

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

FILED
AUG 14 3 22 PM '96
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Labor TITLE NUMBER: 42

CITE AUTHORITY 21-9-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 19

TITLE OF RULE BEING AMENDED: West Virginia Manufactured
Housing Construction and Safety Standards Board

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

15.60

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: West Virginia Manufactured Housing Construction & Safety Standards Board

Type of Rule: Legislative Interpretive Procedural

Agency Division of Labor/Manufactured Housing Section

Address Building 3, Room 319

Capitol Complex

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	HEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

No additional expense anticipated

3. Objectives of these rules:

Regulate Safety and Construction Standards for Manufactured Housing (mobile homes)

Rule Title: West Virginia Manufactured Housing Construction & Safety
Standards Board

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

0

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Proposed Amendment at 42 CSR 19 Section 10 allows manufactured housing dealers to shift costs of installation to consumers of those homes

C. Economic Impact on Citizens/Public at Large.

Improperly installed manufactured homes deteriorate quickly leaving citizens with inadequate housing

Date:

August 14, 1996

Signature of Agency Head or Authorized Representative

Shelby B. Leary

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Labor/Manufactured Housing Section

LEGISLATIVE RULE TITLE: West Virginia Manufactured Housing Construction &

1. Authorizing statute(s) citation Safety Standards Board

21-9-4

2. a. Date filed in State Register with Notice of Hearing

June 28, 1996

b. What other notice, including advertising, did you give of the hearing?

Copy sent to West Virginia Manufactured Housing Association

c. Date of Hearing(s) August 7, 1996

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 14, 1996

f. Name and phone number(s) of agency person(s) to contact for additional information:

Chris Quasebarth, Deputy Commissioner 558-7890

Fran Cook, Director, Manufactured Housing Section

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

3.11.	3.12.	Renumbered.
3.12.	3.13.	Renumbered.
3.13.		Eliminated duplicated "federal standards" definition at 3.12.
3.14.		Moved into 3.5.
3.15.	3.14.	Renumbered.
3.16.	3.15.	Renumbered.
3.17.	3.16.	Corrected federal rule citation; renumbered.
3.18.	3.19.	Renumbered.
3.19.	3.20.	Substitute a clearer definition of "informal presentation of views."
3.20.		Moved to 3.6.
3.21.		Eliminated as unnecessary and unused term.
	3.21.	Added definition of "Installation."
3.24.	3.24.	Substituted correct word "erected" for wrong word "entered."
3.27.	3.27.	Added "consumer" in as alternate term for "purchaser"; limited definition to not include manufacturers, dealers, etc.; included "installation services" as something a "purchaser" may be purchasing.
3.28.	3.28.	Eliminated specific section cite.
	3.31.	Added definition of "set-up."
	3.32.	Added definition of "site."
3.31.	3.33.	Renumbered.
4.3.	4.3.	Eliminated obsolete clause in lines 1 & 2; rewrote (g) and (h).

- 4.4. 4.4. Clarifies time renewal application acts as valid license.
- 4.5. 4.5. Removes redundant language.
- 5.1. 5.1. Added "it operates."
- 5.3. 5.3. Eliminated obsolete clause in lines 1 & 2; rewrote (g) and (h).
- 5.4. 5.4. Clarifies time renewal application acts as valid license.
- 5.5. 5.5. Removes redundant language.
- 5.8. 5.8. Removes nonsensical clause.
- 6.3. 6.3. Eliminated obsolete clause in lines 1 & 2; rewrote (g) and (h).
- 6.4. 6.4./6.5. Clarifies time renewal application acts as valid license; split language regarding the fee waiver into section 6.5; eliminated "renewal" as restriction to waiver since statutory language applies waiver to all licensure meeting standard.
- 6.5. 6.6. Removes redundant language; renumber.
- 6.6. 6.7. Renumbered.
- 6.7. 6.8. Renumbered; removes nonsensical clause.
- 6.8. 6.9. Renumbered.
- 7.1. 7.1./7.2. Clarifies language prohibiting noncompliance; splits language regarding adoption of federal standards into section 7.2; eliminates obsolete 24 CFR 3283 reference.
- 7.2. Moved requirement into 4.3(g), 5.3(g) and 6.3(g).
- 7.3. 7.3. Removed obsolete language regarding becoming an SAA.
- 8.8. 8.8. Removed obsolete language regarding becoming an SAA.

- 9.10. Removed obsolete language regarding becoming an SAA.
- 9.11. Removed obsolete language regarding becoming an SAA.
- 9.12. 9.10. Renumbered; removed DAPIA and IPIA.

All of section 10 now designated as 10A or 10B.

- 10.1 10A.1 Added "new" to modify manufactured homes to specify that only new homes must be provided with a consumer manual.
- 10.2. 10A.2. Allows dealers to shift costs of installation and liabilities for improper installations to consumers; changed 24 CFR 3283 reference to 3282; requires dealers to maintain record of which required installation method was utilized for installing a manufactured home.
- 10.3. 10A.3. Changed 24 CFR 3283 reference to 3282; substitutes reasonable timeframes for installation of perimeter fascia (skirting) for present "concurrent" installation requirement.
- 10B.1-.6 Heart of installation proposal offered by WV Manufactured Housing Association allowing shifting of costs and liabilities for installation of manufactured homes from dealers to consumers.

All of section 13 regarding complaint handling rewritten to reflect more efficient practice for a more responsive addressing by the Board and Division of Labor of complaints received.

All of current section 14 eliminated as redundant since the federal procedure currently required is adopted by reference in section 7.

All of current section 15 renumbered to 14.

- 15.1. 14.1. Renumbered; eliminated specific section reference in (k); change settlement "order" to settlement "agreement" and clarifies who that agreement is with in (w).

- 15.2. 14.2. Streamlines first paragraph; add "per violation" to fine assessment in (b) to mirror statutory language.
- 15.3. 14.3. Renumbered.
- 15.4. 14.4. Renumbered.
- 15.5. 14.5. Renumbered.
- 15.6. 14.6. Renumbered.
- 15.7. 14.7. Make clear that sanctions cannot be imposed without opportunity for hearing.
- 15.8. 14.8. Renumbered.

All of section 16 renumbered to section 15.

- 16.1. 15.1. Substitutes reference to statutory language for unnecessary language regarding purpose of recovery fund.
- 16.2. 15.2. Renumbered.
- 16.3. Eliminated obsolete language regarding payments to recovery fund when first started.
- 16.4. 15.3. Renumbered.
- 16.5. 15.4. Renumbered.
- 16.6. 15.5. Renumbered; eliminates unnecessary statutory reference.

16.7 thru 16.12 rewritten and replaced with 15.6 thru 15.10 to provide a more efficient and responsive practice for the Board in distributing the recovery fund to qualified consumers.

- 16.13. 15.11. Renumbered.
- 16.14. 15.12. Renumbered.
- 15.13. Added recovery fund cannot be waived.

Section 17 is renumbered to 16.

WEST VIRGINIA DIVISION OF LABOR

319 Building Three, Capitol Complex • Charleston, West Virginia 25305

Phone (304) 558-7890 • Fax (304) 558-3797

GASTON CAPERTON
Governor



SHELBY LEARY
Commissioner

STATEMENT OF CIRCUMSTANCES

MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS BOARD

42 CSR 19
14 AUGUST 1996

Manufactured housing dealers have long sought to legitimize a practice of shifting installation costs, responsibilities and liabilities to their consumers. They have accomplished that with the enclosed proposed changes to section 10 of these rules. Otherwise, the attached modification is designed to improve the clarity and workability of some of the standards and procedures of the Manufactured Housing Construction and Safety Standards Board. The amendments clarify some vague portions of the rule so that businesses and consumer have a clearer understanding of their rights and responsibilities and remove obsolete language.

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FILED

AUG 14 3 22 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 42
LEGISLATIVE RULES
DIVISION OF LABOR

SERIES 19

WEST VIRGINIA MANUFACTURED HOUSING CONSTRUCTION AND
SAFETY STANDARDS BOARD

§42-19-1. General.

1.1. Scope. -- This legislative rule ~~governs licensing, fees, standards, the handling of complaints, sanctions, the recovery fund, and all other matters relevant to the designation of the Board~~ governs all matters arising pursuant to the Manufactured Housing Construction and Safety Standards Board's statutory authority and as a State Administrative Agency under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401 et seq.

1.2. Authority. -- W. Va. Code §§21-9-4 and 29A-3-1.

1.3. Filing Date. --

1.4. Effective Date. --

§42-19-2. Application and Enforcement.

2.1. Application. -- This legislative rule applies to the Board and to all persons, materials and transactions governed by or otherwise within the jurisdiction of the Board.

2.2. Enforcement. -- The enforcement of this legislative rule is vested in the Board, and the Division of Labor as authorized by the Board.

§42-19-3. Definitions.

3.1. ~~"Aggrieved consumer" means any consumer who may be entitled to a payment of compensation out of the Recovery Fund pursuant to Section 16 of this rule as a result of the actions of a manufacturer, dealer, distributor or contractor of manufactured housing. In no event shall any aggrieved consumer be recognized as an interested person in any Board investigation, informal presentation of views, or contested case hearing.~~

3.1. "Aggrieved consumer" means a consumer qualifying for compensation or repairs from the recovery fund, bond or other financial assurance required pursuant to the provisions of this rule.

3.2. "Board" means the West Virginia Manufactured Housing Construction and Safety Standards Board.

3.3. "Business location" means each physically distinct operation maintained by a manufacturer, dealer, or distributor of manufactured housing.

3.4. "Commissioner" means the Commissioner of the State of West Virginia State Division of Labor.

~~3.5. "Contested case hearing" means the procedural rights guaranteed to any interested person who is or may be adversely affected by an order of the Board. These rights are delineated in the Board's procedural rules at 52 C.F.R. 1, Sections 1.1 et seq. and at W.Va. Code § 29A-5-1 et seq.~~

3.5. "Contested case" or "formal presentation of views" is synonymous with the definition of "contested case" found at West Virginia Code § 29A-1-2(b).

3.6. "Contractor" or "installer" means any person who performs operations in the State at the occupancy site which render a manufactured home fit for habitation. This definition does not include a person who does work on a manufactured home which is owned or leased by that person. Such operations include without limitation: installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission. These terms "contractor" specifically includes primary contractors and subcontractors.

3.7. "DAPIA" means the Design Approval Primary Inspection Agency specified in the federal standards.

3.8. "Dealer" means any person engaged in business in the State in the sale, accepting on consignment, leasing, or distribution of manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale. The phrase "engaged in business in the State" includes operating business locations physically within West Virginia, and operating business locations physically outside West Virginia when the dealer knows or should know that the manufactured home is to be first located at an occupancy site in West Virginia.

3.9. "Defect" includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to the occupants of the affected manufactured home.

3.10. "Distributor" means any person engaged in business in the State in the sale and distribution of manufactured homes for resale. The phrase "engaged in business in the State" includes operating business locations physically within West Virginia, and operating business locations physically outside West Virginia when the distributor knows or should know that the manufactured home is to be resold in West Virginia.

3.11. "Division" means the State of West Virginia Division of Labor.

3.12. "Failure to Conform" means an imminent safety hazard related to the federal standards, a serious defect, defect, or noncompliance and is used as a substitute for all of those terms.

~~3.12~~ 3.13. "Federal Standards" means the federal manufactured home procedural and enforcement regulations promulgated under 42 U.S.C. §§ 5401, et seq.

~~3.13. "Federal Standards" means the federal manufactured home construction and safety standards promulgated under 42 U.S.C. §§ 5401, et seq.~~

~~3.14. "Formal presentation of views" is the equivalent of a "contested case hearing" as defined in Section 3.5 of this rule.~~

~~3.15~~ 3.14. "HUD" means the United States Department of Housing and Urban Development and its Secretary.

~~3.16~~ 3.15. "HUD data plate" means the permanently affixed data plate placed on each manufactured home pursuant to the federal standards (24 CFR 3280.5).

~~3.17~~ 3.16. "HUD label" means the permanently affixed certification label placed on each manufactured home pursuant to the federal standards (24 CFR 3280.511).

~~3.18~~ 3.19. "Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to a failure to comply with an applicable federal standard.

~~3.19 "Informal presentation of views" means the procedural rights guaranteed to any person by Sections 13.4, 13.5, and 13.6 of this rule. Any interested person adversely affected by an order~~

~~of the Board after an informal presentation of views shall be afforded an opportunity for a contested case hearing if requested in writing by the interested person within thirty (30) days of receipt of the order adjudicating the informal presentation of views.~~

3.20. "Informal presentation of views" means the opportunity for a manufacturer, dealer, distributor or contractor to be heard following the issuance of preliminary determination of a possible imminent safety hazard or serious defect or the issuance of a notice of violation.

~~3.20. "Installer" is the equivalent of "contractor" as defined in Section 3.6 of this rule.~~

3.21 "Installation" shall mean and include: home placement evaluation, including soil evaluation, footer design and inspection of site for ability to comply; site preparation including clearing site and access and rough grading the site; installing footers including digging footers and pouring concrete; level and trim the home including positioning on the support system (level), anchor, close-in, trim and adjustment, and cross over connects (non-electrical); utility connections including, if applicable, electric or gas, water, sewer, cable TV connects, satellite dishes, DSS systems, telephone connects, and well and septic systems; installation of optional accessory items, including, if applicable, fascia and ventilation, HVAC, decks, porches and awnings, carports, garages, pools, and out buildings; and final grade and water control including footer backfill, installation of a vapor barrier, final grading of lot, landscaping, driveways and sidewalks.

~~3.21. "Interested person" means any person whose rights are or may be adversely affected by the Board as a result of an investigation, informal presentation of views, or contested case hearing, and who accordingly is permitted to participate in these proceedings before the Board.~~

3.22. "IPIA" means the Production Inspection Primary Inspection Agency specified in the federal regulations.

3.23. "Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes into the State for resale.

3.24. "Manufactured home" means a structure, transportable in one (1) or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes

the plumbing, heating, air-conditioning, and electrical systems contained therein; except that the term includes any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards (24 CFR 3282.13). Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when entered erected on site. Unless specifically indicated to the contrary herein, all references to a "manufactured home" means a new or used manufactured home.

3.25. "Noncompliance" means a failure of a manufactured home to comply with a federal standard that does not constitute a defect, serious defect, or imminent safety hazard.

3.26. "Person" means any individual, trust, estate, partnership, corporation, association, or any other legal entity recognized by the State, including any State or political subdivision.

3.27. "Purchaser or consumer" means the person, other than a manufacturer, dealer, distributor, contractor or transporter, purchasing a manufactured home in good faith for purposes other than resale or contracting for the installation.

3.28. "Recovery Fund" means the State Manufactured Housing Recovery Fund as established by Section 16 pursuant to the provisions of this rule.

3.29. "SAA" means the State Administrative Agency specified in the federal regulations.

3.30. "Serious defect" means any failure to comply with an applicable federal standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home.

3.31. "Set-up" shall mean installation as defined at § 42-19-21.

3.32. "Site" shall mean that area encompassing the exterior perimeter of the manufactured home plus 6".

~~3.31~~ 3.33. "State" means the State of West Virginia.

§42-19-4. Licensure of Manufacturers.

4.1. No person may engage in the business of a manufacturer

in this State without a license. Each manufacturer who desires to engage in business in the State shall apply to the Board for a license. A manufacturer must maintain one (1) license for each business location in the State. A manufacturer who maintains all of its business locations out of the State, but who ships, imports, or delivers manufactured homes into the State, and is considered to be engaged in business in the State, must maintain one (1) license for each out-of-State business location which will ship, import, or deliver manufactured homes into the State.

4.2. A manufacturer's license is valid for up to one (1) year, and expires on the thirtieth (30th) day of June in each year, unless sooner revoked or suspended by the Board.

4.3. Any manufacturer ~~who is not currently licensed to engage in business in the State, but~~ who desires to be licensed, shall submit an initial application on forms supplied by the Board. Each initial application shall be accompanied by all information required by the Board on its forms, including but not limited to:

- (a) the legal and trade name(s) of the manufacturer;
- (b) the address of the manufacturer's various business locations desiring licensure;
- (c) the phone number of each business location desiring licensure;
- (d) the names and addresses of the owners, officers, and directors of the manufacturer;
- (e) evidence of the manufacturer's legal authority to engage in business in the State;
- (f) a fee of three hundred dollars (\$300.00) for each business location desiring licensure;
- (g) ~~assurance of the manufacturer's financial responsibility proof of payment to the recovery fund as required by Section 16 of this rule;~~
- (h) a statement of compliance with all applicable state and federal standards. This statement of compliance shall be signed by a responsible officer or person representing the applicant who has full legal authority to bind the applicant to its terms;
- (i) the name(s) of the DAPIA or DAPIAs who inspect the manufacturer;
- (j) the name(s) of the IPIA or IPIAs who inspect the manufacturer;

- (k) a copy of all DAPIA-approved manufactured home designs currently in use;
- (l) a copy of all DAPIA-approved quality assurance programs currently in use;
- (m) a copy of all manufacturing plant certification reports issued by an IPIA in the past twelve (12) months; and
- (n) a list of the names of all dealers and/or distributors in the State that are authorized to receive the manufacturer's product line.

4.4. Any manufacturer currently licensed in the State shall submit an application for licensure renewal on or before the thirtieth (30th) day of June in each year. Any renewal application is a valid license for a period of thirty (30) days, ~~or until unless sooner~~ rejected by the Board. The renewal application shall be accompanied by all information required by the Board on its forms as specified by Section 4.3 of this rule, including a renewal fee of three hundred dollars (\$300.00).

4.5. The Board shall grant or refuse any initial or renewal application for a manufacturer's license within thirty (30) days after a proper and complete application has been filed. If any initial or renewal application is found by the Board to not constitute a proper and complete application, the Board may request additional information. ~~The Board's thirty (30) day period for acting upon an application does not commence until a proper and complete application has been received by the Board. In no event shall any renewal application, complete or incomplete, proper or improper, be considered a valid license for a period of more than thirty (30) days from the date of its filing.~~

4.6. The Board shall grant an initial or renewal manufacturer's license if it finds that the applicant is eligible to operate as a manufacturer by virtue of each of the following:

- (a) the manufacturer's adequate financial capacity;
- (b) the manufacturer's record of compliance with any lawful orders of the Board or any other equivalent agency for any other jurisdiction, including the lack of any revocation, suspension, or limitation on the manufacturer's license in this state or any other jurisdiction; and
- (c) the manufacturer's compliance with the applicable portions of this rule and with the applicable federal standards, including receipt of all DAPIA and IPIA approvals and certifications.

WEST VIRGINIA DIVISION OF LABOR

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SHELBY LEARY
Commissioner

SUMMARY OF PROPOSED CHANGES

MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS BOARD

42 CSR 19
14 AUGUST 1996

The attached is a proposed modification of an existing rule. The modifications include additions and deletions to clarify some vague portions of the rule, remove obsolete language and make the rule easier to follow.

Old #	New #	Effect
1.1.	1.1.	Streamline scope language.
1.2.	1.2.	Add Administrative Procedures Act authority.
2.2.	2.2.	Clarify role of the Division of Labor.
3.1.	3.1.	Substitute a clearer definition of "aggrieved consumer."
3.4.	3.4.	Add "State of" to "West Virginia."
3.5.	3.5.	Substitute a clearer definition of "contested case" for "contested case hearing"; folded in "formal presentation of views" definition from 3.14.
3.6.	3.6.	Folded in "installer" definition from 3.20.
3.8.	3.8.	Specifies that a "dealer" can be someone with a business location in or, under certain conditions, out of state.
3.10.	3.10.	Specifies that a "distributor" can be someone with a business location in or, under certain conditions, out of state.
	3.11.	Adds "Division of Labor" definition.

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4.7. The Board may grant initial and renewal licenses for manufacturers for some business locations and deny them for others if the facts justify such action.

4.8. Each manufacturer shall conspicuously display its license at each of its licensed business locations.

4.9. A manufacturer's license is not transferable. Any change in the person holding the license, including a change in the ownership of sole proprietorship, a change of a partner in a partnership, or the creation of a new corporate entity, requires a new license.

§42-19-5. Licensure of Dealers and Distributors.

5.1. No person may engage in the business of a dealer and/or distributor in this state without a license. Each dealer and/or distributor who desires to engage in business in the state shall apply to the Board for a license. A dealer and/or distributor must maintain one (1) license for each business location in the state it operates.

5.2. A dealer's and/or distributor's license is valid for up to one (1) year, and expires on the thirtieth (30th) day of June each year, unless sooner revoked or suspended by the Board.

5.3. Any dealer and/or distributor ~~who is not currently licensed to engage in business in the State, but~~ who desires to be licensed, shall submit an initial application on forms supplied by the Board. Each initial application shall be accompanied by all information required by the Board on its forms, including but not limited to:

- (a) the legal and trade name(s) of the dealer and/or distributor;
- (b) the address of the dealer and/or distributor's various business locations desiring licensure;
- (c) the phone number of each business location desiring licensure;
- (d) the names and addresses of the owners, officers, and directors of the dealer and/or distributor;
- (e) evidence of the dealer's and/or distributor's legal authority to engage in business in the state;
- (f) a fee of one hundred dollars (\$100.00) for each business location desiring licensure;

- (g) ~~assurance of the dealer's and/or distributor's financial responsibility proof of payment to the recovery fund as required by Section 16 of this rule;~~
- (h) a statement of compliance with all applicable state and federal standards. This statement of compliance shall be signed by a responsible officer or person representing the applicant who has full legal authority to bind the applicant to its terms;
- (i) a list of the names of all manufacturers in or out of the State whose product line the dealer and/or distributor is authorized to receive; and
- (j) a list of the names of all salespersons employed by the dealer and/or distributor.

5.4. Any dealer and/or distributor currently licensed in the state shall submit an application for licensure renewal on or before the thirtieth (30th) day of June in each year. Any renewal application is a valid license for a period of thirty (30) days, ~~or until unless sooner~~ rejected by the Board. The renewal application shall be accompanied by all information required by the Board on its forms as specified by Section 5.3 of this rule, including a renewal fee of one hundred dollars (\$100.00).

5.5. The Board shall grant or refuse any initial or renewal application for a dealer's and/or distributor's license within thirty (30) days after a proper and complete application has been filed. If any initial or renewal application is found by the Board to not constitute a proper and complete application, the Board may request additional information. ~~The Board's thirty (30) day period for acting upon an application does not commence until a proper and complete application has been received by the Board. In no event shall any renewal application, complete or incomplete, proper or improper, be considered a valid license for a period of more than thirty (30) days from the date of its filing.~~

5.6. The Board shall grant an initial or renewal dealer's and/or distributor's license if it finds that the applicant is eligible to operate as a dealer and/or distributor by virtue of each of the following:

- (a) the dealer's and/or distributor's adequate financial capacity;
- (b) the dealer's and/or distributor's record of compliance with any lawful orders of the Board or any other equivalent agency of any other jurisdiction, including the lack of any

revocation, suspension, or limitation of the dealer's and/or distributor's license in this state or any other jurisdiction; and

- (c) the dealer's and/or distributor's compliance with the applicable portions of these rules and with the applicable federal standards.

5.7. The Board may grant initial and renewal licenses for dealers and/or distributors for some business locations and deny them for others if the facts justify such action. However, if one business location qualifies as both a dealer and distributor under this rule, only one (1) license is required for that business location.

5.8. Each dealer and/or distributor shall conspicuously display its license at each of its business locations and at any work-site where the dealer and/or distributor is performing services, ~~as defined by West Virginia Code §21-9-1 et seq or this rule.~~

5.9. A dealer's and/or distributor's license is not transferable. Any change in the person holding the license, including a change in the ownership of a sole proprietorship, a change of a partner in a partnership, or the creation of a new corporate entity, requires a new license.

§42-19-6. Licensure of Contractors.

6.1. No person may engage in the business of a contractor in the state without a license. Each contractor who desires to engage in business in the state shall apply to the Board for a license. A contractor is required to maintain only one (1) license. A contractor whose principal office or place of business is out of the state, but who desires to perform contractor services in the state, must maintain a license.

6.2. A contractor's license is valid for up to one (1) year, and expires on the thirtieth (30th) day of June in each year, unless sooner revoked or suspended by the Board.

6.3. ~~Any contractor who is not currently licensed to engage in business in the state, but who desires to be licensed, shall~~ submit an initial application on forms supplied by the Board. Each initial application shall be accompanied by all information required by the Board on its forms, including but not limited to:

- (a) the legal and trade name(s) of the contractor;
- (b) the address of the contractor;

- (c) the phone number of the contractor;
- (d) the names and addresses of the owners, officers, and directors of the contractor;
- (e) evidence of the contractor's legal authority to engage in business in the state, including compliance with W.Va.Code §11-15-8b;
- (f) a fee of fifty dollars (\$50.00);
- (g) ~~such assurance of the contractor's financial responsibility proof of payment to the recovery fund as required by Section 16 of this rule; and~~
- (h) a statement of compliance with all applicable state and federal standards. This statement of compliance shall be signed by a responsible officer or person representing the applicant who has full legal authority to bind the applicant to its terms;

6.4. Any contractor currently licensed in the State shall submit an application for licensure renewal on or before the thirtieth (30th) day of June in each year. Any renewal application is a valid license for a period of thirty (30) days, ~~or until unless sooner~~ rejected by the Board. The renewal application shall be accompanied by all information required by the Board on its forms as specified by Section 6.3 of this rule, including a renewal fee of fifty dollars (\$50.00).

~~6.5. Provided, That~~ If a contractor has met the licensing requirements of this rule and the West Virginia Contractor Licensing Act of West Virginia Code §21-11-1 et seq, and has paid the annual license fee under West Virginia Code §21-11-3, and has furnished bond or other assurance under West Virginia Code §21-9-10, he or she is not required to pay the annual ~~renewal~~ license fee set forth in this section.

~~6.5~~ 6.6. The Board shall grant or refuse any initial or renewal application for a contractor's license within thirty (30) days after a proper and complete application has been filed. If any initial or renewal application is found by the Board not to constitute a proper and complete application, the Board may request additional information. ~~The Board's thirty (30) day period for acting upon an application does not commence until a proper and complete application has been received by the Board. In no event shall any renewal application, complete or incomplete, proper or improper, be considered a valid license for a period of more than thirty (30) days from the date of its filing.~~

~~6.6~~ 6.7. The Board shall grant an initial or renewal contractor's license if it finds that the applicant is eligible to

operate as a contractor by virtue of each of the following:

- (a) the contractor's adequate financial capacity;
- (b) the contractor's record of compliance with any lawful orders of the Board or any other equivalent agency for any other jurisdiction, including the lack of any revocation, suspension, or limitation on the contractor's license in the state or any other jurisdiction; and
- (c) the contractor's compliance with the applicable portions of this rule and with the applicable federal standards.

~~6.7 6.8.~~ Each contractor shall conspicuously display its license at its business location and at any work-site where the contractor is performing services, as defined by West Virginia Code §21-9-1, et seq and this rule.

~~6.8 6.9.~~ A contractor's license is not transferable. Any change in the person holding the license, including a change in the ownership of a sole proprietorship, a change of a partner in a partnership, or the creation of a new corporate entity, requires a new license.

**§42-19-7. Adoption of Federal Standards and Regulations;
Designation by HUD as an SAA.**

~~7.1.~~ All manufactured homes manufactured, shipped, imported, delivered, distributed, sold, leased, or installed into or in this state shall be in strict compliance with this rule and with the applicable federal standards. The "Manufactured Home Construction and Safety Standards" developed by HUD and codified at 24 C.F.R. §3280.1 et seq. are hereby adopted in their entirety and incorporated by reference in this rule. In addition, the "Manufactured Home Procedural and Enforcement Regulations" developed by HUD and codified at 24 C.F.R. 3282.1 et seq. Part 3282 are hereby adopted in their entirety and incorporated by reference in this rule. Likewise, the "Manufactured Home Consumer Manual Requirements" developed by HUD and codified at 24 C.F.R. §3283.1 et seq. are hereby adopted in their entirety and incorporated by reference in this rule. No person may manufacture, ship, import, deliver, distribute, sell, lease, or install a manufactured home in this State that violates any applicable state or federal standard.

~~7.2.~~ Each manufacturer, dealer, distributor, or contractor applying for a license shall provide a statement of compliance with all applicable state and federal standards. This statement of compliance shall be signed by a responsible officer or person representing the applicant who has full legal authority to bind the

~~applicant to its terms.~~

~~7.3. The Board shall seek the approval of HUD to be designated as an SAA for purposes of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401 et seq. The Board is authorized to file any and all required applications and plans with HUD, and to employ such personnel as required by federal standards, in order to obtain approval as an SAA (24 C.F.R. 3282.302).~~

7.1. No person may manufacture, ship, import, deliver, distribute, sell, lease, or install a manufactured home in this State that violates any applicable state or federal standard.

7.2. The following federal standards are incorporated herein in their entirety by reference: a) "Manufactured Home Construction and Safety Standards," 24 C.F.R. Part 3280; and b) "Manufactured Home Procedural and Enforcement Regulations," 24 C.F.R. Part 3282.

7.3. The Board will maintain its qualifications to continue approval by HUD as a State Administrative Agency (SAA).

§42-19-8. Inspections; DAPIAs; IPIAs.

8.1. The Board and its authorized agents, employees, and representatives may enter into any business location maintained by a manufacturer, distributor, dealer, or contractor engaged in business in this State for the purpose of inspecting and otherwise ascertaining whether state and federal standards are being met. Any manufacturer, dealer, distributor, or contractor engaged in business in the state is considered to have given its irrevocable consent to such an inspection by the Board. During the course of an inspection, the Board may inspect and copy any and all records maintained by the manufacturer, dealer, distributor, or contractor pursuant to this rule and the federal standards. An inspection may occur, announced or unannounced, at any time between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, or at such other reasonable times as considered necessary by the Board in the exercise of its duties.

8.2. The Board may charge an inspection fee of \$29.00 per hour, not to exceed \$290.00 per day, plus an amount representing reimbursement of any mileage, per diem, and other reasonable expenses incurred in connection with any inspection authorized by Section 8.1 of this rule. This inspection fee is payable to the Board within thirty (30) days of completion of the inspection.

8.3. The federal regulations contemplate the establishment of primary inspection agencies known as DAPIAs and IPIAs. These primary inspection agencies are responsible for the enforcement of the federal regulations and standards. The primary inspection agencies perform four (4) basic enforcement functions. They are:

- (a) approval by a DAPIA of a manufacturer's manufactured home design to assure that it is in compliance with federal standards;
- (b) approval by a DAPIA of a manufacturer's quality control program to assure that it is compatible with the design;
- (c) approval by an IPIA of a manufacturer's plant facility and manufacturing process to assure that the manufacturer can perform its approved quality control program and can produce manufactured homes in conformance with its approved design; and
- (d) performance of on-going inspections of the manufacturing process to assure that the manufacturer is continuing to perform its approved quality control program and, with respect to those aspects of manufactured homes inspected, is continuing to produce manufactured homes in conformance with its approved designs and in conformance with federal standards.

8.4. The Board may develop a DAPIA and/or an IPIA to carry out the federal enforcement functions. If the Board determines that it will seek to develop a DAPIA and/or an IPIA, it is authorized to file any and all required applications and plans with HUD needed in order to obtain approval as a DAPIA and/or IPIA, including a State-exclusive IPIA. The Board may employ such personnel as required by federal standards for approved DAPIAs and IPIAs (24 C.F.R. 3282.352).

8.5. If the Board does not seek or obtain the approval of HUD to act as a DAPIA and/or IPIA, it may participate in joint team monitoring of DAPIAs and IPIAs in conjunction with HUD. The Board may also independently monitor the performance of DAPIAs and IPIAs acting within the State in coordination with HUD monitoring.

8.6. The Board may charge the following inspection fees when performing any of its duly authorized functions as an approved DAPIA and/or IPIA:

- (a) a fee of \$30.00 per hour, not to exceed \$300.00 per day, for conducting manufactured home initial design or design change evaluations;
- (b) a fee of \$30.00 per hour, not to exceed \$300.00 per day, for conducting manufacturer quality control program evaluations;
- (c) a fee of \$30.00 per hour, not to exceed

\$300.00 per day, for conducting initial and ongoing manufacturing plant inspections; and

- (d) an amount representing reimbursement of any mileage, per diem, and other reasonable expenses incurred in connection with any of the inspections or evaluations contained in this subsection.

8.7. The DAPIA and IPIA inspection fees are payable to the Board within thirty (30) days of completion of the inspection.

8.8. ~~When the Board is finally approved by HUD as an SAA,~~ Each manufacturer shall also pay a monitoring inspection fee in an amount established from time to time by HUD for each transportable section of each manufactured housing unit produced by a manufacturer in the State. This monitoring inspection fee is payable directly to HUD.

§42-19-9. Labeling, Recordkeeping, and Reporting.

9.1. The HUD label affixed to each transportable section of each manufactured home for sale or lease in the United States is the only label required by the Board. No manufactured home shall be shipped, imported, delivered, distributed, sold, leased, or installed into or in the state without a HUD label.

9.2. The HUD data plate affixed to each manufactured home for sale or lease in the United States is the only data plate required by the Board. No manufactured home shall be shipped, imported, delivered, distributed, sold, leased, or installed into or in the state without a HUD data plate.

9.3. No person may remove a HUD label or data plate from a manufactured home.

9.4. Each licensed manufacturer shall maintain records of the following for each manufactured home manufactured in this state, or shipped, imported, or delivered to a dealer, distributor, purchaser, or other person in this state:

- (a) the information contained on the HUD data plate;
- (b) the date the HUD label was affixed to the manufactured home; and
- (c) the name and address of the dealer, distributor, purchaser, or other person to whom the manufactured home was first shipped, imported, or delivered by the manufacturer.

9.5. Each licensed manufacturer shall report the information

outlined in Section 9.4 of this rule to the Board on a quarterly basis, covering the periods July 1 to September 30, October 1 to December 31, January 1 to March 31, and April 1 to June 30. These reports are due no later than October 31, January 31, April 30, and July 31, respectively.

9.6. Each licensed dealer and/or distributor shall maintain records of the following for each manufactured home shipped, imported, or delivered to it by a manufacturer, distributor, dealer, or other person:

- (a) the information contained on the HUD data plate;
- (b) whether the manufactured home contains a HUD label;
- (c) that the manufactured home has been inspected upon delivery to determine if it has been damaged, and if all furniture, appliances, fixtures, and other devices are in place and operable;
- (d) the extent of any damage found upon inspection;
- (e) whether any alterations to the manufactured home were made by the dealer and/or distributor, including any repairs;
- (f) The name and address of the purchaser or other person to whom the manufactured home was shipped, imported, delivered, sold, or leased by the dealer and/or distributor.

9.7. Each licensed dealer and/or distributor shall report the information outlined in Section 9.6 of this rule to the Board on a quarterly basis, covering the periods July 1 to September 30, October 1 to December 31, January 1 to March 31, and April 1 to June 30. These reports are due no later than October 31, January 31, April 30, and July 31, respectively.

9.8. Each licensed contractor shall maintain records of the following for each manufactured home which it transports and/or installs in the state:

- (a) the information contained on the HUD data plate;
- (b) whether the manufactured home contains a HUD label;
- (c) the manner of transport and/or installation of the manufactured home;

- (d) whether the manufactured home was damaged in any way during transport and/or installation, and the extent of the damage;
- (e) whether any alterations to the manufactured home were made by the contractor, including any repairs; and
- (f) the name and address of the purchaser or other person to whom the manufactured home was transported and/or installed.

9.9. Each licensed contractor shall report the information outlined in Section 9.8 of this rule to the Board on a quarterly basis, covering the periods July 1 to September 30, October 1 to December 31, January 1 to March 31, and April 1 to June 30. These reports are due no later than October 31, January 31, April 30, and July 31, respectively.

~~9.10. When the Board receives approval as an SAA, each IPIA shall file reports with the Board in accordance with the federal regulations.~~

~~9.11. When the Board receives approval as an SAA, it is authorized and is directed to file reports with HUD in accordance with the federal regulations.~~

~~9.12~~ 9.10. Nothing in this rule shall be construed to excuse or exempt any manufacturer, dealer, distributor, or contractor, DAPIA, or IPIA from complying with any recordkeeping or reporting requirements mandated by the federal regulations.

§42-19-10A. Consumer Manuals; Installation.

10A.1. Each purchaser of a new manufactured home in the state shall be provided, by the seller, with a HUD-approved consumer manual applicable to the manufactured home purchased. No manufacturer, dealer, distributor, or contractor may interfere with the distribution of a HUD-approved consumer manual.

10A.2.(a) All manufactured homes installed in the state shall be installed:

- (a*i*) in accordance with the home manufacturer's recommendations contained in or accompanying the consumer manual required by this section and 24 CFR 3283 Part 3282; or
- (a*ii*) in accordance with a competent design certified in writing by a registered professional engineer and/or architect prior to installation; or

(eiii) consistent with the recommendations published by the American National Standards Institute, A225.1 Installation Standard for Manufactured Homes; or

(eiv) for used homes only, any generally accepted commercial method submitted to, reviewed, and approved from time to time by the Board.

(b) The dealer must maintain in his files a written record of which method of installation was followed, or, if the dealer is not selling installation, a written record signed by the dealer and purchaser specifying that the purchaser must make separate arrangements with a licensed installer for installation of the home except where the consumer installs the manufactured home as provided at Section 10B of this rule.

(c) Installation of a manufactured home as defined at Section 3.20 of this rule shall only be performed by a licensed dealer or installer or consumer as provided in Section 10B of this rule.

10A.3. Frostline considerations are mandatory for all manufactured home installations in this state. For the purposes of Section 10.2 of this rule, a frostline shall be determined by local ordinance of a municipality or county. If the installation of the manufactured home in this state is in a municipality or county that has not provided a specific numerical standard, a the frostline may be the designated numerical standard set forth in the consumer manual required by 24 CFR ~~3283~~ Part 3282, or as determined by a registered professional engineer and/or architect and approved by the Board for the individual site of the manufactured home installation. In the absence of any of these specific designated numerical standards, for all applications, frostline is as follows:

(a) Thirty (30) inches from grade level for all perimeter footings; and

(b) Thirty (30) inches from grade level for footings under the I-beams, center piers and inset blocking piers if a perimeter fascia enclosure is not to be installed; Provided, That the footings may be twelve (12) inches from grade level for footings under the I-beams, center piers and inset blocking piers if a perimeter fascia enclosure and vapor barrier are installed:
i) within twenty-one (21) days of the home installation if the home is installed between November 1 and March 30; or ii) before November 1 for homes installed after March 30.

~~(a) Twelve (12) inches from grade level for footers under the I-beam if a perimeter fascia enclosure is concurrently installed with the installation of the manufactured home;~~

~~(b) Thirty (30) inches from grade level for footers under the I-beam if a perimeter fascia enclosure is not concurrently installed with the installation of the manufactured home; and~~

~~(c) Thirty (30) inches from grade level for all perimeter footings.~~

§42-19-10B-Consumer Installation of a manufactured home.

10B.1. For proper performance in accordance with federal design standards, Manufactured Homes should be installed by a licensed Dealer or Installer. However, each Consumer has the right to and may personally install, or independently hire a licensed Dealer or Installer for the installation of, his or her manufactured home and, if the Consumer chooses to exercise that right, the Consumer is legally responsible for the choices he/she makes. However, due to safety concerns and the technical expertise required, only a licensed Dealer or Installer shall conduct the home placement evaluation and level and trim the home. This rule, §42-19-10B et seq., applies only to those transactions in which the Consumer agrees to install all or part of his/her manufactured home. Each Dealer shall notify the Consumer that the installation of his or her manufactured home must comply with the installation standards enumerated at Section 10A.2 and 10A.3 of this rule.

10B.2. All Dealers shall inform the Consumer of the following, through one or more of the following means including, but not limited to, video tapes, manuals, brochures, drawings, personal conversations or other appropriate means, at/or prior to, the date of the final agreement for the purchase or installation of a manufactured home:

(a) The risks of improper installation of the manufactured home including but not limited to, the impact upon the manufacturer's warranty, decreased performance of the manufactured home and other relevant concerns known to the Dealer, and matters which make time of the essence in completing the Consumer's assumed obligations;

(b) The legally mandated standards for installation of a manufactured home as enumerated at Sections 10A.2 and 10A.3 of this rule;

(c) All parties, other than the Consumer, who engage in the installation of manufactured homes must be licensed under West Virginia Code §21-1-9;

(d) The Dealer or a licensed Installer will conduct an on-site review, in accordance with Section 10B.4 of this rule, to review all aspects of installation for which the consumer assumed responsibility.

10B.3. If the Consumer assumes all or part of the responsibility of installation of his/her manufactured home, as defined at Section 3.20 of this rule, then the Agreement between the Consumer and the Dealer regarding their individual obligations with respect to installation will be memorialized in a written contract.

10B.4. The licensed Dealer or Installer shall conduct an initial home placement evaluation to determine accessibility to the site, proper soil compaction and whether the site can be improved to assure proper drainage. A record of the conclusions and findings shall be provided to the Consumer with a copy maintained by the Licensed Dealer or Installer as part of the on-site review form described in Section 10B.4(b).

10B.5. Where the Consumer has assumed the responsibility for site preparation and installation of footers, the Licensed Dealer or Installer shall review these aspects of installation to determine if they have been completed in accordance with the installation standards at Sections 10A.2 and 10A.3 of this rule and document the findings and conclusions as part of the on-site review form described in 10bB.4(b) of this rule.

10B.6. A Licensed Dealer or Installer shall conduct an on-site review in all instances where the Consumer has assumed all or part of the responsibilities of the installation of his/her manufactured home as defined at Section 3.20 of this rule.

(a) The on-site review will be conducted in not less than sixty (60) days but not more than one hundred eighty (180) days after the delivery date to the Consumer or the date of the final agreement for purchase or installation of the manufactured home;

(b) The Licensed Dealer or Installer shall conduct the on-site review in accordance with a form prescribed or approved by the Department of Labor which identifies the elements of installation.

(c) The form as described in 10.B.6(b) above shall be signed and dated by the Licensee conducting the on-site review at the time of the review.

(d) The Licensed Dealer or Installer shall evaluate all aspects of the installation which were assumed by the Consumer and note any deficiencies in such installation directly on the form described in 10B.6(b) above.

10B.7. Reporting Requirement

(a) A copy of the completed on-site review form shall be maintained by the Licensed Installer or Dealer for a period of not less than 5 years;

(b) If the on-site review reveals a deficiency pursuant to 10B.6(a) above, the Licensed Dealer or Installer shall send a copy of the on-site review form to the Consumer via certified United States mail, Return Receipt Requested and, as an attachment to the on-site review form pursuant to 10B.7(c) below, the Consumer shall be notified of the hazards and risks resulting from his/her failure to comply with his/her assumed obligations and that the home does not conform to the installation requirements set forth herein.

(c) The Department of Labor will prescribe or approve a form for attachment to the on-site review form which identifies the potential risks associated with the Consumer's failure to properly comply with his or her assumed obligations.

10B.6 All provisions of this rule above shall also apply to a licensed Installer who contracts with a Consumer to install part of the manufactured home except those provisions that deal exclusively with the sale of a manufactured home.

§42-19-11. Alterations and Repairs.

11.1. No alteration or repair shall be made to any manufactured home by a dealer, distributor, or contractor which directly causes a failure to conform with applicable state and federal standards.

11.2. Alterations or repairs made to a used manufactured home by a dealer, distributor, or contractor shall be designed to promote compliance with applicable state and federal standards provided that a dealer, distributor, or contractor shall not be obligated to bring a used manufactured home into full compliance with applicable state and federal standards. It is the intent of this provision to allow and encourage dealers, distributors, and contractors to make desirable alterations and repairs to used manufactured homes, including alterations and repairs which do not bring such used homes into full compliance with all applicable standards, so long as the alterations and repairs made do not directly create a condition of noncompliance which did not previously exist.

§42-19-12. Transportation.

12.1. The transportation of any manufactured home shall be accomplished in a manner that allows the manufactured home to withstand the adverse effects of transportation shock and vibration without its degradation or the degradation of its component parts. In no event shall any transportation method be utilized which causes a failure of any manufactured home to conform with applicable state and federal standards.

12.2. Manufactured homes shall not be transported at speeds

in excess of fifty (50) miles per hour.

§42-19-13. Complaint Handling.

~~13.1. All complaints to the Board shall be in writing and shall specify the name, address, and phone number of the person lodging the complaint. The Board, on its own initiative, may file complaints. The Board shall review each complaint to determine whether it should be dismissed, or subject to such other action as specified by this rule.~~

~~13.2. The Board shall forward a copy of every complaint to the person named in the complaint. Upon receipt, the person named has thirty (30) days in which to respond to the complaint in writing. If, upon consideration of the complaint and the response, the Board determines that no violation of any applicable state or federal standard has occurred, the Board may dismiss the complaint through the issuance of a written order setting forth the basis for the dismissal. If, however, the Board determines that further review or other action is necessary, the Board may proceed as set forth by this rule.~~

~~13.3. The Board, and its authorized agents, employees, and representatives may independently investigate the basis for any complaint filed. During the course of its investigation, the Board may conduct such inspections as are described in Section 8.1 of this rule. If at any time during the course of its investigation it becomes apparent that no violation of any applicable state or federal standard has occurred, the Board may dismiss the complaint in the manner set forth in Section 13.2 of this rule.~~

~~13.4. The Board may at any time after the receipt of a complaint issue a written notice of its intent to conduct an informal hearing. Notice of such intent shall be provided to all interested persons by certified mail at least twenty (20) days in advance. This notice of intent to conduct an informal presentation of views shall include:~~

~~(a) a statement of the time, place, and nature of the proceeding;~~

~~(b) a statement of the subject matter of the proceeding, and if appropriate, an order to show cause why the Board should not impose a sanction upon the interested person or persons named; and~~

~~(c) a summary of how the proceeding shall be conducted and by whom, it being specifically recognized that a hearing examiner may be appointed by the Board for this purpose.~~

~~13.5. An informal hearing of views shall be written or oral, or both, at the sole discretion of the Board. Testimony under oath or affirmation is not required, nor is cross-examination or rebuttal evidence permitted. The rules of evidence as applicable in the circuit courts of the state shall not prevail, nor shall the presence of legal counsel be permitted. A stenographic or mechanical transcript of the proceeding shall not be maintained. If a hearing examiner is appointed, the hearing examiner shall prepare a written summary of any oral proceedings. The purpose of an informal presentation of views is to allow the gathering of information at a minimum of cost and time for both the Board and interested persons, while facilitating fully informed decision-making by the Board.~~

~~13.6. The Board shall issue a written order within sixty (60) days after the completion of an informal presentation of views. The order shall include a brief statement of findings and conclusions, with specific references to principal supporting items of evidence as well as the reasons or basis therefor.~~

~~13.7. The Board, in the exercise of its discretion, may forego an informal hearing of views and institute a contested case hearing (formal presentation of views) at any time after the filing of a complaint. Moreover, any interested person adversely affected by an order of the Board after an informal presentation of views may make a written request for a contested case hearing within thirty (30) days of receipt of the order adjudicating the informal hearing. The Board shall conduct a contested case hearing in accordance with the procedural rules of the Board as set forth at 52 C.F.R. 1, Section 1.1 et seq., as well as W.Va. Code §29A-5-1 et seq.~~

~~13.8. Any interested person, including the Board, involved in any investigation of a complaint, informal hearing, or contested case hearing (formal hearing) may at any time propose a settlement which may be entered into with the consent of all interested persons and the Board. Final acceptance of a settlement shall be memorialized in a settlement order and signed by the Board and all interested persons. The execution of a final settlement order immediately terminates any related proceedings, and is binding upon the Board and all interested parties.~~

~~13.9. All proceedings, reports, records, complaints, and deliberative materials of the Board are open to the public to the same extent as permitted under the Open Governmental Proceedings Act, W.Va. Code §6-9A-1 et seq., and the Freedom of Information Act, W.Va. Code §29B-1-1 et seq.~~

13.1. In addition to any requirements of the federal standards, the Board will handle complaints regarding manufactured housing construction and safety standards or the Board's licensees.

13.2. All complaints to the Board shall be in writing and shall specify the name, address, and phone number of the person lodging the complaint. The Board, on its own initiative, may file complaints.

13.3. Upon receipt of any complaint or other information indicating the possible existence of a noncompliance, defect, serious defect or imminent safety hazard under the federal standards, the Board will forward the complaint or information to the manufacturer of the manufactured home and to the SAA of the state where the home was manufactured.

13.4. The Division will review each written complaint received. If it appears that the matters raised in the complaint are outside the jurisdiction of the Board, the Division will so inform the complainant in writing. If it appears that the matters raised in the complaint are within the jurisdiction of the Board, the Division may conduct an investigation and inspection of the manufactured home and the relevant records of the manufacturer, dealer, distributor or contractor.

13.5. If, upon investigation, the Division determines that no violation of any federal or state manufactured housing standard has occurred, the Division will so inform the complainant in writing.

13.6. If, upon investigation, the Division determines that a violation of any federal or state manufactured housing standard has occurred, the Division will issue a Notice of Violation to the Board's licensee it determines responsible, specifying the condition found and the legal standard violated. The person receiving the Notice of Violation will be afforded not longer than thirty (30) days to correct the violations.

13.7. Any person issued a Notice of Violation may, within ten (10) days of receipt, request in writing an informal presentation of views to contest either the violation(s) or the reasonableness of the amount of time afforded to correct. Failure to timely request an informal presentation of views will result in the Notice of Violation becoming a final order of the Board. The informal presentation of views will be scheduled by the Division within fifteen (15) days of receipt of the request. Except when imminent safety hazards or serious defects are involved, the time specified in the Notice of Violation to correct the violations is stayed pending the informal presentation of views.

13.8. The informal presentation of views is not an adversary proceeding, and may be written or oral. Testimony is not required to be taken under oath, nor is cross examination permitted. The rules of evidence do not apply. Following the informal presentation of views, an agreement will be signed by the parties specifying the issues resolved, and setting the time frame, if any, for corrections to be made to the manufactured home.

13.9. If agreement is not reached at the informal presentation of views, the matter will be referred within five (5) days to a hearing examiner as a contested case hearing. The hearing examiner will schedule the hearing to commence within forty-five (45) days of receipt of the referral. Written notice specifying the date, time and place of the hearing will be sent at least ten (10) days prior to the hearing. Any additional stay of time to correct the violations must be requested, in writing, from the hearing examiner, who shall grant the stay upon good cause shown.

13.10. Following hearing, the parties may be directed by the hearing examiner to submit their proposed findings of fact and conclusions of law within twenty (20) days of the hearing, except that if a transcript of the hearing is requested at the hearing, the proposed findings of fact and conclusions of law will be submitted within twenty (20) days of receipt of the transcript. The hearing examiner will submit a recommended decision to the Board within thirty (30) days of receipt of the proposals. In the recommended decision the hearing examiner may recommend the imposition of any appropriate disciplinary sanction allowed by these rules. The Board will accept, reject or modify the recommended decision and issue a final order within thirty (30) days of the receipt thereof.

~~§42-19-14. Imminent Safety Hazards, Serious Defects, Defects, Noncompliances.~~

~~14.1. Notwithstanding any provision of this rule to the contrary, when the Board is approved by HUD as an SAA, it shall be guided by procedures adopted by HUD at 24 C.F.R. §3282.401 through §3282.416 when dealing with consumer complaints or other information indicating the possible existence of an imminent safety hazard, serious defect, defect, or noncompliance of a manufactured home manufactured by a manufacturer located within the state. The federal regulations are hereby adopted in their entirety and are incorporated by reference in this rule. The Board shall oversee the handling of such consumer complaints in accordance with these federal regulations.~~

~~14.2. Manufacturers are required by the federal regulations to maintain records relating to notification and correction of imminent safety hazards or serious defects of manufactured homes. In some cases, manufacturers are required to provide notification of defects, in accordance with 24 C.F.R. 3282.404(a). These records include, but are not limited to, the following:~~

- ~~(a) records of all investigations and inspections undertaken to determine whether there exists an imminent safety hazard, serious defect, defect, or noncompliance in its~~

~~manufactured homes;~~

~~(b) records of all determinations regarding the existence or nonexistence of such an imminent safety hazard, serious defect, defect, or noncompliance;~~

~~(c) records of all plans for notification and correction of any imminent safety hazard or serious defect, and in some cases notification of defects, including copies of the actual notices sent and the lists of the persons notified;~~

~~(d) records of all corrections and attempted corrections undertaken; and~~

~~(e) records of all completion reports filed pursuant to 24 C.F.R. §3282.412(e).~~

~~14.3. To assist the Board in overseeing the handling of consumer complaints in accordance with the federal standards, the Board shall inspect the records identified in Section 14.2 of this rule no less frequently than once every twelve (12) months for each manufacturer located within the State. If the Board finds that a manufacturer is not acting in compliance with 24 C.F.R. §3282.401 through §3282.416, the Board shall schedule the matter for a contested case hearing unless one of the following apply:~~

~~(a) the affected manufactured homes were manufactured in more than one state;~~

~~(b) there exists an imminent safety hazard; or~~

~~(c) there exists a serious defect.~~

~~If subsections 14.3 (a), (b), or (c) of this rule applies, the matter shall be referred by the Board to HUD for immediate handling.~~

~~14.4. At the conclusion of any contested case hearing conducted pursuant to Section 14.3 of this rule, and the subsequent issuance of the Board's order, the manufacturer may seek an appeal in accordance with W.Va. Code §29A-5-4. Alternatively, the manufacturer may, pursuant to 24 C.F.R. §3282.407 (c) (2), appeal to HUD within ten (10) days after receipt of the Board's order.~~

§42-19-15 14. Disciplinary Sanctions.

~~15.1~~ 14.1. The Board may impose sanctions upon any person for

any of the following reasons:

- (a) the manufacture, sale, lease, offer for sale or lease, or the introduction, delivery, or importation into this State of any manufactured home on or after the effective date of any applicable state or federal standard, which does not comply with such standard: provided however, that this subsection shall not apply to (i) any person who establishes that he or she did not have reason to know in the exercise of due care that such manufactured home is not in conformity with applicable state or federal standards, or (ii) any person who, prior to such first purchase, holds a certificate by the manufacturer or importer of manufactured home to the effect that manufactured home conforms to all applicable federal standards, unless the person knows that the manufactured home does not conform;
- (b) the failure or refusal to permit Board access to or copying of records, or the failure to make required reports or to provide information, or the failure or refusal to permit entry or inspection as required by this rule;
- (c) the failure to furnish notification and correction of any defect as required by 42 U.S.C. §5414 and 24 C.F.R. §3282.401 through §3282.416;
- (d) the failure to issue a certification required by 42 U.S.C. §5415, or to issue a certification to the effect that a manufactured home conforms to all applicable federal standards if such person knows or in the exercise of due care has reason to know that such certification is false or misleading in a material respect;
- (e) the failure to establish and maintain records, make reports, and provide information as the Board requires under this rule, or the failure to permit, upon request of a person duly authorized by the Board, the inspection of appropriate books, papers, records, and documents relative to determining whether a manufacturer, dealer, distributor, or contractor has acted or is acting in compliance with this rule or the federal standards;
- (f) the issuance of a certification pursuant to 42 U.S.C. §5403(h) if that person knows or in the exercise of due care has reason to know that

the certification is false or misleading in a material respect;

- (g) the submission of any information or statements to the Board, HUD, a DAPIA, or an IPIA which are known by the person submitting the information to be false or misleading in a material respect;
- (h) the criminal conviction of any person by any competent state or federal court, which directly relates to the business of a manufacturer, dealer, distributor, or contractor;
- (i) the application to any person by any competent state or federal authority of any disciplinary action which directly relates to the business of a manufacturer, dealer, distributor, or contractor, including but not limited to, a fine, license suspension, license revocation, or license denial;
- (j) the operation of any business location engaged in business in the state as a manufacturer, dealer, distributor, or contractor without a license;
- (k) the failure to maintain adequate financial assurance as required by ~~Section 16~~ of this rule;
- (l) the refusal to allow the Board to conduct inspections as permitted by this rule;
- (m) the failure to pay any fee required by law, this rule, or the federal standards;
- (n) the removal of any HUD label or HUD data plate from a new or used manufactured home;
- (o) the destruction or permanent removal by a manufacturer, dealer, distributor, or contractor of a HUD-approved consumer manual from a manufactured home, thereby depriving a consumer of the use of a manual;
- (p) the violation of the state or federal transportation or installation standard applicable to a new or used manufactured home;
- (q) the making of any deceptive, false, fraudulent, or misleading representation to any consumer of a new or used manufactured home;

- (r) the shipment of a manufactured home by a manufacturer to a dealer and/or distributor in this state that is not properly licensed by this state;
- (s) the acceptance of a manufactured home by a dealer and/or distributor from a manufacturer not properly licensed by this State;
- (t) the utilization of contract installation/repair services by a dealer or manufacturer from a contractor that is not properly licensed by this state;
- (u) the misappropriation of funds of a consumer or prospective consumer of a new or used manufactured home;
- (v) the failure to fulfill any written or implied warranty obligation applicable to any new or used manufactured home;
- (w) the failure to comply with any order issued by the Board, including or any settlement order agreement with the Board or Division; and or
- (x) the violation of any other rule promulgated by the Board.

~~15.2~~ 14.2. A Upon a determination by the Board that a person has committed any of the violations outlined in Section ~~15.1~~ 14.1 of this rule, ~~shall lead to the imposition of such disciplinary sanctions as determined appropriate by the Board under the facts and circumstances of the case. If the Board may apply any one or more of the following sanctions:~~

- (a) a public reprimand;
- (b) a civil fine not to exceed one thousand dollars (\$1000) per violation;
- (c) suspension of license of a manufacturer, dealer, distributor, or contractor;
- (d) revocation of the license of a manufacturer, dealer, distributor, or contractor; or
- (e) denial of an application for licensure filed by any manufacturer, dealer, distributor, or contractor.

~~15.3~~ 14.3. A civil fine may be imposed for each separate

violation with respect to each manufactured home, except that the maximum penalty shall not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one (1) year from the date of the first violation.

~~15.4~~ 14.4. A suspension may be issued by the Board for any period of time up to and including the remaining term of the current license of the manufacturer, dealer, distributor, or contractor in question. At the end of the designated suspension period, the manufacturer, dealer, distributor, or contractor may apply for reinstatement of a license pursuant to the provisions of Sections 4.3, 5.3, or 6.3 of this rule, as applicable.

~~15.5~~ 14.5. A revocation may be issued by the Board for any period of not less than one (1) nor more than five (5) years. At the end of the designated revocation period, the manufacturer, dealer, distributor, or contractor may re-apply for a license pursuant to the provisions of Section 4.3, 5.3, or 6.3 of this rule, as applicable.

~~15.6~~ 14.6. A determination by the Board to deny an application for licensure disqualifies the applicant from re-applying at any time during the subsequent twelve (12) month period, unless the Board agrees to consider a re-application within a lesser time period by so designating its willingness to consider a re-application within its order of denial.

~~15.7~~ The determination to impose a public reprimand, fine, license suspension, license revocation, or license denial may be undertaken by the Board as a result of either an informal presentation of views as outlined in Section 13 of this rule, or after a contested case hearing. Provided that if the action is taken by the Board after an informal presentation of views, the issue of the public reprimand, fine, license suspension, license revocation, or license denial shall be made the subject of a contested case hearing if so requested in writing by an interested party within thirty (30) days after receipt of the order adjudicating the informal presentation of views. The purpose of this provision is to assure that any interested person adversely affected by a decision of the Board is afforded those rights delineated at W.Va. Code §21-9-5(b), §29A-5-1 et seq., in a contested case hearing de novo.

14.7. Sanctions may be imposed by the Board only after the person to be disciplined has been afforded an opportunity for hearing.

~~15.8~~ 14.8. Nothing in this rule shall be construed to limit or restrict in any manner other civil or criminal remedies available under the law to any person.

§42-19-16 15. State Manufactured Housing Recovery Fund.

~~16.1 15.1.~~ There is hereby created the State Manufactured Housing Recovery Fund within the special treasury account described at W.Va. Code §21-9-9(g). ~~The primary purpose of the Recovery Fund is to repair manufactured homes so as to conform to applicable federal and state regulations and to hold an amount of financial assurance from each licensed manufacturer, dealer, distributor, or contractor as required by this rule for the purposes established at W. Va. Code § 21-9-10.~~

~~16.2 15.2.~~ The Board shall collect the following annual assessment fee in satisfaction of each licensed manufacturer's, dealer's, distributor's, or contractor's required assurance of financial responsibility:

- (a) \$2,500.00 for each manufacturer's licensed business location;
- (b) \$1,000.00 for each dealer's and/or distributor's licensed business location; and
- (c) \$500.00 for each licensed contractor.

These assessments shall be collected annually at the time of the filing of all initial and renewal license applications: provided, that if the balance of the Recovery Fund on the thirtieth (30th) day of June of any year equals or exceeds three hundred thousand dollars (\$300,000), then no assessments shall be collected from any previously licensed manufacturer, dealer, distributor, or contractor for the next licensure period. New applicants for licensure are required to pay the applicable assessment fee regardless of the balance of the Recovery Fund.

~~16.3. A manufacturer, dealer, distributor, or contractor who applies for license within sixty (60) days of the effective date of this rule may elect to pay the initial assessment fee in three (3) equal installments as follows:~~

- ~~(a) the first installment shall be paid with the application;~~
- ~~(b) the second installment within ninety (90) days;~~
- ~~(c) the third installment within one hundred eighty (180) days.~~

~~Initial and renewal applications filed after this initial sixty (60) day period must include payment in full of all assessment fees.~~

~~16.4 15.3.~~ The Board is authorized at any time to make

special assessments upon all licensed manufacturers, dealers, distributors, and contractors if the Board determines that the assessments are necessary to maintain the fiscal integrity of the Recovery Fund. In no event may a special assessment be issued by the Board until or unless the balance of the Recovery Fund falls below two hundred fifty thousand dollars (\$250,000).

~~16.5~~ 15.4. All assessments collected under the provisions of this section shall be deposited in the Recovery Fund maintained within the special treasury account described at W.Va. Code §21-9-9(g), and shall be used solely for the purposes described in this section. The assets of the Recovery Fund may be invested and reinvested by the Board in accordance with applicable law. Interest revenues derived from the Recovery Fund shall be used solely to maintain the Recovery Fund.

~~16.6~~ 15.5. All fines paid to the Board pursuant to any disciplinary action conducted pursuant to Section 15 of this rule shall be deposited by the Board in the Recovery Fund.

~~16.7. After the completion of any informal presentation of views or a contested case hearing involving a licensed manufacturer, dealer, distributor, or contractor pursuant to Section 15 of this rule the Board may determine that in lieu of imposition of a public reprimand, fine, license suspension, or license revocation, the Board may instead direct in its order that the licensed manufacturer, dealer, distributor, or contractor pay an amount to an aggrieved consumer for damages actually incurred. Such payment shall be directed by the Board only if:~~

~~(a) a rule violation has been determined to exist under Section 15.1 of this rule: provided, that if such violation has been determined as a result of an informal presentation of views, the issue of such violation and the direction to pay compensation shall be made the subject of a contested case hearing if so requested in writing by the manufacturer, dealer, distributor, or contractor within thirty (30) days after receipt of the order adjudicating the informal presentation of views;~~

~~(b) the public interest and welfare is not harmed by the payment of compensation in lieu of a public reprimand, fine, license suspension, or license revocation; and~~

~~(c) the payment of compensation achieves the desired disciplinary purpose.~~

~~16.8. Any amount directed to be paid to an aggrieved consumer pursuant to Section 16.7 of this rule shall be limited to actual,~~

~~compensatory damages. The compensation shall not include attorney's fees, punitive or exemplary damages, or other legal or court costs. It is the purpose of this rule to strictly limit the compensation to that amount designed to make the aggrieved consumer whole for damages sustained as a result of the actions of the manufacturer, dealer, distributor, or contractor.~~

~~16.9. If any amount directed to be paid to an aggrieved consumer is not paid by the manufacturer, dealer, distributor, or contractor within thirty (30) days following receipt of the Board's order and the manufacturer, distributor, or contractor has failed to request a contested case hearing, or if one has already been held, to request a timely appeal, then the Board shall, upon request pay the amount directed from the Recovery Fund if:~~

~~(a) the Recovery Fund balance is sufficient to pay the amount directed;~~

~~(b) the aggrieved consumer has assigned to the Board all rights and claims that he or she has against the manufacturer, dealer, distributor, or contractor in question; and~~

~~(c) the aggrieved consumer has agreed to subrogate the Board to all of his or her rights to the extent of the payment amount directed.~~

~~16.10. In no event shall any compensation be paid from the Recovery Fund which exceeds ten thousand dollars (\$10,000) for any one (1) violation by any one (1) licensed manufacturer, dealer, distributor, or contractor, or which exceeds twelve thousand five hundred dollars (\$12,500) for any series of violations by any one (1) licensed contractor, twenty five thousand dollars (\$25,000) for any series of violations by any one (1) licensed dealer and/or distributor, or seventy five thousand dollars (\$75,000) for any series of violations by any one (1) licensed manufacturer.~~

~~16.11. An aggrieved consumer has no claim, action, or legal right to any payment from the Recovery Fund. The decision to award compensation from the Recovery Fund falls solely within the sound discretion of the Board acting in accordance with this rule. In no event shall any aggrieved consumer be permitted to participate as an interested person in any Board action, nor shall the consumer be entitled to appeal, challenge, or contest the Board's direction to pay or to not pay compensation. It is the purpose of this rule to establish a Recovery Fund for the protection of manufactured home consumers, and to have the Board represent the interests of the consumers in disciplinary proceedings against manufacturers, dealers, distributors, and contractors.~~

~~16.12. Any licensed manufacturer, dealer, distributor, or contractor who does not seek either a contested case hearing or~~

~~appeal, as appropriate under the circumstances, and who fails to institute payment within the time period specified in Section 16.9 of this rule, shall reimburse the Recovery Fund for any amount paid on its behalf by the Recovery Fund plus interest calculated at the rate of ten percent (10%) per annum. In addition, the Board is authorized to immediately suspend or revoke the license of the manufacturer, dealer, distributor, or contractor without further proceedings until full reimbursement to the Recovery Fund is made. Any person that maintains a substantial ownership interest (five percent [5%] or more) in any licensed manufacturer, dealer, distributor, or contractor that has failed to provide for full reimbursement to the Recovery Fund is disqualified from maintaining any substantial ownership interest (five percent [5%] or more) in any other licensed manufacturer, dealer, distributor, or contractor. The Board is authorized to deny any application for licensure filed by any person that is substantially owned (five percent [5%] or more) by any previously defaulting manufacturer, dealer, distributor, or contractor, or any substantial owner thereof (five percent [5%] or more). This provision applies until the previously defaulting manufacturer, dealer, distributor, or contractor, or substantial owner thereof (five percent [5%] or more), has made full reimbursement to the Recovery Fund.~~

15.6. a) The Board may make payment from the recovery fund for any of the reasons authorized by W. Va. Code § 21-9-10(b), after the responsible licensee(s) has (have) been afforded an opportunity to be heard on a Notice of Violation issued, and has (have) failed to correct the violations as directed by the Board.

b) When a licensee fails to make repairs to a manufactured home as directed by the Board, or as agreed between the licensee and the Board or Division, the Board may determine the fair market value of the cost of obtaining those repairs and contract with a third party licensee to effect those repairs.

c) Payments from the recovery fund will be made if:

i) the recovery fund balance is sufficient to pay the amount directed;

ii) the aggrieved consumer has assigned to the Board all rights and claims relating to the repairs that he or she has against the licensee(s); and

iii) the aggrieved consumer has agreed to subrogate the Board to all of his or her rights to the extent of the payment amount directed.

15.7. Payments from the recovery fund are limited to a per home maximum of:

a) ten thousand dollars (\$10,000) for any one (1) violation by any one (1) licensed manufacturer, dealer, distributor, or contractor;

b) twelve thousand five hundred dollars (\$12,500) for

any series of violations by any one (1) licensed contractor;
c) twenty-five thousand dollars (\$25,000) for any series
of violations by any one (1) licensed dealer and/or distributor;
and
d) seventy-five thousand dollars (\$75,000) for any
series of violations by any one (1) licensed manufacturer.

15.8. Payments from the recovery fund are limited to actual
expenses incurred, as determined by the Board. The recovery fund
may not be used to pay for any incidental expenses of the consumer,
including claims for personal injuries, claims for property damage
other than to the home itself, inconvenience, alternate housing,
attorney's fees, punitive or exemplary damages, or other legal or
court costs.

15.9. The decisions to determine expenses incurred, repairs
to be made, the fair market value of the cost of repairs, whether
to contract for repairs and whether to make any payment from the
recovery fund lie within the sole discretion of the Board.

15.10. a) When the Board determines to make payment from the
recovery fund, the responsible licensee(s) shall be civilly liable
to the Board for any amount paid from the recovery fund, plus
interest calculated at the rate of ten percent (10%) per annum from
the date payment was made. The Board may immediately suspend or
revoke the license of the manufacturer, dealer, distributor, or
contractor without further proceedings until full reimbursement to
the recovery fund is made.

b) Any person that maintains a substantial ownership
interest (five percent [5%] or more) in any licensed manufacturer,
dealer, distributor, or contractor that has failed to provide for
full reimbursement to the recovery fund is disqualified from
maintaining any substantial ownership interest in any other
licensed manufacturer, dealer, distributor, or contractor. The
Board may deny any application for licensure, or renewal, where it
appears that any such person owns five percent [5%] or more of the
applicant until full reimbursement is made to the recovery fund.

~~16.13~~ 15.11. Nothing in this rule shall be construed to limit
or restrict in any manner other civil or criminal remedies
available under the law to any person.

~~16.14~~ 15.12. The Board may utilize any funds contained in the
recovery fund in excess of four hundred thousand dollars
(\$400,000) for such consumer and public education activities that
are related to manufactured homes as the Board considers
appropriate.

15.13. The Board may not waive the recovery fund requirements
of this rule.

§42-19-~~17~~16. Severability.

~~17~~16.1. If any provisions of this rule or its application to any person is held invalid, such invalidity shall not affect the provisions or application of the rules which can be given effect without the invalid provisions or application, and to this end the provisions of this rule are declared to be severable.

WEST VIRGINIA DIVISION OF LABOR

319 Building Three, Capitol Complex • Charleston, West Virginia 25305

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GASTON CAPERTON
Governor



SHELBY LEARY
Commissioner

RESPONSE TO COMMENTS RECEIVED

MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS BOARD

42 CSR 19
14 AUGUST 1996

The Board received only one written comment to its proposed rule, that from the West Virginia Manufactured Housing Association. That comment is enclosed. The Board substituted verbatim the language proposed by the Association at sections 3.21, 3.31, 3.32 and 10 for that which the Board had put out for public comment.

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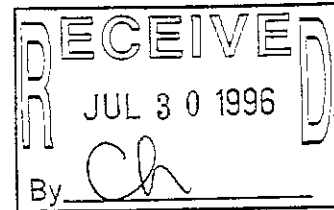


WEST VIRGINIA MANUFACTURED HOUSING ASSOCIATION

205 First Avenue Nitro, WV 25143 (304) 727-7431

July 30, 1996

West Virginia Division of Labor
Manufactured Housing
Building 3, Room 319
Capitol Complex
Charleston, West Virginia 25305



Dear Sir or Madam:

Enclosed please find comments relative to the proposed rules which were filed by the Manufactured Housing Construction and Safety Standards Board on June 28, 1996.

Due to ambiguity over the term "installation", the West Virginia Manufactured Housing Association proposes a concrete, generally acceptable definition of installation to add further clarity to the regulations. Additionally, we have proposed similar definitions for "set-up" and "site".

Further, with recognition that the statutory provisions, specifically W.Va. Code §21-9-2, allow unlicensed persons who own or lease a manufactured home to perform work on their own homes, the Association has proposed and clarified a means for allowing the consumer to properly do all or part of the installation of his or her manufactured home, except the home placement evaluation and the level and trim of the home. These proposed amendments to the regulation are crucial to allow consumers of limited means to obtain manufactured housing and properly participate in the installation of their manufactured home. The procedure as outlined envisions providing the consumer with appropriate and adequate information and knowledge so that they may correctly install their manufactured home in conformity with appropriate standards. This regulation encourages a wider dissemination of information to consumers. Further, there is a procedure where the Dealer checks the consumer's work for conformity with said standards. All of our proposed changes in the attached documents are redlined.

These proposed regulation amendments represent significant effort and discussion by various members of the Manufactured Housing Association and represent a unified effort by the Association. With the support of the entire West Virginia Manufactured Housing industry, the Association recommends that the Manufactured Housing Construction and Safety Standards Board adopt these proposed revisions to the proposed rules which were filed on June 28, 1996.

Very truly yours,

Leff Moore
Executive Director

LM/bod
Enclosure

FISCAL NOTE

**WEST VIRGINIA MANUFACTURED HOUSING ASSOCIATION REVISIONS TO
MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS BOARD**

42 C. S. R. 19

The Association's attached proposed modifications are designed to clarify and simplify practice and procedures of the Manufactured Housing Construction and Safety Standards Board and is expected to have NO FISCAL IMPACT on the Board or the Division of Labor.

CHS-51032

STATEMENT OF CIRCUMSTANCES

WEST VIRGINIA MANUFACTURED HOUSING ASSOCIATION REVISIONS TO MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS BOARD

42 C. S. R. 19

The Association's attached modifications are designed to improve the dissemination of information to the Consumer. They clarify the aspects of installation and provide concrete, generally acceptable definitions of "installation", "set-up" and "site". They also offer a greater element of protection to the Consumer while clearly delineating rights, duties and responsibilities so that Installers, Dealers and Consumers have a clear understanding of their obligations. In accordance with W. Va. Code §21-9-2 which allows unlicensed persons to perform work on a home owned or leased by them, the Association has proposed a procedure to allow the Consumer to properly do all or part of the installation of his/her manufactured home; however, due to safety concerns and the technical expertise required, the Association's modifications do not permit the Consumer to conduct the home placement evaluation or the level and trim of the home. Further, the modifications require the licensed Dealer or Installer to conduct an on-site review where the Consumer has done all or part of the installation of the home. These modifications represent significant effort by the industry as a whole and are a compromise with benefits and burdens to all parties involved in the transaction for the sale of a manufactured home. Ultimately these modifications require the Dealer/Installer to responsibly disseminate information to the Consumer which ultimately raises the level of knowledge of the Consumer so that he/she can make informed choices in purchasing and installing a manufactured home

CHS-51032

PROPOSED REVISIONS SUBMITTED BY THE
MANUFACTURED HOUSING ASSOCIATION TO
MANUFACTURED HOUSING CONSTRUCTION & SAFETY
STANDARDS BOARD

42 C.S.R. 19

§ 42-19-3.20

"Installation" shall mean and include: home placement evaluation, including soil evaluation, footer design and inspection of site for ability to comply; site preparation including clearing site and access and rough grading the site; installing footers including digging footers and pouring concrete; level and trim the home including positioning on the support system (level), anchor, close-in, trim and adjustment, and cross over connects (non-electrical); utility connections including, if applicable, electric or gas, water, sewer, cable TV connects, satellite dishes, DSS systems, telephone connects, and well and septic systems; installation of optional accessory items, including, if applicable, facia and ventilation, HVAC, decks, porches and awnings, carports, garages, pools, and out buildings; and, final grade and water control including footer backfill, installation of a vapor barrier, final grading of lot, landscaping, driveways and sidewalks.

§ 42-19-3.31

"Set-up" shall mean installation as defined at § 42-19-3.20.

§ 42-19-3.32

"Site" shall mean that area encompassing the exterior perimeter of the manufactured home plus 6".

NOTE:

To implement/adopt these definitional amendments may require additional renumbering within the section.

CHS-45472

**PROPOSED REVISIONS SUBMITTED BY THE
MANUFACTURED HOUSING ASSOCIATION TO
MANUFACTURED HOUSING CONSTRUCTION & SAFETY
STANDARDS BOARD**

§42-19-10A Consumer Manuals; Installation.

10A.1 Each purchaser of a new manufactured home in the state shall be provided, by the Seller, with a HUD-approved consumer manual applicable to the manufactured home purchased. No manufacturer, dealer, distributor, or contractor may interfere with the distribution of a HUD-approved consumer manual.

10A.2 (a) All manufactured homes installed in the state shall be installed:

- (ai) in accordance with the home manufacturer's recommendations contained in or accompanying the consumer manual required by this section and 24 CFR 3283 Part 3282; or
- (bii) in accordance with a competent design certified in writing by a registered professional engineer and/or architect and submitted to the Board at least five (5) days prior to installation; or
- (ciii) consistent with the recommendations published by the American National Standards Institute, A225.1 Installation Standard for Manufactured Homes; or
- (civ) for used homes only, any generally accepted commercial method submitted to, reviewed and approved from time to time by the Board.

(b) The dealer must maintain in his files a written record of which method of installation was followed, or, if the dealer is not selling installation, a written record signed by the dealer and purchaser specifying that the purchaser must make separate arrangements with a licensed installer for installation of the home except where the consumer installs the manufactured home as provided at Section 10B of this rule.

(c) The following operations Installation of a manufactured home as defined at Section 3.20 of this rule shall only be performed by a licensed dealer or installer or consumer as provided in Section 10B of this rule.

i) an initial on-site qualification to determine accessibility to the site, proper soil compaction and whether the site can be improved to assure proper drainage. A written report of the findings and conclusions shall be kept by the dealer or installer and a copy provided to the consumer prior to transporting the home to the site;

ii) initial site preparation, including removal of all vegetation, including grass, wood and roots, in the area over which the home will be installed, and necessary grading which cannot be performed after the home is installed to prevent water collection under the home and assure proper drainage away from the home;

iii) the construction of footings below grade, and below the frostline as required by this section, to support the piers;

iv) the placing and blocking of the home over the footings, construction of piers of appropriate size and location to support the home, complete connection of sections if multi-sectional, and leveling of the home;

v) the placement and attachment of anchors;

vi) utility connections and testing; and

vii) backfilling around the piers to grade level for required frostline considerations and the prevention of water collection; and ensuring proper drainage away from the immediate vicinity of the home, where the grade away from the outer edge of the outermost footings shall fall a minimum of six inches within the first ten feet, except as restricted by lot lines where the fall shall be a minimum of six inches regardless of the horizontal distance available;

10A.3 Frostline considerations are mandatory for all manufactured home installations in this state. For the purpose of Section 10.2 of this rule, a frostline shall be determined by local ordinance of a municipality or county. If the installation of the manufactured home in this state is in a municipality or county that has not provided a specific numerical standard, a the frostline may be the designated numerical standard set forth in the consumer manual required by 24 CFR 3283 Part 3282, or as determined by a registered professional engineer and/or architect and approved by the Board for the individual site of the manufactured home installation. In the absence of any of these specific designated numerical standards, for all applications, frostline is as follows:

(a) Thirty (30) inches from grade level for all perimeter footings; and

(b) Thirty (30) inches from grade level for footings under the I-beams, center piers and inset blocking piers if a perimeter facade enclosure is not to be installed; Provided, That the footings may be twelve (12) inches from grade level for footings under the I-beams, center

piers and inset blocking piers if a perimeter fascia enclosure and vapor barrier are installed: i) within twenty-one (21) days of the home installation if the home is installed between November 1 and March 30; or ii) before November 1 for homes installed after March 30.

(a) — ~~Twelve (12) inches from grade level for footers under the I-beam if a perimeter fascia enclosure is concurrently installed with the installation of the manufactured home;~~

(b) — ~~Thirty (30) inches from grade level for footers under the I-beam if a perimeter fascia enclosure is not concurrently installed with the installation of the manufactured home; and~~

(c) — ~~Thirty (30) inches from grade level for all perimeter footings.~~

CHS-47124

**PROPOSED REVISIONS SUBMITTED BY THE
MANUFACTURED HOUSING ASSOCIATION TO
MANUFACTURED HOUSING CONSTRUCTION & SAFETY
STANDARDS BOARD**

Editor's Note: Unless otherwise defined the terms used herein will have the meanings and definitions already defined under West Virginia C.S.R. §42-19-1 et seq.

§42-19-10A (Formerly §42-19-10 et seq.)

§42-19-10B-Consumer Installation of a manufactured home.

10B.1. For proper performance in accordance with federal design standards, Manufactured Homes should be installed by a licensed Dealer or Installer. However, each Consumer has the right to and may personally install, or independently hire a licensed Dealer or Installer for the installation of, his or her manufactured home and, if the Consumer chooses to exercise that right, the Consumer is legally responsible for the choices he/she makes. However, due to safety concerns and the technical expertise required, only a licensed Dealer or Installer shall conduct the home placement evaluation and level and trim the home. This rule, §42-19-10B et seq., applies only to those transactions in which the Consumer agrees to install all or part of his/her manufactured home. Each Dealer shall notify the Consumer that the installation of his or her manufactured home must comply with the installation standards enumerated at Sections 10A.2 and 10A.3 of this rule.

10B.2. All Dealers shall inform the Consumer of the following, through one or more of the following means including, but not limited to, video tapes, manuals, brochures, drawings, personal conversations or other appropriate means, at/or prior to, the date of the final agreement for the purchase or installation of a manufactured home:

(a) The risks of improper installation of the manufactured home including but not limited to, the impact upon the manufacturer's warranty, decreased performance of the manufactured home and other relevant concerns known to the Dealer, and matters which make time of the essence in completing the Consumer's assumed obligations;

(b) The legally mandated standards for installation of a manufactured home as enumerated at Sections 10A.2 and 10A.3 of this rule;

(c) All parties, other than the Consumer, who engage in the installation of manufactured homes must be licensed under West Virginia Code §21-1-9;

(d) The Dealer or a licensed Installer will conduct an on-site review, in accordance with Section 10B.4 of this rule, to review all aspects of installation for which the consumer assumed responsibility.

10B.3. If the Consumer assumes all or part of the responsibility of installation of his/her manufactured home, as defined at Section 3.20 of this rule, then the Agreement between the Consumer and the Dealer regarding their individual obligations with respect to installation will be memorialized in a written contract.

10B.4. The licensed Dealer or Installer shall conduct an initial home placement evaluation to determine accessibility to the site, proper soil compaction and whether the site can be improved to assure proper drainage. A record of the conclusions and findings shall be provided to the Consumer with a copy maintained by the Licensed Dealer or Installer as part of the on-site review form described in Section 10B.4(b).

10B.5. Where the Consumer has assumed the responsibility for site preparation and installation of footers, the Licensed Dealer or Installer shall review these aspects of installation to determine if they have been completed in accordance with the installation standards at Sections 10A.2 and 10A.3 of this rule and document the findings and conclusions as part of the on-site review form described in 10bB.4(b) of this rule.

10B.6. A Licensed Dealer or Installer shall conduct an on-site review in all instances where the Consumer has assumed all or part of the responsibilities of the installation of his/her manufactured home as defined at Section 3.20 of this rule.

(a) The on-site review will be conducted in not less than sixty (60) days but not more than one hundred eighty (180) days after the delivery date to the Consumer or the date of the final agreement for purchase or installation of the manufactured home;

(b) The Licensed Dealer or Installer shall conduct the on-site review in accordance with a form prescribed or approved by the Department of Labor which identifies the elements of installation;

(c) The form as described in 10.B.6(b) above shall be signed and dated by the Licensee conducting the on-site review at the time of the review.

(d) The Licensed Dealer or Installer shall evaluate all aspects of the installation which were assumed by the Consumer and note any deficiencies in such installation directly on the form described in 10.B.6(b) above.

10B.7. Reporting Requirement

(a) A copy of the completed on-site review form shall be maintained by the Licensed Installer or Dealer for a period of not less than 5 years;

(b) If the on-site review reveals a deficiency pursuant to 10.B.6(a) above, the Licensed Dealer or Installer shall send a copy of the on-site review form to the Consumer via certified United States mail, Return Receipt Requested and, as an attachment to the on-site review form pursuant to 10B.7(c) below, the Consumer shall be notified of the hazards and risks resulting from his/her failure to comply with his/her assumed obligations and that the home does not conform

to the installation requirements set forth herein.

(c) The Department of Labor will prescribe or approve a form for attachment to the on-site review form which identifies the potential risks associated with the Consumer's failure to properly comply with his or her assumed obligations.

IOB.6 All provisions of this rule above shall also apply to a licensed Installer who contracts with a Consumer to install part of the manufactured home except those provisions that deal exclusively with the sale of a manufactured home.

CHS-44166

MANUFACTURED HOUSING BOARD
PUBLIC HEARING AUGUST 7, 1996

1:00 P.M.

NAME	REPRESENTING	WISH TO SPEAK?
Shelby Leary	W.V. Div. of Labor	yes.
Thomas Belasco	Belasco Home Sales	N/A
Jeresa Ball	Quality Homes & Auto Sales, Inc	NO
Barey Howell	Quality Homes + Auto Sales Inc	NO
Emery Young	Beckley Home Show	NO
Lisa Maggi	Attorney	yes
Lynn Moore	WV Mfg. Assn	yes
Charles [unclear]	Crestview Group of Lot	NO
Gary [unclear]	TRI-STATE HOME CTR DANVILLE	NO

WEST VIRGINIA MANUFACTURED HOUSING
CONSTRUCTION AND SAFETY STANDARDS BOARD

IN RE: PROPOSED CHANGES IN RULES REFERENCE
SECTION 42 CSR 19

The following is a transcript of proceedings had in the public hearing held reference the above-styled matter on the 7th day of August, 1996, commencing at 1:05 p.m. and concluding at 1:35 p.m., at the West Virginia Division of Labor, West Virginia State Capitol Complex, Building 3, Room 319, Charleston, Kanawha County, West Virginia, before Sherry M. Lawson, Certified Court Reporter and Notary Public for the State of West Virginia.

PHYLLIS HAYNES EDENS, CCR, INC.
CERTIFIED COURT REPORTERS
POST OFFICE BOX 13337
SISSONVILLE, WEST VIRGINIA 25360
(304) 984-3531

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Shelby Leary	20
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1 MR. QUASEBARTH: This is a public hearing
2 with the West Virginia Manufactured Housing Construction
3 and Safety Standards Board. The hearing is being conducted
4 for the purpose of receiving comments on the proposed Rules
5 that have been filed by the Board with the Secretary of
6 State's Office and Legislative Rule Making Review
7 Committee. It's about 10 after 1 on today, the 7th of
8 August.

9 This is not a meeting, just so everybody
10 understands what the perimeters are. This is a public
11 hearing the Board is conducting. The Board is not taking
12 any official action upon anything today. The Board is
13 having its regular monthly meeting tomorrow and we can
14 discuss comments that we take in today at that time. But
15 today we're just here to listen and to ask questions of
16 anybody who has any comments, but there won't be any
17 official action taken.

18 I would like to welcome our two newest
19 Board members, since I didn't get the opportunity to
20 welcome you last month to our meeting: Sam Bonasso and
21 Jack Albert. We're glad you can be with us and we'll get

1 you started with a trial by fire here.

2 For those of you that are in the audience,
3 I'm Chris Quasebarth. I'm the Deputy Commissioner of the
4 Division of Labor and I'm sitting as Chair in place of the
5 Commissioner of the Board. Sam Bonasso to my left at the
6 corner; Sam Pertko, Board member at the end of the table;
7 Ms. Karen Bailey, Board member; Jack Albert, Board member;
8 Tom Ryan, directly in front of me and Bill Carmichael, all
9 Board members.

10 The other people we have sitting at the
11 table; Amie Johnson is from the Attorney General's Office.
12 Fran Cook is the Director of our Manufactured Housing
13 Section, and we have Carla from our Manufactured Housing
14 Section as well, and a Court Reporter.

15 I'm sending around a list, I think most of
16 you have seen it now, asking you to sign-in and say who
17 you're representing. Those that are desiring to speak will
18 be given an opportunity to speak.

19 I would request that each of you, when you
20 stand up to speak, those of you who are speaking, identify
21 yourselves for the record so the Court Reporter can get it

1 down, and speak clearly for her benefit and I'll try to do
2 the same.

3 The only written comment we've received is
4 from the West Virginia Manufactured Housing Association,
5 and there were no other written comments.

6 I've got the list back. We just have a
7 handful of people that are here today. We can go ahead and
8 get started, if the Board is ready. Mr. Moore, you are the
9 only one who sent in a written comment on behalf of the
10 Association. I know that you have Gina Mazzei with you
11 today, who also worked with you, and you're both indicating
12 you wish to speak. Is Gina speaking on behalf of the
13 Association?

14 MR. MOORE: Gina and I will be sort of a team
15 that will jointly speak on behalf of the Association. My
16 comments will be a general overview of our position on the
17 Rule and our submittal, and then Gina will talk about the
18 lawyerly aspect of it and how we applied the law and so
19 forth to our work.

20 So we would hope that you would consider
21 our testimony as one, as representing the industry.

1 MR. QUASEBARTH: That's fine, and I would
2 like to limit the comments, if I may, even though we don't
3 have scads of people here, but in 10 or 15 minutes you
4 should be able to address the written comments we have.

5 Mr. Moore, if you'd like to start?

6 MR. MOORE: Mr. Chairman, Ladies and
7 Gentlemen, Members of the West Virginia Manufactured
8 Housing Construction and Safety Standards Board, my name is
9 Leff Moore. I am the Executive Director of the trade
10 Association that represents manufacturers, retailers,
11 installing contractors, lenders, suppliers and other
12 associated businesses participating in the manufactured
13 housing industry in West Virginia. Over 250 companies make
14 up our membership and they are diversified not only in
15 their business interests, but geographically throughout the
16 state. Some of our members are manufacturers, retailers
17 and installing contractors who are located in other states,
18 but ship to or do work in West Virginia.

19 As part of our interest in our marketplace
20 our Association has an active program to assist the buyers
21 of our industry homes. Our Consumer Affairs Council is

1 focused on assisting manufactured home buyers in attaining
2 an affordable home with quality. Our industry's goal is to
3 also assure that the home performs well and serves the
4 buyer in a safe and long-term manner.

5 We recognize the important role that this
6 Regulatory Board plays in meeting the goals of the
7 industry, assisting consumers, and carrying out the
8 important role of a State Administrative Agency for the
9 federal government. Carrying out the provisions of the
10 Manufactured Housing Construction and Safety Standards Act
11 is an important function, also. Our industry gratefully
12 acknowledges the cooperative spirit, interest, and
13 leadership provided by this Board and its members in
14 carrying out the important legal mandates established under
15 that law.

16 My purpose in appearing here today is to
17 provide comments on behalf of the industry relative to the
18 proposed changes in the rules promulgated by this Board and
19 utilized by this Board to provide policy, regulation and
20 guidance to its licensees, as well as to the public it
21 serves. We have watched with a keen eye the thorough way

1 the Board has reviewed its existing rules. We, in the
2 main, wholeheartedly support most of the technical
3 corrections, editorial changes, elimination of the archaic
4 language and general updating of appropriate sections of
5 42 CSR 19.

6 Our industry formed a committee comprised
7 of representatives from all segments of the industry in
8 mid-April. This committee has labored many, many hours
9 since that time to formulate industry positions and to
10 review proposals published for public comment by this
11 Board. Following the committee's work, our industry
12 leaders embodied in our Association's Board of Directors,
13 have adopted proposed changes to the rules published by the
14 Regulatory Board. Those proposed rule changes were
15 submitted as written comments to this Board in compliance
16 with the published schedule. My comments today are in
17 support of our written comments and are designed to amplify
18 our position and to clarify our industry goals. I would
19 respectfully submit the following points to this Board for
20 your consideration:

21 Current regulations are ambiguous as they

1 relate to the dealer, installer, set-up and site. The
2 industry proposal provides an all encompassing definition
3 of installation which must be addressed with the customer,
4 and our installation definition assures that all issues
5 relative to the home are written in contract documents.

6 Our recommended amendments allow home
7 buyers to achieve home ownership through "sweat equity",
8 while the Division of Labor's proposal will mean that
9 hundreds of West Virginians will not be able to afford a
10 house because they will not be able to participate in the
11 installation and save themselves lots of money.

12 Our recommended revisions recognize the
13 current statutory provisions that allow unlicensed persons
14 who own or lease a manufactured home to do installation
15 activities and work on their own homes.

16 The Association's recommended amendments to
17 the law do not permit homeowners to engage in those
18 technical activities where special training and knowledge
19 or safety concerns are critical. These include the
20 evaluation of the site and its ability to comply with
21 standards and the blocking, leveling and trim of the home.

1 These issues, along with anchoring, are reserved for
2 licensees only.

3 Our recommended amendments require that
4 proper notification and documentation of customer's assumed
5 responsibilities for installation are identified and
6 discussed and are established by a mandated procedure that
7 provides the customer with appropriate information and
8 knowledge so that they may voluntarily elect to participate
9 in some tasks relative to their home's installation.

10 The Association recommended amendments
11 propose that the licensees be required to disseminate
12 necessary information to allow the consumer to make
13 informed choices regarding their home's installation, and
14 as a result would place licensees under the sanctions of
15 the Regulatory Board for failure to adequately inform
16 consumers.

17 Licensees would place their licenses in
18 jeopardy if they failed to check the consumer's voluntarily
19 performed installation work to assure that the work done by
20 consumers met appropriate codes and standards.

21 Our recommended standards require that the

1 licensees, who mutually contract with consumers to share
2 responsibility for certain elements of installation, could
3 be subject to loss of their license or other sanctions of
4 the Board if they failed to notify consumers in a timely
5 fashion of the fact that the consumer-performed work was
6 substandard.

7 Retailers and Installing Contractors would
8 likewise be subject to loss of license and other allowable
9 sanctions under current law and regulations if they failed
10 to notify the consumer of the effect of failure to complete
11 their voluntary work on installation and the possible
12 damage, loss of value and/or utility, or safety hazard that
13 might exist because of the consumer's failure to follow the
14 information provided by the seller relative to the proper
15 installation of their home as per the contract documents.

16 Our recommended amendments require
17 extensive new responsibilities and liabilities on the part
18 of those installing licensees (both dealers and installing
19 contractors) who allow customers to voluntarily participate
20 in the installation of their home in order to save money
21 and make the home more affordable and attainable. These

1 new imposed requirements are placed by rules on Board
2 licensees, but truly benefit the industry's customers.

3 The industry proposed rules are truly
4 consumer oriented and only apply when the customer has
5 fully discussed all elements of installation with the
6 installer or dealer and, through written contract,
7 expresses the desire and ability and is provided the
8 knowledge to do certain elements of installation. This
9 action, coupled with the required review by the licensee to
10 assure that consumer prepared tasks are done properly,
11 provides new consumer protection that does not exist in
12 existing rules or in the rule proposed by the Division of
13 Labor.

14 While this Board and the Division of Labor
15 staff clearly share our vision for a quality home properly
16 installed and performing in a safe and durable manner, we
17 find that the rule as published does not accomplish this
18 task. It is our finding that the rule, if applied as
19 written, would eliminate a lot of West Virginia families
20 from the opportunity to realize home ownership. It is
21 usual and customary for many West Virginia home buyers to

1 cut brush, acquire and supervise earth moving at the home
2 site, provide for post installation drainage, landscaping,
3 and to install decorative non-structural skirting or
4 perimeter fascia foundation enclosures. Many customers
5 routinely complete such tasks as installation of vapor
6 barriers, construct steps and decks, or make other
7 improvements to their home site such as installing french
8 drains and providing for proper water control after the
9 home is blocked and leveled.

10 In the past, sometimes licensees failed to
11 evaluate the customer's ability to do this work, failed to
12 inform the home buyer of the nature and extent of the work,
13 and in many cases failed to impress upon the home buyer the
14 relative importance of consumer performed tasks relative to
15 the overall long-term performance of the home. Our
16 proposal for the rules not only will recommend that these
17 important discussions take place with home buyers, but will
18 mandate that they do in those instances wherein the
19 homeowner wants to participate in the installation of their
20 home. The rules would require that the entire installation
21 be discussed and the rules further outline a very broad,

1 all-inclusive definition of installation.

2 Our proposals further outline that all of
3 the details of installation be memorialized in written
4 documents in order to assure that everyone understands who
5 is providing what service. Our regulations would require
6 all licensees to tell the customer not only how to do the
7 work they might elect to do, but provide them with
8 technical knowledge in a sufficient manner that they would
9 be able to accomplish the work in a manner that meets the
10 required standards.

11 Our proposals, after having communicated
12 with the consumer adequately, and providing technical
13 knowledge and information to the consumer, and requiring
14 that all of this be clearly and effectively outlines in
15 contract documents, then would take this protection one
16 step further. All licensees who work with consumers on
17 installation methods would be required to review, after the
18 fact, work done by consumers or their agents, or other
19 licensees, to determine that, in fact, the work that was
20 done by other than the licensee was done in accordance with
21 the standards being utilized. Licensees would be required

1 to notify consumers of any work done by them that was not
2 done in accordance with required standards and to further
3 notify the consumer of the negative impact of the
4 substandard work or uncompleted work on the long-term
5 performance of their home.

6 Our proposal assures that site evaluation,
7 blocking and leveling the home, and anchoring the home, are
8 limited to licensees only. It is our finding that we, as
9 an industry, could not provide consumers with enough
10 detailed information and training for them to perfect those
11 installation tasks. Other tasks such as skirting and those
12 other items mentioned before certainly are attainable by
13 any consumer when provided with proper information.

14 We believe that all licensees have the
15 ability now to structure their contracts and agreements
16 with all those consumer protection mandates contained
17 therein. Unfortunately, without guidance of the rule, many
18 licensees simply will not perform these proposed tasks. We
19 urge the Board to amend its published rule and use the
20 language we have recommended. First of all, our proposals
21 accomplished three major goals. First it allows the

1 homeowner who is capable, knowledgeable and willing to
2 participate in a limited way, and an informed way, and in
3 an inspected way, in the installation of their home, thus
4 reducing their initial investment and in making home
5 ownership easily attainable for many.

6 Secondly, the rule proposal provides a
7 comprehensive, all inclusive definition of the term
8 installation. Licensees will be required to review with
9 the consumer all of the various installation issues.
10 Further, each licensee, along with the purchaser of the
11 home, would be required to review all issues of
12 installation and to determine, at the time of purchase, the
13 relative relationship of the installation issue to that
14 particular purchase. The rule would require that all
15 issues be reviewed and that the review would be
16 encapsulated in contract documents, thus affording
17 consumers a greater level of knowledge and understanding of
18 their relative importance on a quality installation.

19 And finally, the rule would require that
20 all licensees would be held to this new higher standard and
21 that all licensees would be subject to loss of license or

1 other sanctions by this Board relative to any transaction
2 that failed to meet the requirements of the proposed rule.

3 We believe that this proposal, while it
4 places new requirements on licensees, is fair, workable,
5 and in the best interest of all parties. We urge that the
6 Manufactured Housing Construction and Safety Standards
7 Board adopt this proposed amendment to the published rule
8 and we look forward to working with you to implement it in
9 the marketplace. We urge the adoption of the amendments to
10 the published rule.

11 Thank you for the opportunity to make this
12 presentation and I would like for our presentation to be
13 continued by our legal counsel, Gina Mazzei.

14 MR. QUASEBARTH: Thank you, Mr. Moore.

15 MS. MAZZEI: Mr. Chairman, Ladies and
16 Gentlemen, Members of the Board, my name is Gina Mazzei and
17 I've served as counsel to the West Virginia Manufactured
18 Housing Association.

19 I was charged by the West Virginia
20 Manufactured Housing Association to work with its members,
21 to look to the regulation revisions to preserve the

1 statutory concept that consumers can participate in the
2 installation of their manufactured home.

3 The definition of contractor at West
4 Virginia Code Section 21-9-2 excludes from the definition
5 of contractor persons who do work on a manufactured home
6 which is owned or leased by them.

7 The issues of affordable housing and proper
8 installation of manufactured housing were the primary
9 issues which were considered by the Association members in
10 proposing its regulatory amendments. I worked with various
11 Association members in determining how consumer could get
12 responsibly involved, if they desire, in the installation
13 of their manufactured home while still protecting the
14 safety of the consumers.

15 There were certain aspects of installation,
16 including the home placement evaluation and the level and
17 trim of the home, positioning on the support system,
18 anchor, close-in, trim and adjustment, and crossover
19 connects, which the Association members did not feel could
20 be reasonably delegated to the consumer. However, due to
21 monetary concerns, the Association wanted to enable those

1 consumers who desire to contribute "sweat equity" to the
2 installation of their home.

3 The Association members struggled with the
4 ambiguity of what exactly was an installation of a
5 manufactured home and what were the respective
6 responsibilities of the various parties.

7 The Association members were also concerned
8 about assuring that the homes were installed properly to
9 ensure maximum safety to its consumers and to achieve
10 proper performance of the home and to preserve the
11 manufacturer's warranty.

12 The Association members acknowledge that
13 the consumer must be given appropriate disclosures,
14 detailed information, all relative to proper installation
15 so that they may proceed properly and enjoy their
16 manufactured home to the fullest extent.

17 The Association members also wanted to
18 ensure that the industry as a whole was disseminating
19 appropriate information to the consumers who wanted to
20 participate in the installation of their home. To that
21 end, since I have helped draft the Association's proposed

1 regulatory amendments, the Association has asked that I
2 provide support on their behalf to the Department of Labor
3 to work on the adoption of our proposed regulatory
4 amendments and to work with your legal counsel in any way
5 that I may to renumber and refine the proposed amendments
6 that have been submitted by the Association. Thank you.

7 MR. QUASEBARTH: Thank you, Ms. Mazzei.

8 Questions from the Board members for either
9 Mr. Moore or Ms. Mazzei?

10 MS. JOHNSON: Mazzei.

11 MR. QUASEBARTH: Mazzei. I'm sorry.

12 Okay, if not, thank you all, and
13 Commissioner, you desired to speak?

14 COMMISSIONER LEARY: Yes, I did. I would
15 like to speak informally.

16 Mr. Chairman, Members of the Board. I'm
17 very concerned about what is being proposed to --

18 MR. QUASEBARTH: Commissioner, if you could
19 identify yourself specifically for the record?

20 COMMISSIONER LEARY: Yes. I am Shelby
21 Leary. I'm the Commissioner of the West Virginia Division

1 of Labor, and I believe I'm here as a spokesperson for the
2 consumers of this State or that's what I hope to be, of my
3 concerns.

4 Of those concerns is certainly the changes
5 to these rules that I think then takes the obligation away
6 from the dealers who are selling the homes and setting them
7 up. My concern is for the safety of the consumer out
8 there, that you're saying "sweat consumers" here, because
9 not very many consumers buying these homes are ever going
10 to have the knowledge or the training to set these homes
11 up.

12 I believe that the Board is going to come
13 back as a liability, because as I look at this Board, this
14 Board is made up mostly of dealers, and this change in this
15 rule, what it's going to be is when you find people who are
16 killed underneath of these homes, it's going to come back
17 to this Board to haunt you, I can tell you that, if this
18 passes.

19 I think the Board's responsibility is
20 looking at the consumer in which this Board is set up or
21 supposed to be set up to be. The consumer is going to take

1 -- many of them low income that's moving into manufactured
2 homes -- are going to take whatever cuts that they can take
3 to be able to set this home up and be able to live in it.

4 But people can be killed underneath this,
5 as a 15-year old in Beckley, a man in Pentress, and a
6 nephew of mine that was almost killed in that and my
7 brother-in-law that was killed, underneath a home that the
8 dealer talked them into setting up this home, knocking
9 \$1000 off of it and it would save them a little money to
10 set it up. My brother-in-law was underneath it when the
11 jack came down and was killed and my nephew was pinned for
12 five hours under it.

13 The home was paid for automatically by the
14 dealers that sold that home, so my sister never had to
15 finish paying for that home, but it never brought back her
16 husband.

17 You're going to find a lot of injuries and
18 you're going to find some deaths, and it's going to come
19 back to haunt you.

20 The dealer may save money, and that's what
21 it's coming down to right here, to save money. But believe

1 you me, when that home does not set right and it falls
2 apart because it's not set right, it's going to come back
3 to the banks by people who don't want to pay for them. If
4 you think setting a home and it not being level and it
5 being crooked or any way from the ground isn't going to
6 pull it apart, come and look at mine. It's been done by
7 mine subsidence because the ground is not where it should
8 be now.

9 I'm asking this Board to turn down these
10 rules. I think there's some room for movement and some
11 things that the consumer can do as far as maybe some ground
12 work, but setting that home, no. I'm opposed to it and I
13 will continue to oppose it in any way I can. Thank you.

14 MR. QUASEBARTH: Questions for the
15 Commissioner?

16 MR. RYAN: I have a comment or question, but
17 it's been an ongoing problem with this issue, the
18 definition of terms, but as I understand it, the
19 Association proposal specifically does not involve or does
20 not allow for the involvement of the consumer during the
21 blocking or positioning of the home.

1 I assume when the Commissioner talks about
2 the relatives and other consumers that have died underneath
3 homes when jacks failed, the Association proposal does not
4 allow the consumer's involvement in what I think she is
5 calling set-up. That has been a problem with this Board
6 and then also in the newspapers and whatnot and is an
7 incomplete knowledge of what is actually being proposed.

8 The Board's original proposal, nor the
9 Association's counter-proposal, advocates the consumer
10 being under the home during the set-up of the home. That's
11 just a point of clarification.

12 MR. QUASEBARTH: Is there a question to that?
13 If not, we're just having some questions for the
14 Commissioner right now, but thank you for your comment.

15 Commissioner, I've got a question.

16 COMMISSIONER LEARY: Yes?

17 MR. QUASEBARTH: When you stated that you
18 were opposed to the rules --

19 COMMISSIONER LEARY: I'm not opposed to the
20 rules as they have been written; the changes in the rules
21 to allow people to do their own lines and all the other

1 things that's being proposed in the amendment to this. I
2 oppose that, the rule as it is.

3 MR. QUASEBARTH: You're talking about the
4 proposal that Mr. Moore described --

5 COMMISSIONER LEARY: The proposal by the
6 manufacturers --

7 MR. QUASEBARTH: -- rather than what's been
8 filed?

9 COMMISSIONER LEARY: Right. No, what's been
10 filed I'm fine with. The proposals to the change today,
11 I'm opposed to that.

12 MR. ALBERT: All of them or the ones
13 dealing with the installation?

14 COMMISSIONER LEARY: Of course the
15 installation, but the ground work and those things, getting
16 it ready, the site preparation and everything for that. I
17 think there was some discussion on some movement there and
18 areas that I think could have been workable.

19 MR. QUASEBARTH: Again, for clarification,
20 your opposition is the Association's proposal?

21 COMMISSIONER LEARY: The Association's

1 proposal and not to the rules as they've been over there.

2 MR. QUASEBARTH: Thank you.

3 COMMISSIONER LEARY: Thank you.

4 MR. RYAN: Is the Commissioner aware that
5 both proposals allow the consumer to get involved in
6 certain aspects of installation, the one that --

7 COMMISSIONER LEARY: I didn't hear all of
8 that. I'm sorry.

9 MR. RYAN: Both proposals allow the consumer
10 to be involved in certain parts of installation, even the
11 current one that has been passed by the Board, so I'm not
12 understanding the objection. The objection to the
13 Association proposal is that it involves the consumer in
14 certain parts of installation, but then the current one
15 coming out of the Board also allows for the consumer to be
16 involved in certain --

17 COMMISSIONER LEARY: Certain aspects, right.

18 MR. RYAN: Right.

19 COMMISSIONER LEARY: Yes, and I'm not
20 opposed to what has been proposed as the rule that has been
21 sent over there. I'm in full support and if you want me to

1 highlight those, Tom, I can't be here tomorrow, but I'll
2 highlight the areas of concern that I have and give them to
3 you. Okay?

4 MR. RYAN: Okay.

5 MR. QUASEBARTH: Thank you, Commissioner.

6 There is no one else who is listed to
7 speak, so I guess that concludes our public hearing for
8 today. Thank you all for coming.

9 (WHEREUPON, the public hearing
10 was concluded at 1:35 p.m.)

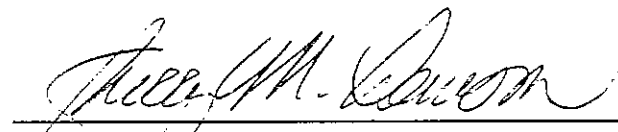
REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Sherry M. Lawson, Certified Court Reporter and Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing is a true and accurate transcript of the proceedings held reference the above-styled matter.

Given under my hand this 8th day of August, 1996.

My commission expires November 8, 1998.



Certified Court Reporter
Notary Public

