

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

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2005 MAY 13 P 2: 36

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

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 RULE BEING PROPOSED: _____

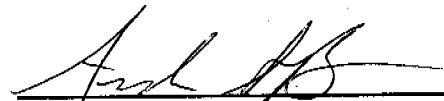
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2718

SECTION §64-10-3(c), PASSED ON April 9, 2005

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: July 1, 2005



Authorized Signature

TITLE 42
LEGISLATIVE RULE
DIVISION OF LABOR

FILED

2005 MAY 13 P 2:36

SERIES 19
WEST VIRGINIA MANUFACTURED HOUSING CONSTRUCTION
AND SAFETY STANDARDS BOARD

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§42-19-1. General.

1.1. Scope. -- This legislative rule 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.

1.3. Filing Date. -- May 13, 2005

1.4. Effective Date. -- July 1, 2005

§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 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 Division of Labor.

3.5. "Contested case" or "formal presentation of views" is synonymous with the definition of "contested case" found at W. Va. 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. The 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. The 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 specifically include 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 this 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 this 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 of the home 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 this 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.

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

3.14. "Final grade and water control" means footing backfill, installation of a water vapor barrier, final grading of the lot, landscaping, drive way and walks.

3.15. "Home placement evaluation" means conducting a soil evaluation, designing footings, and physically inspecting the site for the ability to comply with code and installation requirements.

3.16. "HUD" means the United States Department of Housing and Urban Development and its Secretary.

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

3.18. "HUD label" means the permanently affixed certification label placed on each manufactured home pursuant to the federal standards (24 CFR 3280.11).

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.

3.20. "Informal presentation of views" means the opportunity for a manufacturer, dealer, distributor or contractor to meet with the Division's staff following the issuance of preliminary determination of a possible imminent safety hazard or serious defect or the issuance of a notice of violation.

3.21. "Installation" means and includes: home placement evaluation; site preparation; installing footings; leveling and trimming the manufactured home; utility connections; installation of optional accessory items; and final grade and water control.

3.22. "Installation of optional accessory items" means installing fascia and ventilation.

3.23. "Installing footings" means digging footings and pouring concrete.

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

3.25. "Level and trim the manufactured home" means positioning and leveling the manufactured home on its support system, anchoring the home, close-in, trim and adjustments, and cross over connects (non-electrical).

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

3.27. "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 in the structure; 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 erected on site. Unless specifically indicated to the contrary in this rule, all references to a "manufactured home" means a new or used manufactured home.

3.28. "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.

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

3.30. "Purchaser" or "consumer" means a 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 of a manufactured home.

3.31. "Recovery Fund" means the State Manufactured Housing Recovery Fund as established pursuant to the provisions of W.Va. Code §21-9-10 and this rule.

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

3.33. "Serious defect" means any failure to comply with an applicable federal standard that renders the manufactured home or any part of the manufactured home 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.

3.34. "Set-up" means "installation," as defined in this rule.

3.35. "Site" means that area encompassing the exterior perimeter of the manufactured home plus six inches (6").

3.36. "Site preparation" means clearing, providing access to and rough grading the site.

3.37. "State" means the State of West Virginia.

3.38. "Transporter only contractor" means a person, firm or corporation who, for compensation, transports a manufactured home upon a public road in this state to an occupancy site and who performs no installation work.

3.39. "Utility connections" means the connection of utility services, including electric, gas, water (and) sewer systems.

§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 this State shall apply to the Board for a license. A manufacturer shall maintain one (1) license for each business location in this State. A manufacturer who maintains all of its business locations out of this State, but who ships, imports, or delivers manufactured homes into this State, and is considered to be engaged in business in this State, shall maintain one (1) license for each out-of-State business location which will ship, import, or deliver manufactured homes into this 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 desires to be licensed shall submit an initial application on forms supplied by the Board. Each initial application shall be accompanied by a fee of seven hundred fifty dollars (\$750.00) for each business location the manufacturer desires to license and all information required by the Board on its forms, including but not limited to:

- (a) the legal and trade name of the manufacturer;
- (b) the address of the various business locations the manufacturer desires to license;
- (c) the phone number of each business location the manufacturer desires to license;
- (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 this State;
- (f) proof of payment to the recovery fund as required by this rule;
- (g) a statement of compliance with all applicable state and federal standards which is signed by a responsible officer or person representing the applicant who has full legal authority to bind the applicant to its terms;

- (h) the name of the DAPIA or DAPIAs who inspect the manufacturer;
- (i) the name of the IPIA or IPIAs who inspect the manufacturer;
- (j) a copy of all DAPIA-approved manufactured home designs currently in use;
- (k) a copy of all DAPIA-approved quality assurance programs currently in use;
- (l) a copy of all manufacturing plant certification reports issued by an IPIA in the past twelve (12) months; and
- (m) 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, 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 subsection 4.3 of this rule, and shall include a renewal fee of seven hundred fifty dollars (\$750.00).

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.

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 that 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 shall 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 desires to be licensed, shall submit an initial application on forms supplied by the Board. Each initial application shall be accompanied by a fee of two hundred fifty dollars (\$250.00) for each business location desiring licensure and all information required by the Board on its forms, including but not limited to:

- (a) the legal and trade name of the dealer and/or distributor;
- (b) the address of the various business locations the dealer and/or distributor desires to license;
- (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 this state;
- (f) proof of payment to the recovery fund as required by this rule;
- (g) a statement of compliance with all applicable state and federal standards which is signed by a responsible officer or person representing the applicant who has full legal authority to bind the applicant to its terms;
- (h) 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
- (i) 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, 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 subsection 5.3 of this rule and shall include a renewal fee of two hundred fifty dollars (\$250.00).

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.

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 that 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.

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 this state without a license. Each contractor who desires to engage in business in this 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 this state, but who desires to perform contractor services in this state, shall 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 desires to be licensed, shall submit an initial application on forms supplied by the Board. Each initial application shall be accompanied by a fee of one hundred twenty-five dollars (\$125.00) and all information required by the Board on its forms, including but not limited to:

- (a) the legal and trade name 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 this state, including compliance with W. Va. Code §21-11, et seq;
- (f) proof of payment to the recovery fund as required by this rule; and
- (g) 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, 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 subsection 6.3 of this rule and shall include a renewal fee of one hundred twenty-five dollars (\$125.00).

6.5. 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.

6.6. 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. Each contractor shall conspicuously display its license at its business location and at any work-site where the contractor is performing services.

6.8. 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.

6.9. A contractor involved solely in the transportation of manufactured homes to the occupancy site and who is not regulated by the West Virginia Public Service commission, may apply for a "transporter only" contractor license. A transporter shall meet the general requirements of a contractor but is not required to participate in the Recovery Fund identified by section 15 of this rule. In lieu of Recovery Fund participation, the transporter shall maintain a policy of insurance approved by the board and obtained from an insurer authorized to conduct business in this state in the amount of not less than fifty thousand dollars for each manufactured home transported and five hundred thousand dollars in the aggregate. The policy shall insure the transporter against liability for damages to a manufactured home in the transit process. The insurer shall provide the board with at least thirty days notice of any intent of cancellation, suspension or non-renewal of the policy.

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

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 in this rule 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 shall maintain its qualifications to continue approval by HUD as a State Administrative Agency (SAA).

§42-19-8. Inspections; DAPIAs; IPIAs.

8.1.(a) 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 other reasonable times considered necessary by the Board in the exercise of its duties.

(b) The Board may provide inspections to private home sites to aid in the resolution of consumer complaints filed with the Board by the home owner. The Board may provide, free of charge, one initial inspection and one follow-up inspection relative to each consumer complaint. Provided however, The Board may charge the licensee an inspection fee for any subsequent follow-up inspection which is necessitated by the licensee's failure to comply with an order of the Board.

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 subsection 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 may 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 any personnel 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. Each manufacturer shall 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 subsection 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; and
- (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 subsection 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 subsection 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. Nothing in this rule shall be construed to excuse or exempt any manufacturer, dealer, distributor, or contractor from complying with any recordkeeping or reporting requirements mandated by the federal regulations.

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

10A.1. The seller shall provide each purchaser of a new manufactured home in the state 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:

(i) in accordance with the home manufacturer's recommendations contained in or accompanying the consumer manual required by this section and 24 CFR Part 3282;

(ii) in accordance with a competent design certified in writing by a registered professional engineer and/or architect prior to installation;

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

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

(b) If the dealer contracted with the purchaser to install the manufactured home, the dealer shall maintain in his or her files a written record of which method of installation was followed. If the dealer did not contract with the purchaser to install the home, the dealer shall maintain in his or her files a written record signed by the dealer and purchaser specifying that the purchaser shall make separate arrangements with a licensed installer for installation of the home unless the consumer contracts to install the manufactured home as provided at section 10B of this rule. This written record is not required to be maintained longer than a period of five (5) years.

(c) Installation of a manufactured home as defined at subsection 3.21 of this rule shall only be performed by a licensed dealer or installer or by the 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 subsection 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, the frostline may be the designated numerical standard set forth in the consumer manual required by 24 CFR 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.

§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 or she makes. However, due to safety concerns and the technical expertise required, only a licensed dealer or installer shall conduct the manufactured home placement evaluation and level and trim the manufactured home. This section applies only to those transactions in which the consumer agrees to install all or part of his or 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 subsections 10A.2 and 10A.3 of this rule.

10B.2. Each dealer shall inform each 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 in subsections 10A.2 and 10A.3 of this rule;

(c) the requirement that all parties, other than the consumer, who engage in the installation of manufactured homes must be licensed under W. Va. Code §21-9-1; and

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

10B.3. If the consumer agrees to assume all or part of the responsibility of installation of his or her manufactured home, as defined at subsection 3.21 of this rule, then the agreement between the consumer and the dealer shall be rendered in writing, specifying each party's installation obligations.

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. The dealer or installer shall use an evaluation form as prescribed in subdivision 10B.6(b) of this rule, provide the consumer with a copy and maintain the form as a record of the conclusions and findings of the evaluation.

10B.5. Where the consumer has assumed the responsibility for site preparation that cannot be performed after the home is leveled as described in the initial home placement evaluation form in subsection 10B.4 of this rule or installation of footings, the licensed dealer or installer shall review these aspects of installation to determine if they have been completed in accordance with the installation standards in subsections 10A.2 and 10A.3 of this rule and document the findings and conclusions. The dealer or installer shall use a form as prescribed in subdivision 10B.6(b) of this rule, provide the consumer with a copy and maintain the form as a record of the conclusions and findings of the review.

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 or her manufactured home, as defined at subsection 3.21 of this rule.

(a) The on-site review shall be conducted not less than sixty (60) days nor 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 Division which identifies all elements of installation as set forth in subsection 3.21 of this rule.

(c) The form described in subdivision 10B.6(b) of this section shall be signed and dated by the dealer or installer conducting the on-site review and the consumer at the time of the review.

(d) The dealer or installer shall evaluate all aspects of the installation which were assumed by the consumer and note any deficiencies in the installation directly on the form.

10B.7. Reporting Requirement

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

(b) If the on-site review conducted pursuant to subdivision 10B.6(a) of this section reveals a deficiency, the 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 attach the form prescribed by subsection 10B.7(c) of this section to notify the consumer of the hazards and risks resulting from his or her failure to comply with his or her assumed obligations.

(c) The Division shall 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.8. All provisions of this rule, except those provisions that deal exclusively with the sale of a manufactured home, also apply to a licensed installer who contracts with a consumer to install part of the 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 of the manufactured home 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. A dealer, distributor or contractor is not 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 the 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. In addition to any requirements of the federal standards, the Board shall handle complaints regarding manufactured housing construction and safety standards or the Board's licensees, including but not limited to warranty claims, matters concerning the installation of the home and all matters covered by this rule.

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. Any licensee may file a complaint with the Board.

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 shall 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 shall review each written complaint received. If it appears that the matters raised in the complaint are outside the jurisdiction of the Board, the Division shall 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 shall conduct an investigation and inspection of the manufactured home and the relevant records of the manufacturer, dealer, distributor, contractor or installer.

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

13.6. If, upon investigation, the Division determines that a violation of any matter within the Board's jurisdiction as defined by this rule has occurred, the Division shall issue a Notice of Violation to any and all responsible licensees, specifying the condition found and the legal standard violated. If no standard has been violated it shall be so noted in writing to all parties involved. The Board shall afford the licensee receiving a Notice of Violation no longer than thirty (30) calendar days from receipt of notice 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 Notice of Violation or the reasonableness of the amount of time afforded to correct the condition violating the legal standard. If any person fails to timely request an informal presentation of views the Notice of Violation becomes a final order of the Board. The informal presentation of views shall be scheduled by the Division within thirty (30) 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, the division shall notify the licensee by certified mail of its findings within five (5) days of the conclusion of the informal presentation of views. The licensee may request in writing, within five (5) days from receipt of the

notice, the case be referred to the Board as a contested case.

13.9. The Board may refer the matter within five (5) days to a hearing examiner as a contested case hearing. The hearing examiner shall schedule the hearing to commence within forty-five (45) days of receipt of the referral. The hearing examiner shall send to the parties a written notice specifying the date, time and place of the hearing 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 shall be submitted within twenty (20) days of receipt of the transcript. The hearing examiner shall 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 this rule. The Board shall accept, reject or modify the recommended decision and issue a final order within thirty (30) days of the receipt of the decision.

§42-19-14. Disciplinary Sanctions.

14.1. The Board may impose sanctions upon any licensee 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 that 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 the manufactured home is not in conformity with applicable state or federal standards; or

(ii) any person who, prior to the first purchase, holds a certificate by the manufacturer or importer of the manufactured home to the effect that the manufactured home conforms to all applicable federal standards, unless the person knows that the manufactured home does not conform;

(b) 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;

(c) 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 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;

(d) the failure to establish and maintain records, make reports, and provide information as the Board required under this rule, or the failure to permit, upon request of a person duly authorized by the Board, the inspection or copying of appropriate books, papers, records, or documents, or the failure to permit entry or inspection relative to determining whether a manufacturer, dealer, distributor, or contractor has acted or is acting in compliance with this rule or the federal standards;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) the operation of any business location engaged in business in the state as a manufacturer, dealer, distributor, or contractor without a license;

(j) the failure to maintain adequate financial assurance as required by this rule;

(k) the refusal to allow the Board to conduct inspections as permitted by this rule;

(l) the failure to pay any fee required by law, this rule, or the federal standards;

(m) the removal of any HUD label or HUD data plate from a new or used manufactured home;

(n) 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;

(o) the violation of the state or federal transportation or installation standard applicable to a new or used manufactured home;

(p) engaging in any deception or false or fraudulent representations or deceitful practices in selling, obtaining financing to consummate a sale or representing a product whereby injury is or may be sustained by any consumer of a new or used manufactured home or the manufactured home industry. If the violation pertains to prohibited actions in obtaining financing, then the knowledge or complicity of the consumer shall not be considered as a defense to this violation;

(q) 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;

(r) the acceptance of a manufactured home by a dealer and/or distributor from a manufacturer not properly licensed by this State;

(s) the utilization of contract installation or repair services by a manufacturer, dealer or contractor/installer that is not properly licensed by this state;

(t) the misappropriation of funds of a consumer or prospective consumer of a new or used manufactured home;

(u) the failure to fulfill any written or implied warranty obligation applicable to any new or used manufactured home;

(v) the failure to comply with any order issued by the Board, or any settlement agreement

with the Board or Division; or

(w) the violation of any other rule promulgated by the Board.

14.2. Upon a determination by the Board that a person has committed any of the violations outlined in subsection 14.1 of this rule, the Board may apply any one or more of the following sanctions:

(a) a public reprimand;

(b) an administrative penalty not to exceed one thousand dollars (\$1000) per violation;

(c) suspension of the 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.

14.3. The Board may impose an administrative penalty 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.

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 subsections 4.3, 5.3, or 6.3 of this rule, as applicable.

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 subsections 4.3, 5.3, or 6.3 of this rule, as applicable.

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 designating its willingness to consider a re-application within its order of denial.

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

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.

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

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) for the purposes established at W. Va. Code §21-9-10.

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 shall pay the applicable assessment fee regardless of the balance of the Recovery Fund.

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).

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 that 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 Recovery Fund.

15.5. All fines paid to the Board pursuant to any disciplinary action conducted pursuant to this rule shall be deposited by the Board in 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 has been afforded an opportunity to be heard on a Notice of Violation issued, and has 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 shall 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; 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 manufactured 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 is 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 person owns five percent [5%] or more of the applicant until full reimbursement is made to the Recovery Fund.

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.

15.12. The Board may utilize any funds contained in the Recovery Fund in excess of four hundred thousand dollars (\$400,000) for 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.