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Final Regulation Agency Background Document

Agency name	Virginia Department of Housing and Community Development (DHCD)
Virginia Administrative Code (VAC) citation	13 VAC 6-20
Regulation title	Manufactured Housing Licensing and Transaction Recovery Fund Regulations (MHLTRF Regulations)
Action title	Licensing changes of the Manufactured Housing Regulations.
Date this document prepared	11-19-2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The 2008 General assembly passed legislation that requires the MHLTRF Regulations be amended to comport with the legislation that prevents a licensee from circumventing the regulations by opening a new business while maintaining controlling interest in another business seeking licensure. There will be a proposed full review of licensing fees that will more adequately cover directly associated program costs. The amended changes clarify the regulations for posting of licenses and applications and fees being submitted by electronic methods. Changes recommended by the OAG are entered so that impacted parties are able to do business more efficiently and in a less costly manner. Several fees and assessments as noted in the MHLTRF are set forth in accordance to the Code of Virginia §36-85, et seq. These fees and assessments are proposed for review and change since there has been no proposed change in the current regulation or fees since they were established in 1996. The Code of Virginia §36-85.18 grants the Board power to levy fees that are sufficient to cover the expenses for administration of this chapter. The need to increase fees is due to the fact that cost to manage the HUD programs have increased. Also HUD has added two new programs; Dispute Resolution and Home Installation Programs. To increase these fees as found in §36-85.28, §36-85.31 and §36-85.32 requires the introduction of regulation.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Manufactured Housing Board adopted, as final, these proposed amendments to the Manufactured Housing Licensing and Transaction Recovery Fund Regulations at its meeting of January 14, 2010.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Code of Virginia §36-85.7 provides legal authority to the Virginia Manufactured Housing Board to issue licenses to manufacturers, dealers, brokers, and salespersons and to levy and collect fees that are sufficient to cover the expenses for the administration of these regulations. The Administrative Process Act § 2.2-4000 et seq. grants authority for the Manufactured Housing Board to promulgate the Manufactured Housing Licensing and Transaction Recovery Fund Regulations. The regulations are mandatory.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Manufactured Housing Board, with feedback from industry representatives, consumers and input from staff of the Department of Housing and Community Development, determined that licensure fees to support staff activities (inspecting manufacturing plants, investigating consumer complaints, conducting Informal Fact-finding Conferences, preparing and transcribing reports, conducting dealer lot inspections statewide) is not sufficient to cover these activities by tens of thousands of dollars. It is further determined that legislative fees and assessments set at the time of inception of these regulations has not kept pace with inflation. In addition, delivery of required services to industry members needs to be expanded by providing annual training, certification standards and educational programs. Also, means are proposed to find new methods and opportunities to advise consumers of their rights regarding warranties, installation responsibilities for manufactured homes, filing complaints and claims, as well as information to file appeals.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

13 VAC 6-20-10 Definitions. Add definition for "controlling financial interest" to comport with 2008 legislative changes. Add definition for "imminent safety hazard" as used in the existing regulation and as was recommended by the OAG. Adds definition for "substantial identity of interest" and "responsible Management" as recommended by the OAG. Changed definition of "Manufactured Home Dealer" to allow the sale of one home instead of two before you need to obtain a license. Added definition for "Reinstatement", this allows a regulant to have license reinstated if revoked by the Board. Added definition for "Renewal", allows regulant to renew license. Added definition for "Responsible management" describes who in company is responsible. Rewrote 13 VAC 6-20-20, 50, 90, 130 to explain renewal process and added language to indicate where license should be posted. Delete text in 13 VAC 6-20-80 which referred to definition of imminent safety hazard from another regulation and increased inspection/processing fee. Fees need to be increased to make program self funding. In addition, added text to allow 30 days to submit fees to DMV. 13 VAC 6-20-30, 60 and 100 indicates license applications can be by electronic means and added statement that holds licensee responsible for renewal. 13 VAC 6-20-130 clarifies that a salesperson can still be considered licensed while they are obtaining licensure within the prescribed time period. 13 VAC 6-20-110 and 120 add texts to enable the MHB not to issue a license to a person who circumvents the regulation by opening a new business and clarifies penalties to regulants. 13 VAC 6-20-170 and text to state Board may revoke license if licensee has a substantial identity of interest with a licensee who license has been revoke. This matches the text in HB 44. 13 VAC 6-20-200 allows electronic payments and proposes fee increases for licenses. This is the first ever increase in the fees. It was necessary to raise the fees due to the number of man hours spend enforcing two new federal regulations. The department current spends about 11648 man hours per year. The program was meant to be self funding, but with no increase in fees monies are taken from the general fund to supplement the budget. 13 VAC 6-20-201, 203 and 204 are new sections recommended by the OAG combining into one section reinstatement provisions and the related fees. The reinstatement fee includes the renewal cost plus a \$100 penalty that was in deleted text from 13 VAC 6-20-20. Deleted 13 VAC 6-20-250, this section disallowed a manufactured the right to operate a dealer ship. The Board felt this was a throw back to the auto dealerships and was not necessary.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The 2008 General Assembly passed legislation that requires the MHLTRF Regulations be amended to comport with the legislation. The new legislation prevents a licensee from circumventing the regulations by opening a new business if licensee maintained a substantial identity of interest in another business whose license was revoked. This legislation is an advantage to the public because it provides more assurance to consumers that a licensee will not have license revoke and open another business with another name in the Commonwealth. The requirement to increase fees is due in part to increase cost to manage the HUD programs. Two new programs have been added to the HUD program; Dispute Resolution and the Home Installation Program. To increase fees related to these programs require

legislative changes. The advantages of the enforcement of the programs is that consumers in the Commonwealth will be afforded added protection and additional venues to resolve disputes and complaints as well as added protection in the installation and set-up of their manufactured homes. An additional issue regarding fee increases is the result of increased costs and additional services by the Department with no increase having been applied since the inception of the program. These fees have not kept pace with inflation, required costs for delivery of services to consumers or industry representatives. The advantages for fee increases allows required annual training for industry representatives and installers, development of certification standards for installers, as well as development of educational programs for the public to be administered by the regulatory agency. It is proposed that new methods and opportunities be devised to advise consumers of their rights regarding warranties, installation responsibilities for manufactured homes, filing complaints and claims as well as information to file appeals.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	NONE		

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
NONE		

Enter any other statement here

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
6-20-10			Added Controlling financial interest to address the substantial identity of interest issues brought up by the General Assembly with the passing of House Bill 44. Added Imminent Safety Hazard per the recommendation of the Attorney General. Added definition for Reinstatement; license will expire if not renewed within 30 days of license expiration date. Gives incentive to renew. Added Renewal, defines difference between reinstate. Added definition Substantial Identity of Interest, address General Assembly concerns from HB 44. Changed definition of dealer to reflect HUD's definition
6-20-20A		Currently only states that license should be displayed	Requirement clarifying where license should be posted, OAG felt that instruction should be added.
6-20-20C		Described the renewal process.	Delete renewal process and add requirement that you must renew within 30 days or license will need to be reinstated.
6-20-20D			Added requirement to post license at each location, if operating more than one.
6-20-30A			Will accept applications by electronic means.
6-20-30C			Added failure to receive renewal notice will not relieve obligation to renew.
6-20-50A		Currently only states that license should be displayed.	Requirement for where license should be posted.
6-20-50C		Described the renewal process.	Deleted renewal process added requirement that you must renew within 30 days or license will need to be reinstated.
6-20-50D			Added requirement to post license at each location, if operating more than one.
6-20-60A			Will accept applications by electronic means.
6-20-60C			Added failure to receive renewal notice will not relieve obligation to renew.

6-20-80A			Deleted as defined in 13 VAC 5-95-10 of the Manufactured Home Safety Regulations, added definitions to these regulations.
6-20-80E		Dealer to collect title fees and taxes and forward to DMV	Section added to include an additional \$30.00 inspection fee, This fee was previously in 13VAC 6-20-200 and the amount was \$10.00 which was sent to DMV. The Board determined it was best to move this provision into this section. Also increase is the first ever increase.
6-20-80E1			Added 30 day requirement for fees and taxes to be paid to DMV. The Board determined that the dealer should be given time to submit monies.
6-20-80F			Add new section that requires each dealer to give buyer information on how to file a claim with DHCD.
6-20-90A		Currently only states that license should be displayed	Added language to specify where license should be posted, OAG felt that instruction should be added.
6-20-90C		Described the renewal process.	Delete renewal process and add requirement that you must renew within 30 days or license will need to be reinstated.
6-20-90D			Added requirement to post license at each location, if operating more than one.
6-20-100A			Added language that allows applications be submitted by electronic transfer.
6-20-100C			Also failure to receive renewal notice will not relieve obligation to renew.
6-20-120A			Deleted as defined in 13 VAC 5-95-10 of the Manufactured Home Safety Regulations, added definition to these regulations
6-20-120D		Broker to collect the fees and taxes and forward to DMV.	Section added to include \$30.00 inspection fee. This fee was previously in 13VAC 6-20-200 and the amount was \$10.00 which was sent to DMV. The Board determined it was best to put it in this section. Also increase is the first ever increase.
6-20-120D1			Added 30 day requirement for fees and taxes paid to DMV. Board felt that broker should be given time to submit monies.
6-20-130A		Currently only states that license should be displayed	Added language to specify where license should be posted, OAG felt that instruction should be added. Also added language to allow salesperson to sell manufactured homes after applying for a license but prior to receiving the license back from the board.
6-20-130C		Described the renewal process.	Delete renewal process and add requirement that you must renew within 30 days or license will need to be reinstated.
6-20-140A			Added language that allows applications be submitted by electronic transfer.
6-20-140C			Added failure to receive renewal notice will not relieve obligation to renew.

6-20-170A21			Added substantial identity of interest clause which prevents regulant from having license revoked and then going into business with another regulant.
6-20-180A			Added the word reinstatement, which is a new term.
6-20-180B		Assessments	Term changed to Monetary penalties and added reinstatement
6-20-180B1		Transaction Recovery Fund assessments	Term changed to Monetary penalties
6-20-180B2		Transaction Recovery Fund assessments	Term changed to Monetary penalties
6-20-180B3		Transaction Recovery Fund assessments	Term changed to Monetary penalties
6-20-190D		Appeal from the decision of the board	Section deleted per recommendation of the OAG.
6-20-200A			Added language to describe methods of payment and penalties for returned checks.
6-20-200A1		manufacturer's original license fee shall be \$600	Manufacturer's original license fee shall be \$700. Increased fee to offset rising cost to conduct business. First increases since fees were established in 1996.
6-20-200A2		manufacturer's renewal license fee shall be \$500	Manufacturer's renewal license fee increased to \$600. Increased fee to offset rising cost to conduct business; first increase since fees were established in 1996.
6-20-200A3		dealer's original license fee shall be \$150	Dealer's original license fee increased to \$200, increased fee to offset rising cost to conduct business, first increase since fees were established in 1996
6-20-200A4		dealer's renewal license fee shall be \$100	Dealer's renewal license fee increased to \$150 increased fee to offset rising cost to conduct business, first increase since fees were established in 1996
6-20-200A5		broker's original license fee shall be \$150	Broker's original license fee increased to \$200 increased fee to offset rising cost to conduct business, first increase since fees were established in 1996
6-20-200A6		broker's renewal license fee shall be \$100	Broker's renewal license fee increased to \$150 increased fee to offset rising cost to conduct business, first increase since fees were established in 1996
6-20-200A7		salesperson's original license fee shall be \$50	salesperson's original license fee increased to \$100 increased fee to offset rising cost to conduct business, first increase since fees were established in 1996
6-20-200A8		salesperson's renewal license fee shall be \$50	Salesperson's renewal license fee increased to \$100 increased fee to offset rising cost to conduct business, first increase since fees were established in 1996
	6-20-201		For license holders who fail to renew license within 30 days of expiration date, the licensee shall be required to reinstate the license. License holders who allow their license to expire and then apply for renewal

			cost the staff additional time.
	6-20-202		Added language to describe methods of payment and penalties for returned checks; also sets fees for reinstatement and eligibility requirements for reinstatement.
	6-20-203		Explained the status of the licensee during the period prior to reinstatement. This allows the licensee to remain under the full disciplinary authority of the Board during this period
	6-20-204		Board discretion to deny reinstatement of a license for the same reasons as it may refuse initial or renewal licensure or to discipline a regulant.
6-20-210			Added language to only require manufacturer sales agreements if such agreements are used by the manufacturer and dealer. Some manufacturers do not use these agreements.
6-20-250			Deleted this section which prohibited the operation or ownership of a dealership by a manufacturer, Board felt this was a throwback to the auto industry franchise regulations and not needed for manufactured homes.
6-20-350			Deleted as defined in 13 VAC 5-95-10 of the Manufactured Home Safety Regulations, added definition to these regulations.
6-20-460			Deleted renewal and added reinstatement

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Upon review of the regulations, the Board established a 30 days after the completion of sale compliance date for regulants to pay fees. Current regulation requires fees to be paid immediately after the completion of sale. In addition, the proposed regulations will allow for electronic submission of new licensees and renewal of license.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

A positive impact is expected from the changes to the regulations by improved and increased ability for families to 1) seek restitution against regulants who violate the regulations 2) have damage to the manufactured homes documented and addressed more effectively and 3) protecting consumers by not allowing regulants who violate the regulations to remain in business.