

August 1, 2005

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS

FROM: Acting Executive Director /S/  
Immigration Policy and Programs

SUBJECT: Setting of Modular Homes

A question has arisen regarding permissible activities relating to delivering and "setting" of modular homes under the B-1 visitor for business provisions.

Current field guidance in the Inspector's Field Manual (IFM) Chapter 21.13 regarding the entry of commercial truck drivers includes a discussion of movements and activities permitted by foreign drivers entering from Canada or Mexico. Based on case law and precedent decisions, drivers may perform activities that are "necessary incidents" of international commerce, or a necessary function of delivery, such as loading, unloading, or securing international cargo. The example used in the guidance permits drivers delivering a portable dwelling to secure the dwelling, but not to participate in construction activities, as is prohibited by regulation.

It has come to our attention that some foreign drivers delivering portable housing or modular homes to the United States are engaging in activities that constitute building and construction work in violation of immigration law. "Setting" the modular home goes beyond merely ensuring safe delivery and unloading of the cargo to prevent damage.

Therefore, IFM Chapter 21.13(d)(7) is revised to read as follows:

(7) Necessary Incidents. Drivers may perform activities that are "necessary incidents" of international commerce, or a necessary function of delivery, such as loading or unloading international cargo. In addition to loading and unloading, the driver may participate in activities to safeguard the cargo, as needed. For instance, an alien driver delivering a portable dwelling (i.e. modular home) or prefabricated parts (i.e. modules) may unload the dwelling or prefabricated parts and any required ~~supplementary~~ <sup>supplementary</sup> foundation, including temporary stanchions, shipped with the dwelling to its delivery point in the United States. However, the alien

driver, and any other personnel admitted as a B-1 visitor who is involved in the delivery, may not engage in building, construction, or other activities, such as clearing or leveling the site, sealing seams, installing steps, hooking up utilities, attaching the portable dwelling or prefabricated parts to the foundation or slab, assembling of the various parts of the portable dwelling or prefabricated parts, and/or securing them to one another. Drivers may not return to U.S. job sites to unload, move or affix previously delivered parts of a building.

Other minor conforming revisions have been made to update IFM Ch. 21.13. Questions regarding this memorandum may be addressed to Linda Loveless at (202) 344-2493.

*Linda M. Loveless (for)*  
Michael J. Hrinyak /S/

Attachment