

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

FILED

JUN 18 2 27 PM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Division of Labor TITLE NUMBER: 42

RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code 21-9-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 19

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

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

TITLE OF RULE BEING PROPOSED: _____

DATE OF PUBLIC HEARING: July 18, 1996 TIME: 10:00 A.M.

LOCATION OF PUBLIC HEARING: Division of Labor
Building 3, Room 319
Capitol Complex
Charleston, WV 25305

COMMENTS LIMITED TO: ORAL _____, WRITTEN , BOTH _____

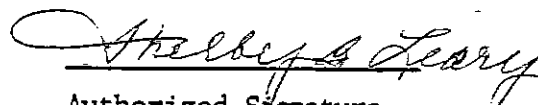
COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Division of Labor
Manufactured Housing
Building 3, Room 319

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

Capitol Complex
Charleston, WV 25305

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL


Authorized Signature

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
18 JUNE 1996

The attached modification is designed to clarify and simplify practice and procedures of the Manufactured Housing Construction and Safety Standards Board by clarifying some vague portions of the rule, removing obsolete language and making the rule easier to follow.

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SUMMARY OF PROPOSED CHANGES

MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS BOARD

42 CSR 19
18 JUNE 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. | Added "soil testing, grading and other site preparation" to "contractor" definition; 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. |

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| | | |
|-------|-----------|--|
| 3.31. | 3.30. | 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. |
| 10.2. | 10.2. | Strengthens consumer protection by requiring that a licensee perform installations; requires prior approval of Board for certain installation methods; changed 24 CFR 3283 reference to 3282; substituted correct word "facia" for incorrect word "ficia." |
| 10.3. | 10.3. | Changed 24 CFR 3283 reference to 3282. |

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.

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|-------|-------|--|
| 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.

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FISCAL NOTE

MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS BOARD

42 CSR 19
18 JUNE 1996

The attached modification is 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.

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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, soil testing, grading and other site preparation, 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 3280.811).

~~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. "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~~ 3.21. "IPIA" means the Production Inspection Primary Inspection Agency specified in the federal regulations.

~~3.23~~ 3.22. "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~~ 3.23. "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~~ 3.24. "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~~ 3.25. "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~~ 3.26. "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~~ 3.27. "Recovery Fund" means the State Manufactured Housing Recovery Fund as established by ~~Section 16~~ pursuant to the provisions of this rule.

~~3.29~~ 3.28. "SAA" means the State Administrative Agency specified in the federal regulations.

~~3.30~~ 3.29. "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~~ 3.30. "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.

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 IPHA 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 IPDA~~ from complying with any recordkeeping or reporting requirements mandated by the federal regulations.

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

10.1. Each purchaser of a 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.

10.2. All manufactured homes installed in the state shall be installed by a licensee of the Board:

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

10.3. 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) Twelve (12) inches from grade level for footers under the I-beam if a perimeter ~~ficie~~ facia 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 ~~ficie~~ facia enclosure is not concurrently installed with the installation of the manufactured home; and
- (c) Thirty (30) inches from grade level for all perimeter footings.

§42-19-11. 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 nondeliberative 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. ~~The~~ 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.

§42-19-1716. Severability.

1716.1. 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.