

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Division of Labor TITLE NUMBER: 42

CITE AUTHORITY WV 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: West Virginia Manufactured Housing
Construction and Safety Standards Board

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

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Andrew A. Brown
Asst. to the Commissioner

7.60

TITLE 42
LEGISLATIVE RULES
DIVISION OF LABOR

SERIES 19
WEST VIRGINIA MANUFACTURED HOUSING, CONSTRUCTION AND
SAFETY BOARD

§42-19-1. General.

1.1. Scope. -- ~~These~~ This legislative ~~rules~~ rule govern licensing, fees, standards, the handling of complaints, sanctions, the recovery fund, and all other matters relevant to the designation of the Board 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. -- ~~April 8, 1991.~~

1.4. Effective Date. -- ~~April 8, 1991.~~

§42-19-2. Application and enforcement.

2.1. Application. -- ~~These~~ This legislative ~~rules~~ rule ~~shall apply~~ 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 ~~these~~ this legislative ~~rules~~ rule ~~shall be~~ is vested in 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.

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

3.6. "Contractor" 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 persons who do work on a manufactured home which is owned or leased by such person doing the work. Such operations include without limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission. The term "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 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.

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 the State in the sale and distribution of manufactured homes for resale.

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

3.16. "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. "HUD label" means the permanently affixed certification label placed on each manufactured home pursuant to the federal standards (24 CFR 3280.8).

3.18. "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 so requested in writing by the interested person within ten (10) days of receipt of the order adjudicating the informal presentation of views.

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 such proceedings before the Board.

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

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

3.24. "Manufactured home" means a structure, transportable in one (1) or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such 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 on site. Unless specifically indicated to the contrary herein, all references to a "manufactured home" means a new or used manufactured home.

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

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

3.27. "Purchaser" means the ~~first~~ person purchasing a manufactured home in good faith for purposes other than resale.

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

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

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

3.31. "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 ~~shall~~ is ~~be~~ considered to be engaged in business in the State, and 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 ~~shall be~~ is valid for up to one (1) year, and ~~shall expire~~ 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 as 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 as required by Section 16 of this rule;
- (h) a statement of compliance with all applicable state and federal standards;
- (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

rejected by the Board. It 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 these rules and with the applicable federal standards, including receipt of all DAPIA and IPIA approvals and certifications.

4.7. Initial and renewal licenses for manufacturers may be granted for some business locations and denied 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.

5.2. A dealer's and/or distributor's license ~~shall be~~ is valid for up to one (1) year, and ~~shall expire~~ 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 as required by Section 16 of this rule;
- (h) a statement of compliance with all applicable state and federal standards;
- (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 rejected by the Board. It 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. Initial and renewal licenses for dealers and/or distributors may be granted for some business locations and denied for others if the facts justify such action. However, if one business location qualifies as both a dealer and distributor under these regulations, 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 of 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 ~~shall be~~ is valid for up to one (1) year, and ~~shall expire~~ 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 as required by Section 16 of this rule; and
- (h) a statement of compliance with all applicable state and federal standards.

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 rejected by the Board. It 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).:

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, 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 license fee set forth in this section.

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. 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. 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 these rules 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 as defined by West Virginia Code §21-9-1, et seq and this rule.

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.

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

7.1. All ~~new~~ manufactured homes manufactured, shipped, imported, delivered, distributed, sold, leased, or installed into or in this state shall be in strict compliance with these rules 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 ~~herein 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. are hereby adopted in their entirety and incorporated by reference ~~herein 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 ~~herein 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).

§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 ~~these rules~~ this rule and the federal standards. ~~Such an~~ 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 shall be authorized to 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 ~~shall be~~ 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 such 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 ~~shall be~~ is authorized to 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 above.

8.7. The DAPIA and IPIA inspection fees ~~shall be~~ 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 ~~shall be~~ 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 ~~shall be~~ 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 of affixment of the HUD label; 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 ~~shall be~~ 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 ~~shall be~~ 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 such 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 ~~shall be~~ are due no later than October 31, January 31, April 30, and July 31, respectively.

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

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

9.12. Nothing in these rules shall be construed to excuse or exempt any manufacturer, dealer, distributor, contractor, DAPIA, or IPIA 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 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 ~~new and used~~ manufactured homes installed in the state shall be installed:

- (a) in accordance with the home manufacturer's recommendations contained in or accompanying the consumer manual required by 24 CFR 3283; or
- (b) in accordance with a competent design certified in writing by a registered professional engineer and/or architect; 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.

§42-19-11. Alterations and Repairs.

11.1. No alteration or repair shall be made to any ~~new or used~~ 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 so made do not directly create a condition of noncompliance which did not previously exist.

§42-19-12. Transportation.

12.1. The transportation of any ~~new or used~~ manufactured home shall be accomplished in a manner that allows the ~~new or used~~ 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 ~~new or used~~ 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 ~~the rules~~ this rule.

13.2. A copy of every complaint shall be forwarded to the person named in the complaint. Upon receipt, the person named ~~shall have~~ has twenty (20) 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 ten (10) 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 ~~shall not be~~ is not required, nor ~~shall~~ is cross-examination or rebuttal evidence ~~be~~ 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 thirty (30) 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 ten (10) days of receipt of the order adjudicating the informal hearing. The Board shall conduct a ~~A~~ contested case hearing ~~shall be conducted~~ 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 shall immediately terminate any related proceedings, and shall be is binding upon the Board and all interested parties.

13.9. All proceedings, reports, records, complaints, and nondeliberative materials of the Board shall be 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.

§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 aforementioned federal regulations are hereby adopted in their entirety and are incorporated by reference herein 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 ~~hereinabove~~ 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) ~~above~~ 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. Disciplinary Sanctions.

15.1. 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 home does not comply with such standard: provided however, that this subsection shall not apply to
 - (i) the sale or the offer for sale of any manufactured home after the first purchase of it in good faith for purposes other than resale,
 - (ii) any person who establishes that he 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
 - (iii) 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 these rules;
- (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 these rules, 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 these rules or the federal standards;
- (f) the issuance of a certification pursuant to 42 U.S.C. §5403(h) if said 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 such 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 criminal conviction 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 these rules;
- (m) the failure to pay any fee required by law, these rules, 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.
- (t) (u) the misappropriation of funds of a consumer or prospective consumer of a new or used manufactured home;
- (u) (v) the failure to fulfill any written or implied warranty obligation applicable to any new or used manufactured home;
- (v) (w) the failure to comply with any order issued by the Board, including any settlement order; and
- (w) (x) the violation of any other rule promulgated by the Board.

15.2. A determination by the Board that a person has committed any of the violations outlined in Section 15.1 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 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);
- (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. 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. 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. 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. A determination by the Board to deny an application for licensure shall ~~disqualify~~ 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 ten (10) 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.

15.8. Nothing in these rules 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. State Manufactured Housing Recovery Fund.

16.1. 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.

16.2. 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 be~~ are required to pay the applicable assessment fee regardless of the balance of the Recovery Fund.

16.3. Any manufacturer, dealer, distributor, or contractor who applies for license within sixty (60) days of the effective date of these rules 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. The Board ~~shall be~~ is authorized at any time to make special assessments upon all licensed manufacturers, dealers, distributors, and contractors if the Board determines that ~~such~~ 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. All assessments collected under the foregoing provisions 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. 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 ten (10) 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. Such compensation shall not include attorney's fees, punitive or exemplary damages, or other legal or court costs. It is the purpose of these rules 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 ~~shall have~~ has no claim, action, or legal right to any payment from the Recovery Fund. The decision to award compensation from the Recovery Fund ~~shall fall~~ falls solely within the sound discretion of the Board acting in accordance with these rules. In no event shall any aggrieved consumer be permitted to participate as an interested person in any Board action, nor shall such consumer be entitled to appeal, challenge, or contest the Board's direction to pay or to not pay compensation. It is the purpose of these rules to establish a Recovery Fund for the protection of manufactured home consumers, and to have the Board represent the interests of such 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 ~~shall~~ is authorized to suspend or revoke the license of such manufacturer, dealer, distributor, or contractor forthwith and 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 ~~shall be~~ is disqualified from maintaining any substantial ownership interest (five percent [5%] or more) in any other licensed manufacturer, dealer, distributor, or contractor. The Board ~~shall be~~ 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 ~~shall apply~~ 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.

16.13. Nothing in these rules shall be construed to limit or restrict in any manner other civil or criminal remedies available under the law to any person.

16.14. 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.

§42-19-17. Severability.

17.1. If any provisions of ~~these rules~~ this rule or ~~their~~ its application to any person ~~be~~ 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 ~~these rules~~ this rule are ~~declared to be~~ severable.

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U.S. DEPARTMENT OF JUSTICE