

NOTICE OF RULE ADOPTION—FINAL RULE

**STATE OF MISSISSIPPI
MISSISSIPPI DEPARTMENT OF INSURANCE
DIVISION OF THE FIRE MARSHAL**

Mississippi Department of Insurance
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Miss. Code Ann. § 25-43-3.108; House Bill 1435, 2008
Regular Legislative Session as codified in Miss. Code Ann. §
75-49-9(11); Miss. Code Ann. § 75-49-11 (Rev. 2008); and
upon agreement between the Mississippi State Fire Marshal's
Office, Factory Built Home Division ("Division") and the
Department of Housing and Urban Development ("HUD")

Specific Legal Authority authorizing the
promulgation of Rule:

Reference to Rules repealed, amended or suspended by the
Temporary Rule:
Emergency Regulation MH-2009-1

Date Rule Proposed: June 30, 2009

Explanation of the Purpose of the Proposed Rule and the reason(s) for proposing the rule:

The purpose of this Regulation is to establish and implement standards and requirements for an installation inspection program for all manufactured homes sited within the State of Mississippi. Said program shall be called the Mississippi Manufactured Home Installation Program.

The Agency Rule Making Record for this rule including any written comments received during the comment period and the record of any oral proceeding is available for public inspection by contacting the Agency at the above address.

An oral proceeding was held on this rule:

An oral proceeding was not held on this rule.

The Agency has considered the written comments and the presentations made in any oral proceedings, and

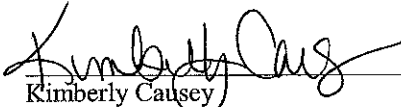
This rule as adopted is without variance from the proposed rule.

This rule as adopted differs from the proposed rule as there are minor editorial changes which affect the form rather than the substance of the rule.

The rule as adopted differs from the proposed rule. The differences however are:
Within the scope of the matters in the Notice of Proposed Rule Adoption, the logical outgrowth of the contents of the Notice of Proposed Rule Adoption and the comments submitted in response thereto, and
The Notice of Proposed Rule Adoption provided fair warning that the outcome of the proposed rule adoption could be the rule in question.

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.

Effective Date of Rule: November 5, 2009



Kimberly Causey
Special Assistant Attorney General
Mississippi Department of Insurance

**MISSISSIPPI DEPARTMENT OF INSURANCE
DIVISION OF THE FIRE MARSHAL
REGULATION MH-2009-01, as amended**

MANUFACTURED HOME INSTALLATION INSPECTION PROGRAM

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Section 1. Purpose

The purpose of this Regulation is to establish and implement standards and requirements for an installation inspection program for all manufactured homes sited within the State of Mississippi. Said program shall be called the Mississippi Manufactured Home Installation Program (hereinafter "MS Inspection Program").

Section 2. Authority

This Regulation is promulgated by the Commissioner of Insurance, in his duties as State Fire Marshal, pursuant to the authority granted to him by House Bill 1435, 2008 Regular Legislative Session as codified in Miss. Code Ann. § 75-49-9(11); Miss. Code Ann. § 75-49-11 (Rev. 2008); as well as the provisions of Mississippi Department of Insurance Regulation No. 88-101, said Regulation being the Rules of Practice and Procedure before the Mississippi Insurance Department; and upon agreement between the Mississippi State Fire Marshal's Office, Factory Built Home

Division (“Division”) and the Department of Housing and Urban Development (“HUD”), which requires the Division to conduct installation inspections of Manufactured Homes from and after July 1, 2009.

Section 3. Scope

This Regulation shall apply to all manufactured homes sited within the State of Mississippi installed on or after July 1, 2009.

Section 4. Definitions

- A. DAPIA – (Design Approval Primary Inspection Agency) is a state or private organization that has been accepted by the Secretary of Housing and Urban Development to evaluate and approve or disapprove manufactured home designs and quality control procedures.
- B. Developer – for the purposes of this Regulation, means any person who buys manufactured homes and real estate and then offers to sell or lease to the general public land-home “package deals” consisting of a manufactured home with real estate.
- C. Fire Marshal’s Office – the Division of the Department of Insurance that is responsible for the regulation of manufactured housing in the State of Mississippi, and includes the Commissioner of Insurance, the State Chief Deputy Fire Marshal, and deputy state fire marshals.
- D. Foundational Designs – designs by a licensed architect or engineer that sets forth the foundations requirements for the manufactured home.
- E. General Liability Insurance - a form of insurance that indemnifies against liability on account of injury to the person or property of another.
- F. Inspection Decal - the decal issued by the Fire Marshal’s Office that is to be placed on all new and used factory-built homes by the inspector at the time the installation has been approved. The label is to be affixed near the HUD seal at the rear of the home.
- G. Inspector – any person who is employed as a Deputy State Fire Marshal, or any person or entity designated and authorized by the State Fire Marshal’s Office pursuant to requirements set forth in Section 9 of this Regulation who conducts installation inspections pursuant to the MS Inspection Program.

- H. Installation - completion of work performed to stabilize, support, anchor, and close up a manufactured home and to join sections of a multi-section manufactured home sited in this state.
- I. Installation instructions - DAPIA-approved instructions provided by the home manufacturer that accompany each new manufactured home and detail the home manufacturer requirements for support and anchoring systems and other work completed at the installation site to comply with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 USCS 5401 et seq.) and as amended by the Manufactured Housing Improvement Act of 2000.
- J. Installer – for the purposes of this Regulation, means the person or entity who is retained to engage in, or who engages in, the business of directing, supervising, controlling, or correcting the installation of a manufactured home sited in this state. “Installer” shall not include persons who do not hold themselves out for hire to the general public for the purposes described in this definition.
- K. Manufactured Home – a new or used structure defined by, and constructed in accordance with, the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 USCS 5401 et seq.) and as amended by the Manufactured Housing Improvement Act of 2000. For the purposes of this Regulation, it also includes those structures defined as a mobile home pursuant to Miss. Code Ann. § 75-49-3.
- L. Manufacturer – any person engaged in the production (construction) of manufactured homes.
- M. Person – includes, unless the context indicates otherwise, corporations, companies, associations, firms, and partnerships, as well as individuals, but does not include any agency of government or tribal governmental entity.
- N. Retailer – any person engaged in the retail sale of new or used manufactured homes to the general public.
- O. Set up - any assembly or installation of a manufactured home onsite.
- P. Surety Bond - A type of bond which protects against loss due to the inability or refusal of an obligor to perform his or her contract.

Section 5. Mississippi Manufactured Home Installation Program Standards

The Mississippi Manufactured Home Installation Program Standards (hereinafter “MS

Installation Standards”) shall be the standards and requirements as set forth by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 USCS 5401 et seq.) and as amended by the Manufactured Housing Improvement Act of 2000, as same may be revised and amended; and Mississippi Department of Insurance Regulation MH-5, as amended.

Section 6. Licensure of Installers

Each installer must be licensed pursuant to Miss. Code Ann. § 75-49-9. Any person who knowingly and willfully fails to obtain a license in violation of Miss. Code Ann. § 75-49-9 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned not more than one (1) year, or both, pursuant to Miss. Code Ann. § 75-49-19.

Section 7. Surety Bond or Insurance

An applicant for an installation license must provide evidence of and must maintain a surety bond in the amount of Ten Thousand Dollars (\$10,000.00), or a general liability insurance policy with a minimum limit of coverage in the amount of Five Hundred Thousand Dollars (\$500,000.00) that will cover, among other things, the cost of repairing all damage to the home and its supports caused by the installer during the installation to bring the home into compliance.

Section 8. Installation Inspection Requirements

Beginning July 1, 2009, each manufactured home that is sited within the State of Mississippi shall be subject to inspection under the MS Inspection Program prior to occupation. Said inspection shall be conducted by an inspector assigned by the State Fire Marshal’s Office to verify that the installation of the manufactured home meets the MS Installation Standards.

Furthermore, each installer shall certify with the State Fire Marshal’s Office that they have installed said manufactured home in accordance with the requirements set forth by the MS Installation Standards.

(A) Installation Inspection Procedure:

- (1) Scheduling of Inspection: Three (3) business days prior to the completion of installation, minus skirting, the installer must contact the Fire Marshal’s Office with the information set forth in Exhibit “A” to arrange for an inspection of the work performed. However, the installer and retailer who contracted with the purchaser for the sale of the manufactured home may agree in writing that the retailer will arrange for the inspection within three (3) business days prior to the completion of installation. Such inspection shall be performed as soon as practicable by an inspector. The scope of the

inspections that are required to be performed is addressed in §8(B) of this Regulation.

- (a) Fees. The State Fire Marshal shall set a reasonable standard fee, which shall not be more than an amount allowed by HUD, for said inspection. The fee shall be paid by the installer, developer, or retailer and, absent a written agreement with the purchaser that specifically states the purchaser will directly pay for the inspection, the State Fire Marshal will not charge the fee to the purchaser of the manufactured home.
 - (b) Contract rights not affected. Failure to arrange for an inspection of a home within three (3) business days of the completed inspection will not affect the validity or enforceability of any sale or contract for the sale of any manufactured home.
 - (c) State or local permits. All necessary permit requirements under state law shall be obtained prior to installation.
- (2) Inspection Checklist: The installation of every manufactured home shall be inspected for each of the installation elements included in the checklist below. The checklist must include assurance that each of the following elements complies with the MS Installation Standards.
- (1) Transit/pre-occupancy damage
 - (2) Proper wind zones placement
 - (3) Soil conditions/Soil classifications and bearing capacity
 - (4) Site drainage
 - (5) Ground moisture control (vapor barrier)
 - (6) Pier construction/configuration/spacing
 - (7) Clearance under homes
 - (8) Required perimeter supports.
 - (9) Footings
 - (10) Ground anchor/stabilizer plates installations
 - (11) Skirting, if present
 - (12) Crawlspace ventilation
 - (13) Utility connections
 - (14) Interconnection of multi-section homes.
 - (15) Bottom board damage/repair
 - (16) Dryer venting/appliance installation
 - (17) Whole house ventilation
 - (18) Proprietary systems installation

(19) Final leveling of manufactured home.

(3) Reinspection upon failure to pass

(a) Procedures for failed inspection. If the inspector cannot verify the proper installation of the manufactured home, the inspector must immediately notify the installer of any failures to comply with the installation standards and provide a written explanation with the reasons why the inspector cannot approve installation. If a manufacturer, developer or retailer retained the installer, a copy of the written explanation shall also be sent to them. After the installation is corrected, it must be reinspected by an inspector before verification can be issued.

(b) Cost of reinspection. If there is any cost for the reinspection of a failed installation, that cost must be paid by the installer or, if the installer was retained by the manufacturer, developer or retailer, by them and, absent a written agreement with the purchaser that specifically states otherwise, that cost cannot be charged to the purchaser of the manufactured home. The fee shall be reasonable and shall not exceed the cost of the original inspection. If the manufacturer, developer or retailer retains the installer, they are jointly and severally responsible with the installer for correcting installation defects discovered at inspection.

(c) Scheduling of Reinspection: Within three (3) business days after completion of all work required by inspector, the installer must contact the Fire Marshal's Office to arrange for an inspection of the work performed. Such inspection shall be performed as soon as practicable by an inspector.

(B) Installer Certification of Installation

(1) When the installation work is complete, the installer shall certify in writing to the State Fire Marshal's Office in the form and manner provided in Exhibit "B" of this Regulation that:

(a) The manufactured home has been installed in accordance with:

(i) An installation design and instructions that have been provided by the manufacturer and approved by the Secretary for Housing and Urban Development directly or through review by the DAPIA; or,

(ii) An installation design and instructions that have been

prepared and certified by a professional engineer or registered architect, that have been approved by the manufacturer and the DAPIA as providing a level of protection for residents of the home that equals or exceeds the protection provided by in MH-5, as amended.

- (iii) If the installation instructions do not comply with the installation standards, the manufacturer is responsible for any aspect of installation that is completed in accordance with the installation instructions and that does not comply with the installation standards.
- (iv) If a manufactured home is used and the manufacturer instructions cannot be located, the installer shall comply with the provisions of MH-5, as amended, in installing the manufactured home.
- (v) If the manufacturer, developer or retailer retains the installer, they are jointly and severally responsible with the installer for correcting installation defects.

(b) The installation of the home has been inspected and an inspector has verified the installation as proper.

(c) All installation defects brought to the installer's attention have been corrected.

(d) The installer must also provide a signed copy of its certification to the retailer or developer that contracted with the purchaser or lessee for the sale or lease of the home, and to the purchaser or other person with whom the installer contracted for the installation work. This certification is verification that the installation has passed final inspection.

(C) Inspection Decal:

- (1) Upon passing of final inspection, the inspector shall permanently attach a serial numbered inspection decal near the HUD label on new or used manufactured homes built after June 1976, and opposite the hitch-end of manufactured homes built prior to or on June 1976, an inspection decal to each manufactured home accepted as proof that the manufactured home installation meets the MS Installment Standards as set forth in MH-5, as amended.

- (2) The State Fire Marshal's Office will supply inspection decals to each inspector. Each decal will have the installer's name, address, date of installation and license number, and will bear the following statement:

THIS FACTORY-BUILT, MOBILE OR MODULAR HOME HAS BEEN INSTALLED IN COMPLIANCE WITH THE UNIFORM STANDARDS CODE FOR THE FACTORY-BUILT HOMES LAW. ANYONE TAMPERING WITH OR REMOVING THIS INSPECTION DECAL FROM THIS UNIT WILL BE PROSECUTED AS SET FORTH IN THESE RULES AND REGULATIONS, AND SHALL BE SUBJECT TO SUSPENSION OR REVOCATION OF THEIR PRIVILEGE LICENSE. (SECTION 75-49-1 ET SEQ., CODE OF MISSISSIPPI (1972), AS AMENDED)

Section 9. Inspector Qualifications

Any person who is a Deputy State Fire Marshal may conduct inspections pursuant to this Regulation. Furthermore, the State Fire Marshal's Office may designate and authorize persons or entities to conduct these inspections provided they meet the following qualifications.

- (A) Qualifications. Any individual or entity who meets at least one of the following qualifications may be designated or authorized by the State Fire Marshal to review the work and verify the installation of a manufactured home:
- (1) A professional engineer;
 - (2) A registered architect;
 - (3) A HUD-accepted Production Inspection Primary Inspection Agency (IPIA) or a Design Approval Primary Inspection Agency (DAPIA);
 - (4) An International Code Council certified inspector; or
 - (5) Any person or entity who has three (3) years or more experience in inspecting homes or experience in the manufactured housing industry, provided the Commissioner finds to his satisfaction that said person or entity is qualified and competent to fulfill the responsibilities of an inspector.
- (B) Independence required. The inspector must be independent of the manufacturer, the retailer, the installer, and any other person that has a monetary interest, other than collection of an inspection fee, in the completion of the sale of the home to the purchaser.
- (C) Suspension or revocation of inspection authority. The Commissioner may, in writing, suspend or revoke an inspector's authority to inspect manufactured home installations for cause. In deciding whether to suspend or revoke an inspector's authority to conduct such installation inspections, the Commissioner may consider

the impact of the suspension or revocation on other affected parties and will seek to assure that the sales and siting of manufactured homes are not unduly disrupted

Section 10. Recordkeeping

The installer must retain the following for a period of three (3) years after certification of installation is received:

- (1) A record of the name and address of the purchaser or other person with whom the installer contracted for the installation work and the address of the home installed;
- (2) A copy of the contract pursuant to which the installer performed the installation work;
- (3) A copy of any notice from an inspector disapproving the installation work;
- (4) A copy of the installer's certification of completion of installation in accordance with the MS Installation Standards as set forth in MH-5, as amended; and,
- (5) A copy of foundation designs used to install the manufactured home, if different from the designs provided by the manufacturer, including evidence that the foundation designs and instructions were certified by a professional engineer or registered architect, including the name, address, and telephone number of the professional engineer or architect certifying the designs.

Section 11. Verification of Installer License

When the retailer or manufacturer agrees to provide any set up in connection with the sale of a manufactured home, the retailer or manufacturer must verify that the installer is licensed pursuant to Miss. Code Ann. § 75-49-9.

Section 12. Temporary Storage of Units

Every manufacturer, distributor, retailer, or installer that has possession of a new home for more than thirty (30) days is required to support each transportable section of a manufactured home that is temporarily located on a site used by that manufacturer, distributor, retailer, or installer in accordance with the manufacturer's instructions. Every manufacturer, developer, retailer or installer that has possession of a used home for more than thirty (30) days that will be used for human habitation will be required to provide minimum support for the home by providing blocking at the four (4) end corners of the home.

Section 13. Site Preparation by Consumer

The manufacturer, retailer or installer may agree in writing to allow the consumer to conduct the site preparation for the manufactured home installation. However, before the installer may begin installation of the manufactured home, the site preparation must meet the requirements set forth in MH-5, as amended. If there is conflict between the installer and the consumer regarding the site preparation, the State Fire Marshal's Office may be required to mediate. Any fee charged by the State Fire Marshal's Office due to said mediation will be paid by the consumer.

Section 14. Waiver of Rights Invalid

Any provision of a contract or agreement entered into by a manufactured home purchaser that seeks to waive any recourse under the MS Installation Program is void, except a waiver provision may be allowed for any agreement entered into pursuant to the provisions of Section 13 of this Regulation.

Section 15. Violations and Penalties

Failure of a retailer or installer or both to comply with a material provision of this Regulation is considered a violation of Miss. Code Ann. § 75-49-7(2). The State Fire Marshal may deny a license application or suspend or revoke a license, or may impose an administrative fine, or both as provided in Miss. Code Ann. § 75-49-19, after giving notice of hearing to the applicant or licensee by serving a written statement of charges on the licensee at least twenty (20) days prior to hearing, in the manner provided for in Miss. Code Ann. § 75-49-13 for any violation of this Regulation.

Section 16. Severability

If any section or portion of a section of this Regulation or the application thereof is held by a court to be invalid, such invalidity shall not affect any other provision of that section or application of the Regulation which can be given effect without the invalid provision or application, and to this end the provisions of the Regulation are declared to be severable.

Section 17. Effective Date

The Effective Date of this amended Regulation shall be November 5, 2009.


MIKE CHANEY
COMMISSIONER OF INSURANCE

EXHIBIT "A"
STATE OF MISSISSIPPI
FIRE MARSHAL'S OFFICE / FACTORY-BUILT HOME DIVISION
POST OFFICE BOX 79, JACKSON, MS 39205
(601) 359-1061 - WATTS NO: 1-888-648-0877 - FAX NO: (601) 359-1076

INSTALLER REQUEST FOR INSPECTION

RETAILER/DEVELOPER

Name: _____
License No: _____
Address: _____
City/State/Zip Code: _____
Telephone #: _____
Fax #: _____

INSTALLER/TRANSPORTER

Name: _____
License No: _____
Address: _____
City/State/Zip Code: _____
Telephone #: _____
Fax #: _____
Email (if available) : _____

CONSUMER

Name: _____
E911 Address: _____
City/State/Zip Code: _____
Telephone #: _____
County where home is located: _____
Date/Time of Installation: _____

Serial #: _____ Size: _____
HUD #: _____
Wind Zone: _____
Year/Make/Model: _____
New: _____ Used: _____
Manufacturer: _____

LOCATION: Directions must start from a known (be specific) starting point so that the Field Inspector may proceed to the location of the manufactured home. For example, use route # and pertinent street and road names. Use left, right or preferably compass directions, (north, south, east, west). Refrain from the use of such landmarks as dealerships, vehicles, and service stations, as they are subject to name changes and physical relocation. As an option, a GPS Coordinate may be provided in Degree/Decimal format (32.30411,-9018356)

INSTRUCTIONS: PLEASE COMPLETE BELOW. A DEPUTY WILL BE ASSIGNED AND AN INSPECTION WILL BE SCHEDULED IN A REASONABLE TIME.

I HEREBY CERTIFY THAT THIS HOME IS INSTALLED ACCORDING TO THE MANUFACTURER'S SPECIFICATIONS OR, IF A USED HOME, MH-5, AS AMENDED AND IS READY FOR INSPECTION ON THIS DATE:
_____ DAY OF _____, 2009.

(Print Name)

(Signature)

EXHIBIT "B"
STATE OF MISSISSIPPI
FIRE MARSHAL'S OFFICE / FACTORY-BUILT HOME DIVISION
POST OFFICE BOX 79, JACKSON, MS 39205
(601) 359-1061 - WATTS NO: 1-888-648-0877 - FAX NO: (601) 359-1076

INSTALLER CERTIFICATE OF INSPECTION

RETAILER/DEVELOPER

INSTALLER/TRANSPORTER

Name: _____

Name: _____

License No: _____

License No: _____

Address: _____

Address: _____

City/State/Zip Code: _____

City/State/Zip Code: _____

Telephone #: _____

Telephone #: _____

Fax #: _____

Fax #: _____

Inspection Decal No: _____

CONSUMER

Name: _____

Serial #: _____ Size: _____

E911Address: _____

HUD #: _____

City/State/Zip Code: _____

Wind Zone: _____

Telephone #: _____

Year/Make/Model: _____

County where home is located: _____

New: _____ Used: _____

Date/Time of Installation: _____

Manufacturer: _____

GPS Coordinates: _____

I HEREBY CERTIFY THAT THIS HOME IS INSTALLED ACCORDING TO THE MANUFACTURER'S SPECIFICATIONS OR, IF A USED HOME, MH-5, AS AMENDED, AND IS READY FOR INSPECTION ON THIS DATE: _____ DAY OF _____, 2009.

(Print Name)

(Signature)

I HEREBY CERTIFY THAT THIS HOME HAS PASSED INSPECTION.

INSPECTOR

DATE