The SAA or the Secretary may grant the request for waiver if the manufacturer agrees under paragraph (b)(4) of this section to an offer of settlement that includes an order that embodies the assurances made by the manufacturer.

[42 FR 2580, Jan. 12, 1977, as amended at 51 FR 34468, Sept. 29, 1986; 51 FR 37568, Oct. 23, 1986]

**§ 3282.408 Reimbursement for prior correction by owner.**

A manufacturer that is required to correct under § 3282.406 or that decides to correct and obtain a waiver under § 3282.404(f) or § 3282.407(d) shall provide reimbursement for reasonable cost of correction to any owner of an affected

manufactured home who chose to make the correction before the manufacturer did so.

**§ 3282.409 Manufacturer's plan for notification and correction.**

(a) This section sets out the requirements that shall be met by manufacturers in preparing plans they are required to submit under § 3282.404(c). The underlying requirement is that the plan show how the manufacturer will fulfill its responsibilities with respect to notification and correction that arise under this subpart I.

(b) The plan shall include a copy of the proposed notice that meets the requirements of § 3282.410.

(c) The plan shall identify, by serial number and other appropriate identifying criteria, all manufactured homes with respect to which notification is to be provided. The class of manufactured homes with respect to which notification shall be provided and which shall be covered by the plan is that class of homes that was or is suspected of having been affected by the cause of an imminent safety hazard or failure to conform. The class is identifiable to the extent that the cause of the imminent safety hazard or failure to conform is such that it would probably have been systematically introduced into the manufactured homes in the class during the course of production. In determining the extent of such a class, the manufacturer may rely either upon information that positively identifies the extent of the class or upon information that indicates what manufactured homes were not affected by the same cause, thereby identifying the class by excluding those manufactured homes. Methods that may be used in determining the extent of the class of manufactured homes include, but are not limited to:

(1) Inspection of manufactured homes produced before and after the manufactured homes known to be affected;

(2) Inspection of manufacturer quality control records to determine whether quality control procedures were followed;

(3) Inspection of IPIA records to determine whether the imminent safety hazard or failure to conform was either