



**State of New York  
Department of State  
Division of Code Enforcement and Administration**

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**Rules and Regulations - Department of State**

**TITLE 19 (NYCRR)  
CHAPTER XXXII - DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION**

**PART 1210 - MANUFACTURED HOMES REGULATIONS**

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**§1210.1 Purpose and applicability.**

(a) *Purpose.* Article 21-B of the Executive Law (Executive Law sections 600, et seq) provides for the initial training, certification, and continuing education of manufacturers, retailers, installers, and mechanics of manufactured homes, establishes procedures for the resolution of disputes relating to manufactured homes, and otherwise implements the provisions of the federal Manufactured Housing Improvement Act of 2000 (PL 106-569). This Part implements the provisions of Article 21-B of the Executive Law.

(b) *Applicability.* This Part applies to manufactured homes; to persons and business entities engaged in the manufacture, sale, installation and service of manufactured homes; to purchasers of manufactured homes; to resolution of disputes relating to manufactured homes; and to other matters that are subject to Article 21-B of the Executive Law. The term "manufactured home" is defined in Article 21-B of the Executive Law as follows: a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty 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. The term shall include any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States code; and except that such term shall not include any self-propelled recreational vehicle.

(c) *Modular homes.* This Part does not apply to "factory manufactured homes" (factory manufactured homes being commonly referred to as "modular homes"). Part 1209 of this Title (19 NYCRR sections 1209.1, et seq.) applies to factory manufactured homes. The term "factory manufactured home" is defined in Part 1209 of this Title as follows: a structure designed primarily for residential occupancy, constructed by a method or system of construction whereby the structure or its components are wholly or in substantial part manufactured in manufacturing facilities, intended or designed for permanent installation, or assembly and permanent installation, on a building site.

## §1210.2 Definitions.

For the purposes of this Part:

(a) The term *acceptable deposit account control agreement* shall mean an agreement which identifies a deposit account having a balance of not less than \$50,000 in the case of an applicant for certification as a manufacturer or a certificate holder certified as a manufacturer, not less than \$25,000 in the case of an applicant for certification as a retailer or a certificate holder certified as a retailer, not less than \$10,000 in the case of an applicant for certification as an installer or a certificate holder certified as an installer, and not less than \$5,000 in the case of an applicant for certification as a mechanic or a certificate holder certified as a mechanic, and which grants the Department of State a security interest in and control of such deposit account; provided that:

(1) such agreement is in form provided by or otherwise acceptable to the Department of State; is executed by an applicant for certification or a certificate holder, as the depositor-debtor; is executed by the bank with which such deposit account is maintained, as depository; and includes:

(i) an agreement by the depository and the depositor-debtor that the Department of State may withdraw funds from the deposit account and apply such funds toward any permitted application, and that funds in the deposit account will be paid to the Department of State, upon written demand by the Department of State, for application by the Department of State toward any permitted application;

(ii) provisions granting the Department of State a security interest in the deposit account to secure the obligation of the depositor to pay the claims, pay the penalties, take the repairs or corrective actions, and satisfy the Article 21-B orders and Article 21-B judgments mentioned in subdivision (x) of this section, and to secure the right of the Department of State to withdraw funds from the account and to apply such funds toward any permitted applications;

(iii) provisions granting the Department of State control (as that term is used in article 9 of the uniform commercial code) of the deposit account, including but not necessarily limited to an agreement by the depositor-debtor, the Department of State, and the depository that the depository will comply with instructions originated by the Department of State directing disposition of the funds in the account without further consent by the depositor-debtor;

(iv) an agreement by the depository that any security interest in, or right of recoupment or set off against, the account then held or thereafter acquired by the depository is and shall be subject and subordinate to the security interest granted to the Department of State;

(v) an agreement by the depositor-debtor and the depository that no withdrawal or other payment may be made from the account for any purpose (including but not limited to application toward any debt or obligation secured by or subject to any security interest or right of recoupment or set off now held or hereafter acquired by the depository), if such withdrawal or payment would cause the balance of the account to be reduced below the applicable minimum balance, without the written consent of the Department of State; and

(vi) such other certifications, acknowledgments, agreements, terms, and provisions as may be required by the Department of State;

(2) such deposit account is a deposit account (as that term is defined in section 9-102(a)(29) of the uniform commercial code); has no stated date of maturity; and is not subject to any pledge, security interest, right of recoupment, or right of set off, other than the security interest granted to the Department of State; and

(3) the bank with which such deposit account is maintained is a bank (as that term is defined in section 9-102(a)(8) of the uniform commercial code); is authorized to engage in the business of

banking in the State of New York; has the State of New York as its jurisdiction for the purposes of section 9-304 of the uniform commercial code; and is acceptable to the Department of State;

(b) The term *acceptable letter of credit* shall mean a letter of credit which:

(1) is in form provided by or otherwise acceptable to the Department of State;

(2) is issued by a bank or other financial institution which is qualified to do business in the State of New York and to issue letters of credit in the State of New York, and which is acceptable to the Department of State;

(3) names an applicant for certification or a certificate holder as the account party, and names the Department of State as the beneficiary;

(4) is in the sum of \$50,000 in the case of an applicant for certification as a manufacturer or a certificate holder certified as a manufacturer, in the sum of \$25,000 in the case of an applicant for certification as a retailer or a certificate holder certified as a retailer, in the sum of \$10,000 in the case of an applicant for certification as an installer or a certificate holder certified as an installer, and in the sum of \$5,000 in the case of an applicant for certification as a mechanic or a certificate holder certified as a mechanic;

(5) expressly provides that such letter of credit is irrevocable; is valid for a stated period of time of not less than one year; that such letter of credit will be automatically extended without amendment (other than expiration date) for a like period of time from the present or any future expiration date unless the issuer shall notify the Department of State in writing, by registered or certified mail, return receipt requested, received by the Department of State not less than 60 days prior to the present or any future expiration date, that the issuer elects not to extend such letter of credit; and that if the issuer gives such notice, the Department of State may draw upon such letter of credit up to the full amount thereof;

(6) provides any sum or sums, up to the stated limit mentioned in paragraph (4) of this subdivision, will be made available to the Department of State, and paid to the Department of State by the issuer, upon the presentation of the draft of the Department of State drawn on the issuer and accompanied by the statement signed by an employee or representative of the Department of State and indicating that the sums drawn are to be applied toward one or more permitted applications or that the Department of State has received notice of the issuer's election not to extend such letter of credit; and

(7) includes such other certifications, acknowledgments, agreements, terms, and provisions as may be required by the Department of State;

(c) The term *acceptable surety bond* shall mean a surety bond which:

(1) is in form provided by or otherwise acceptable to the Department of State;

(2) is executed by an applicant for certification or by a certificate holder, as principal, and by a surety company qualified to do business as a surety in the State of New York and acceptable to the Department of State, as surety;

(3) is in the principal amount of \$50,000 in the case of an applicant for certification as a manufacturer or a certificate holder certified as a manufacturer, in the principal amount of \$25,000 in the case of an applicant for certification as a retailer or a certificate holder certified as a retailer, in the principal amount of \$10,000 in the case of an applicant for certification as an installer or a certificate holder certified as an installer, and in the principal amount of \$5,000 in the case of an applicant for certification as a mechanic or a certificate holder certified as a mechanic;

(4) is payable to the Department of State;

(5) provides that the Department of State may apply payments under the surety bond, up to the stated principal amount of the surety bond, toward any permitted application; and

(6) includes such other certifications, acknowledgments, agreements, terms, and provisions as may be required by the Department of State;

(d) The term *Article 21-B* shall mean article 21-B of the executive law, as currently enacted and as hereafter amended from time to time;

(e) The term *Article 21-B introductory course* shall mean a three hour course of instruction covering the requirements of Article 21-B and of this Part and such other topics related to manufactured homes as the Department of State may deem to be appropriate, and provided by the Department of State or by an instructional provider approved by the Department of State;

(f) The term *Article 21-B judgment* shall mean a judgment entered or made by a court of competent jurisdiction in an action or proceeding involving an allegation that a substantial defect exists in the delivered condition, installation, service, or construction of a manufactured home, including, but not limited to, a judgment which is made in an action or proceeding commenced to review an Article 21-B order and which confirms, affirms, annuls, reverses, modifies, or otherwise affects such Article 21-B order;

(g) The term *Article 21-B order* shall mean:

(1) a consent order made pursuant to subdivision (f) of section 1210.18 (Resolution of disputes) of this Part;

(2) a decision made by an administrative law judge pursuant to subdivision (g) of said section 1210.18 which has become final and binding;

(3) a decision and order made by the Secretary of State or his or her designee pursuant to subdivision (h) of said section 1210.18 which confirms or supercedes a decision of an administrative law judge and which has become final and binding; or

(4) a consent order, a decision of an administrative law judge, or a decision and order of the Secretary of State or his or her designee, which is made pursuant to subdivision (f), (g), or (h) of said section 1210.18 and which is reviewed in any judicial action or proceeding; provided, however, that if such consent order, decision, or decision and order is confirmed, affirmed, annulled, reversed, modified, or otherwise affected in such judicial action or proceeding or in any appeal taken in such judicial action or proceeding, the term *Article 21-B order* shall mean such consent order, decision, or decision and order as so confirmed, affirmed, annulled, reversed, modified, or otherwise affected;

(h) The term *certificate holder* shall mean a person or business entity holding a valid certification as a manufacturer, retailer, installer, or mechanic;

(i) The term *certification* shall mean a certification issued by the Department of State to a manufacturer, retailer, installer, or mechanic pursuant to Article 21-B;

(j) The term *certified* shall mean certified by the Department of State as a manufacturer, retailer, installer, or mechanic pursuant to Article 21-B;

(k) The term *complaining party* shall mean any homeowner, manufacturer, retailer, installer, mechanic, or lending entity filing a complaint under the dispute resolution procedures described in section 1210.18 (Resolution of disputes) of this Part;

(l) The term *equivalent of a high school graduate* shall mean a person who:

(1) holds a high school equivalency diploma issued by an education department of any of the states of the United States, or a comparable diploma issued by any commonwealth, territory or possession of the United States or by the Canal Zone, or a report from the United States armed forces certifying such person's successful completion of the tests of general educational development, high school level; or

(2) establishes to the reasonable satisfaction of the Department of State that he or she can comprehend written manufactured home installation instructions, written manufactured home service instructions, and other similar written material on a level which is at least equivalent to a high school graduate;

(m) The term *homeowner* shall mean an owner of a manufactured home; provided, however, that the term homeowner shall not include the manufacturer of the manufactured home or a retailer who owns the manufactured home for the purposes of resale;

(n) The term *HUD data plate* shall mean the data plate required to be affixed to a manufactured home pursuant to 24 CFR section 3280.5, as currently in effect and as hereafter amended from time to time, or any similar regulation that may hereafter be promulgated by the United States Department of Housing and Urban Development;

(o) The term *installer's warranty seal* shall mean a New York State installer's warranty seal obtained by an installer from the Department of State pursuant to section 603(2) of the Executive Law;

(p) The term *limited certificate* shall mean a certificate issued to a person pursuant to subdivision (c) of section 1210.4 (Standards for certification as a manufacturer) of this Part, subdivision (d) of section 1210.5 (Standards for certification as a retailer) of this Part, subdivision (f) of section 1210.6 (Standards for certification as an installer) of this Part, or subdivision (f) of section 1210.7 (Standards for certification as a mechanic) of this Part;

(q) The terms *manufactured home park* and *manufactured home tenant* shall have the meanings ascribed to such terms in section 233 of the Real Property Law;

(r) The term *manufactured housing* shall mean one or more manufactured homes;

(s) The term *manufactured housing unit* shall mean a manufactured home;

(t) The term *manufacturer's warranty seal* shall mean a New York State manufacturer's warranty seal obtained by a manufacturer from the Department of State pursuant to section 603(1) of the Executive Law;

(u) The term *non-retail sale* shall mean:

(1) the sale of a manufactured home to a certified retailer for the purpose of resale by such certified retailer, or

(2) the resale of a manufactured home by a person who, in good faith, originally purchased such manufactured home for such person's personal residential use, or

(3) the sale of a manufactured home by a referee or any similar officer in connection with the foreclosure of a security interest, mortgage, or other lien in or on such manufactured home, or by a lending entity acting pursuant to a power of sale in any security agreement, mortgage, or other document creating a security interest, mortgage, or other lien in or on such manufactured home, or

(4) the sale of a manufactured home by the owner or operator a manufactured home park to a new manufactured home tenant in such manufactured home park, provided that:

(i) such manufactured home was previously installed in such manufactured home park and was previously occupied by a former manufactured home tenant in such manufactured home park;

(ii) the owner or operator of such manufactured home park acquired such manufactured home from such former manufactured home tenant;

(iii) such manufactured home is not moved or to be moved to a new site following the sale to such new manufactured home tenant; and

(iv) the owner or operator of such manufactured home park has not made more than 3 similar sales in the 12 months preceding such sale;

(v) The term *owner-occupant installer certificate* shall mean a certificate issued to a person pursuant to subdivision (h) of section 1210.6 (Standards for certification as an installer) of this Part;

(w) The term *Part 400 of this Title* shall mean Part 400 (Hearing Rules of Procedure) of this Title (19 NYCRR section 400.1, et seq.), as currently in effect and as hereafter amended from time to time;

(x) The term *permitted applications* shall mean the manners in which the Department of State may apply funds withdrawn from a deposit account evidenced by an acceptable deposit account control agreement, or sums drawn under an acceptable letter of credit, or payments made under an acceptable surety bond, and shall include the following:

(1) payment of any claim arising by reason of any failure by the depositor, account party or principal, as the case may be, to comply with any applicable provision of Article 21-B or this Part;

(2) payment of any penalty levied or assessed against the depositor, account party or principal, as the case may be, under Article 21-B or this Part;

(3) payment for repairs or other corrective actions directed to be made or taken by any Article 21-B order made against the depositor, account party or principal, as the case may be, or payment of such sums as may be required otherwise to satisfy such Article 21-B order;

(4) payment for repairs or other corrective actions directed to be made or taken by any Article 21-B judgment entered against the depositor, account party or principal, as the case may be, or payment of such sums as may be required otherwise to satisfy such Article 21-B judgment;

(5) payment of any claim arising by reason of any failure by any employee holding a limited certificate to comply with any applicable provision of Article 21-B or this Part while acting as an employee of the depositor, account party or principal, as the case may be;

(6) payment of any penalty levied or assessed under Article 21-B or this Part against any employee holding a limited certificate in connection with any act or omission of such employee while acting as an employee of the depositor, account party or principal, as the case may be;

(7) payment for repairs or other corrective actions directed to be made or taken by any Article 21-B order made against any employee holding a limited certificate in connection with any act or omission of such employee while acting as an employee of the depositor or principal, or payment of such sums as may be required otherwise to satisfy such Article 21-B order; and

(8) payment for repairs or other corrective actions directed to be made or taken by any Article 21-B judgment entered against any employee holding a limited certificate in connection with any act or

omission of such employee while acting as an employee of the depositor or principal, or such sums as may be required otherwise to satisfy such Article 21-B judgment;

(y) The term *person* shall mean an individual;

(z) The term *required disclosure statement* shall mean any written disclosure statement which a manufacturer, retailer, or lending entity is required to provide to the purchaser or purchasers of a manufactured home pursuant to any applicable federal or state statute or regulation, and which is required to include a statement of all costs and expenses incidental to the purchase, financing and/or installation of such manufactured home;

(aa) The term *responding parties* shall mean the manufacturer, the retailer, and the installer of a manufactured home which is the subject of a complaint filed under the dispute resolution procedures described in section 1210.18 (Resolution of disputes) of this Part, and, if applicable, each mechanic who serviced such manufactured home, and the term "responding party" shall mean any one of the responding parties;

(ab) The term *substantial defect* shall mean a defect or a number of defects or other conditions in the delivered condition, installation, service, or construction of a manufactured home which collectively can reasonably be expected to cost five hundred dollars or more to cure;

(ac) The term *Uniform Code* shall mean the New York State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time; and

(ad) The following terms shall have the meanings ascribed to such terms in section 601 of the Executive Law:

- (1) business entity;
- (2) delivered condition;
- (3) installation;
- (4) installer;
- (5) lending entity;
- (6) manufactured home;
- (7) manufacturer;
- (8) mechanic;
- (9) retailer;
- (10) service;
- (11) State administrative agency;
- (12) SAA; and
- (13) advisory council.

### **§1210.3 Certification.**

(a) *Certification.* On and after July 1, 2006, no person or business entity shall manufacture any

manufactured home outside the State of New York for sale into the State of New York, or manufacture, sell (other than in a non-retail sale), install, or service any manufactured home in the State of New York, unless such person or business entity has obtained the appropriate certification from the Department of State pursuant to Article 21-B.

(b) *Presence of certified installer during installation.* On and after July 1, 2006, no manufactured home shall be installed in the State of New York unless at least one person certified by the Department of State as an installer is present at the home site during the installation. The presence of a person holding a limited certificate issued pursuant to subdivision (f) of section 1210.6 (Standards for certification as an installer) of this Part at the home site during the installation shall be deemed to satisfy this requirement if, but only if, such person was acting within the scope of his or her employment by the employer named in such person's limited certificate during such installation. The presence of a person holding an owner-occupant installer certificate at the home site during the installation shall be deemed to satisfy this requirement only in connection with the installation of the manufactured home which is identified in such owner-occupant installer certificate and which is or is to be owned and occupied by the person holding such owner-occupant installer certificate.

(c) *Presence of certified installer or mechanic during service.* On and after July 1, 2006, no manufactured home shall be serviced in the State of New York unless at least one person certified by the Department of State as an installer or as a mechanic is present at the home site during the service. The presence of a person holding a limited certificate issued pursuant to subdivision (f) of section 1210.6 (Standards for certification as an installer) of this Part or subdivision (f) of section 1210.7 (Standards for certification as a mechanic) of this Part at the home site during the service shall be deemed to satisfy this requirement if, but only if, such person was acting within the scope of his or her employment by the employer named in such person's limited certificate during such service. The presence of a person holding an owner-occupant installer certificate at the home site during the installation shall not be deemed to satisfy this requirement.

(d) *Applicant to satisfy standards for certification.* An applicant for certification as a manufacturer, retailer, installer, or mechanic must establish to the satisfaction of the Department of State that the applicant satisfies the standards for certification as set forth in section 1210.4 (Standards for certification as a manufacturer), section 1210.5 (Standards for certification as a retailer), section 1210.6 (Standards for certification as an installer), or section 1210.7 (Standards for certification as a mechanic), as applicable.

(e) *Application for certification.* An application for certification as a manufacturer, retailer, installer, or mechanic shall be in writing, shall be submitted on a form provided by or otherwise acceptable to the Department of State, and shall be accompanied by the appropriate application fee set forth in section 1210.19 (Fees) of this Part. If the applicant is a business entity, the applicant shall submit proof establishing to the satisfaction of the Department of State that the applicant has been duly formed under the laws of the State of New York (or, if applicable, that the applicant has been duly formed under the laws of another jurisdiction and has qualified to do business in the State of New York), and that the applicant is in existence and has full authority to do business in the State of New York. If the applicant does business under an assumed name, the applicant shall submit proof establishing to the satisfaction of the Department of State that the applicant has satisfied the requirements of section 130 of the General Business Law. In addition, any person or business entity applying for certification shall provide such additional information and documentation as may be requested from time to time by the Department of State. An application shall not be deemed to be complete until the applicant has provided all additional information and documentation that may be so requested.

(f) *Denial of application.* The Department of State shall, before making a final determination to deny an application for a certification, notify the applicant in writing of the reasons for such proposed denial and shall afford the applicant an opportunity to be heard, in person or by counsel, prior to denial of the application. Such notification shall be served by first class mail, by certified mail (return receipt requested), or in any manner authorized by the Civil Practice Law and Rules for service of a summons. If the applicant fails to make a written request for a hearing within 35 days after receipt of such notification, then the notification of denial shall become the final determination of the Department of State. If the applicant does

make a written request for a hearing within such 35 day period, a hearing shall be conducted at such time and place as the Department of State shall prescribe and in accordance with the provisions of Part 400 of this Title. For the purposes of applying Part 400 of this Title to any such proceeding, the term "license" shall be deemed to include a certification.

(g) *Registry.* The Department of State shall maintain the registry contemplated by subdivision (1) of section 604 of the Executive Law. Such registry shall include information related to manufacturers, retailers, installers, and mechanics, and shall be accessible by the public.

(h) *Cooperation.* Each person or business entity certified pursuant to Article 21-B shall cooperate with any investigation made by the Department of State or by any representative of the Department of State regarding the conduct of such person or business entity or of any employee or representative of such person or business entity, and with any investigation by the Department of State or by any representative of the Department of State regarding any complaint filed under section 1210.18 (Resolution of disputes) of this Part.

#### **§1210.4 Standards for certification as a manufacturer.**

(a) *HUD approval.* A person or business entity applying for certification as a manufacturer must be approved by the United States Department of Housing and Urban Development to construct manufactured homes. A person or business entity certified by the Department of State as a manufacturer must continue to be so approved by the United States Department of Housing and Urban Development at all times such certification is in effect.

(b) *Financial responsibility requirements.* A person or business entity applying for certification as a manufacturer must submit to the Department of State an acceptable deposit account control agreement evidencing a deposit account having a balance of not less than \$50,000, an acceptable letter of credit in the sum of \$50,000, or an acceptable surety bond in the principal amount of \$50,000. Such acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond may be submitted with the application for certification, or within a reasonable time after the applicant receives notification that the application has been approved; provided, however, that the certification shall not be issued until such acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond shall have been received by the Department of State. A person or business entity certified by the Department of State as a manufacturer must maintain an acceptable deposit account control agreement (and the deposit account evidenced thereby), an acceptable letter of credit, or an acceptable surety bond in full force and effect:

(1) at all times while such certification is in effect;

(2) at all times while such certification is suspended; and

(3) at all times following the expiration or revocation of such certification until the expiration of the time during which any homeowner could file a complaint under section 1210.18 (Resolution of disputes) of this Part pertaining to any manufactured home manufactured, sold, installed, or serviced by such certificate holder, and, if any such complaint is filed, until such time such complaint is resolved. For the purpose of this paragraph, a complaint that results in the making of an Article 21-B order or Article 21-B judgment against the certificate holder shall not be deemed to be resolved until such Article 21-B order or Article 21-B judgment shall have been satisfied, and a complaint that is resolved at the administrative level in favor of such certificate holder shall not be deemed to be resolved until the time for taking an appeal therefrom shall have expired, with no such appeal having been filed.

(c) *Limited certificate.* A person may apply for certification as a manufacturer without submitting the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond required under subdivision (b) of this section if such person is employed by a person who or a business

entity which is certified as a manufacturer and such employer has provided an acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond in connection with such employer's certification as a manufacturer; provided, however, that no certification shall be issued to any person pursuant to this subdivision unless such person satisfies all other standards for certification as a manufacturer. An application filed pursuant to this subdivision shall satisfy the requirements set forth in subdivision (e) of section 1210.3 (Certification) of this Part and, in addition, shall indicate that applicant is applying for a limited certificate pursuant to this subdivision, shall identify the applicant's employer, and shall state that applicant's employer is certified as a manufacturer. Any certification issued to a person pursuant to this subdivision shall identify such person's employer, shall authorize such person to act as a manufacturer only within the scope of his or her employment by such employer, and shall cease to be valid if such employer ceases to be certified as a manufacturer, or if such person ceases to be employed by such employer.

### **§1210.5 Standards for certification as a retailer.**

(a) *Financial responsibility requirements.* Except as otherwise provided in subdivision (d) or subdivision (e) of this section:

(1) a person or business entity applying for certification as a retailer must submit to the Department of State an acceptable deposit account control agreement evidencing a deposit account having a balance of not less than \$25,000, an acceptable letter of credit in the sum of \$25,000, or an acceptable surety bond in the principal amount of \$25,000;

(2) such acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond may be submitted with the application for certification, or within a reasonable time after the applicant receives notification that the application has been approved; provided, however, that the certification shall not be issued until such acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond shall have been received by the Department of State; and

(3) a person or business entity certified by the Department of State as a retailer must maintain an acceptable deposit account control agreement (and the deposit account evidenced thereby), an acceptable letter of credit, or an acceptable surety bond in full force and effect:

(i) at all times while such certification is in effect;

(ii) at all times while such certification is suspended; and

(iii) at all times following the expiration or revocation of such certification until the expiration of the time during which any homeowner could file a complaint under section 1210.18 (Resolution of disputes) of this Part pertaining to any manufactured home manufactured, sold, installed, or serviced by such certificate holder, and, if any such complaint is filed, until such time such complaint is resolved. For the purpose of this paragraph, a complaint that results in the making of an Article 21-B order or Article 21-B judgment against the certificate holder shall not be deemed to be resolved until such Article 21-B order or Article 21-B judgment shall have been satisfied, and a complaint that is resolved at the administrative level in favor of such certificate holder shall not be deemed to be resolved until the time for taking an appeal therefrom shall have expired, with no such appeal having been filed.

(b) *Experience requirements.*

(1) A person applying for certification as a retailer must have at least one year of full time employment in the manufactured home industry, or in an industry which in the judgment of the Department of State is substantially similar to the manufactured home industry.

(2) A business entity applying for certification as a retailer must employ:

(i) at least one person who satisfies the experience requirements set forth in paragraph (1) of this subdivision and who is certified by the Department of State as a retailer; or

(ii) at least one person who satisfies the experience requirements set forth in paragraph (1) of this subdivision and who is then applying for certification by the Department of State as a retailer (provided that in such case, the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

(c) *Education requirements.*

(1) A person applying for certification as a retailer must be a high school graduate or the equivalent of a high school graduate.

(2) A business entity applying for certification as a retailer must employ:

(i) at least one person who satisfies the education requirements set forth in paragraph (1) of this subdivision and who is certified by the Department of State as a retailer; or

(ii) at least one person who satisfies the education requirements set forth in paragraph (1) of this subdivision and who is then applying for certification by the Department of State as a retailer (provided that in such case, the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

(d) *Limited certificate.* A person may apply for certification as a retailer without submitting the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond required under subdivision (a) of this section if such person is employed by a person who or a business entity which is certified as a retailer and such employer has provided an acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond in connection with such employer's certification as a retailer; provided, however, that no certification shall be issued to any person pursuant to this subdivision unless such person satisfies all other standards for certification as a retailer. An application filed pursuant to this subdivision shall satisfy the requirements set forth in subdivision (e) of section 1210.3 (Certification) of this Part and, in addition, shall indicate that applicant is applying for a limited certificate pursuant to this subdivision, shall identify the applicant's employer, and shall state that applicant's employer is certified as a retailer. Any certification issued to a person pursuant to this subdivision shall identify such person's employer, shall authorize such person to act as a retailer only within the scope of his or her employment by such employer, and shall cease to be valid if such employer ceases to be certified as a retailer, or if such person ceases to be employed by such employer.

(e) *Multiple-category certifications.* A person or business entity certified as a manufacturer may apply for certification as a retailer without submitting the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond required under subdivision (a) of this section, provided that the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond provided by such person or business entity pursuant to subdivision (b) of section 1210.4 (Standards for certification as a manufacturer) indicates that such person or entity is certified as a manufacturer and as a retailer, and applies to all acts and omissions as a manufacturer and all acts and omissions as a retailer. No certification as a retailer shall be issued to any person or business entity pursuant to this subdivision unless such person or business entity satisfies all other standards for certification as a retailer.

## **§1210.6 Standards for certification as an installer.**

(a) *Financial responsibility requirements.* Except as otherwise provided in subdivision (f), subdivision (g), or subdivision (h) of this section:

(1) a person or business entity applying for certification as an installer must submit to the

Department of State an acceptable deposit account control agreement evidencing a deposit account having a balance of not less than \$10,000, an acceptable letter of credit in the sum of \$10,000, or an acceptable surety bond in the principal amount of \$10,000;

(2) such acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond may be submitted with the application for certification, or within a reasonable time after the applicant receives notification that the application has been approved; provided, however, that the certification shall not be issued until such acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond shall have been received by the Department of State; and

(3) a person or business entity certified by the Department of State as an installer must maintain an acceptable deposit account control agreement (and the deposit account evidenced thereby), an acceptable letter of credit, or an acceptable surety bond in full force and effect:

(i) at all times while such certification is in effect;

(ii) at all times while such certification is suspended; and

(iii) at all times following the expiration or revocation of such certification until the expiration of the time during which any homeowner could file a complaint under section 1210.18 (Resolution of disputes) of this Part pertaining to any manufactured home manufactured, sold, installed, or serviced by such certificate holder, and, if any such complaint is filed, until such time such complaint is resolved. For the purpose of this paragraph, a complaint that results in the making of an Article 21-B order or Article 21-B judgment against the certificate holder shall not be deemed to be resolved until such Article 21-B order or Article 21-B judgment shall have been satisfied, and a complaint that is resolved at the administrative level in favor of such certificate holder shall not be deemed to be resolved until the time for taking an appeal therefrom shall have expired, with no such appeal having been filed.

*(b) Experience requirements.*

(1) Except as otherwise provided in subdivision (h) of this section, a person applying for certification as an installer must have:

(i) at least two years of full time employment in the business of installing manufactured homes in the State of New York, or in a business which in the judgment of the Department of State is substantially similar to the business of installing manufactured homes; or

(ii) substantial involvement in the installation of at least twenty manufactured homes in the State of New York.

(2) A business entity applying for certification as an installer must employ:

(i) at least one person who satisfies the experience requirements set forth in paragraph (1) of this subdivision and who is certified by the Department of State as an installer; or

(ii) at least one person who satisfies the experience requirements set forth in paragraph (1) of this subdivision and who is then applying for certification by the Department of State as an installer (provided that in such case, the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

*(c) Education requirements.*

(1) A person applying for certification as an installer must be a high school graduate or the equivalent of a high school graduate.

(2) A business entity applying for certification as an installer must employ:

(i) at least one person who satisfies the education requirements set forth in paragraph (1) of this subdivision and who is certified by the Department of State as an installer; or

(ii) at least one person who satisfies the education requirements set forth in paragraph (1) of this subdivision and who is then applying for certification by the Department of State as an installer (provided that in such case, the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

(d) *Initial training requirements.*

(1) A person applying for certification as an installer must have satisfied the following initial training requirements:

(i) completion of the Article 21-B introductory course; and

(ii) completion of additional courses totaling not less than thirteen hours in such topics related to the installation of manufactured homes as shall have been approved by the Department of State, the minimum number of class hours to be devoted to each such topic to be as designated by the Department of State; provided, however, that completion of an Article 21-B introductory course or any other course intended to satisfy the initial training requirements set forth in this subdivision more than 6 months prior to application for certification shall not be deemed to satisfy such initial training requirements unless, in the judgment of the Department of State, the topics covered by and the information contained in the course taken by the applicant are substantially similar to the topics covered by and the information contained in the corresponding course offered at the time of such application.

(2) A business entity applying for certification as an installer must employ:

(i) at least one person who has satisfied the initial training requirements set forth in paragraph (1) of this subdivision and who is certified by the Department of State as an installer; or

(ii) at least one person who has satisfied the initial training requirements set forth in paragraph (1) of this subdivision and who is then applying for certification by the Department of State as an installer (provided that in such case, the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

(e) *Examination requirement.*

(1) Except as otherwise provided in section 1210.8 (Recognition of certification or license issued by another state) of this Part, a person applying for certification as an installer must have passed an examination, approved by the Secretary of State and administered by the Department of State or by an instructional provider that has been approved by the Secretary of State, in the installation of manufactured homes.

(2) A business entity applying for certification as an installer must employ:

(i) at least one person who has passed an examination of the type referred to in paragraph (1) of this subdivision (or who is exempt from the examination requirement by reason of section 1210.8 (Recognition of certification or license issued by another state) of this Part) and who is certified by the Department of State as an installer; or

(ii) at least one person who has passed an examination of the type referred to in paragraph (1) of this subdivision (or who is exempt from the examination requirement by reason of section

1210.8 (Recognition of certification or license issued by another state) of this Part) and who is then applying for certification by the Department of State as an installer (provided that in such case, the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

(f) *Limited certificate.* A person may apply for certification as an installer without submitting the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond required under subdivision (a) of this section if such person is employed by a person who or a business entity which is certified as an installer, and such employer has provided an acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond in connection with such employer's certification as an installer; provided, however, that no certification shall be issued to any person pursuant to this subdivision unless such person satisfies all other standards for certification as an installer. An application filed pursuant to this subdivision shall satisfy the requirements set forth in subdivision (e) of section 1210.3 (Certification) of this Part and, in addition, shall indicate that applicant is applying for a limited certificate pursuant to this subdivision, shall identify the applicant's employer, and shall state that applicant's employer is certified as an installer. Any certification issued to a person pursuant to this subdivision shall identify such person's employer, shall authorize such person to act as an installer only within the scope of his or her employment by such employer, and shall cease to be valid if such employer ceases to be certified as an installer, or if such person ceases to be employed by such employer.

(g) *Multiple-category certifications.* A person or business entity certified as a manufacturer or retailer may apply for certification as an installer without submitting the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond required under subdivision (a) of this section, provided that the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond provided by such person or business entity pursuant to subdivision (b) of section 1210.4 (Standards for certification as a manufacturer) or subdivision (a) of section 1210.5 (Standards for certification as a retailer) of this Part, as applicable, indicates that such person or business entity is certified as a manufacturer (if applicable), retailer (if applicable), and installer, and applies to all acts or omissions of such person or business entity as a manufacturer (if applicable), all acts and omissions of such person or business entity as a retailer (if applicable), and all acts and omissions of such person or business entity as an installer. No certification as an installer shall be issued to any person or business entity pursuant to this subdivision unless such person or business entity satisfies all other standards for certification as an installer.

(h) *Owner-occupant installer certificate.* A person who intends to own and occupy a manufactured home may apply for certification as the installer of such manufactured home without submitting the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond required under subdivision (a) of this section and without satisfying the experience requirements set forth in subdivision (b) of this section; provided, however, that no owner-occupant installer certificate shall be issued to any person pursuant to this subdivision unless such person satisfies all other standards for certification as an installer; and provided further that the provisions of section 1210.8 (Recognition of certification or license issued by another state) shall not apply to any person applying for an owner-occupant installer certificate pursuant to this subdivision, and notwithstanding any other provision of this Part to the contrary, no person shall receive an owner-occupant installer certificate unless such person shall have completed the Article 21-B introductory course, satisfied all other initial training requirements set forth in paragraph (1) of subdivision (d) of this section, and satisfied the examination requirement set forth in paragraph (1) of subdivision (e) of this section. An application filed pursuant to this subdivision shall satisfy the requirements set forth in subdivision (e) of section 1210.3 (Certification) of this Part and, in addition, shall indicate that applicant is applying for an owner-occupant installer certificate pursuant to this subdivision, shall identify the manufactured home that such person intends to install, shall identify the location where such manufactured home is to be installed, and shall include such person's certification that he or she is or intends to be the owner and occupant of such manufactured home. A owner-occupant installer certificate issued to a person pursuant to this subdivision shall identify the manufactured home which such person is authorized to install and the location where such manufactured home is to be installed, shall authorize such person to act as an installer only with respect to the manufactured home

which is identified in such owner-occupant installer certificate and which is or is to be owned and occupied by such person, shall authorize such person to install such manufactured home only at the location identified in such owner-occupant installer certificate, and shall not authorize such person to act as a mechanic. An owner-occupant installer certificate issued pursuant to this subdivision shall expire upon the completion of the installation of the manufactured home identified in such owner-occupant installer certificate, or one year after the date of issuance of such owner-occupant installer certificate, whichever is earlier. An owner-occupant installer certificate issued pursuant to this subdivision may not be renewed. A person holding an owner-occupant installer certificate issued pursuant to this subdivision shall not be subject to the continuing education requirements set forth in section 1210.13 (Continuing education requirements) of this Part. A person who receives an owner-occupant installer certificate pursuant to this subdivision shall be permitted to request an installer's warranty seal only for the manufactured home identified in such owner-occupant installer certificate. For the purposes of this subdivision, a person will be deemed to be the owner and occupant of a manufactured home if he or she is, or intends to be, the sole owner and occupant of such manufactured home or a co-owner and co-occupant of such manufactured home.

### **§Section 1210.7 Standards for certification as a mechanic.**

(a) *Financial responsibility requirements.* Except as otherwise provided in subdivision (f) or subdivision (g) of this section:

(1) a person or business entity applying for certification as a mechanic must submit to the Department of State an acceptable deposit account control agreement evidencing a deposit account having a balance of not less than \$5,000, an acceptable letter of credit in the sum of \$5,000, or an acceptable surety bond in the principal amount of \$5,000;

(2) such acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond may be submitted with the application for certification, or within a reasonable time after the applicant receives notification that the application has been approved; provided, however, that the certification shall not be issued until such acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond shall have been received by the Department of State; and

(3) a person or business entity certified by the Department of State as a mechanic must maintain an acceptable deposit account control agreement (and the deposit account evidenced thereby), an acceptable letter of credit, or an acceptable surety bond in full force and effect:

(i) at all times while such certification is in effect;

(ii) at all times while such certification is suspended; and

(iii) at all times following the expiration or revocation of such certification until the expiration of the time during which any homeowner could file a complaint under section 1210.18 (Resolution of disputes) of this Part pertaining to any manufactured home manufactured, sold, installed, or serviced by such certificate holder, and, if any such complaint is filed, until such time such complaint is resolved. For the purpose of this paragraph, a complaint that results in the making of an Article 21-B order or Article 21-B judgment against the certificate holder shall not be deemed to be resolved until such Article 21-B order or Article 21-B judgment shall have been satisfied, and a complaint that is resolved at the administrative level in favor of such certificate holder shall not be deemed to be resolved until the time for taking an appeal therefrom shall have expired, with no such appeal having been filed.

(b) *Experience requirements.*

(1) A person applying for certification as a mechanic must have at least one year of full time employment in the business of servicing manufactured homes in the State of New York, or in a

business which in the judgment of the Department of State is substantially similar to the business servicing manufactured homes.

(2) A business entity applying for certification as a mechanic must employ:

(i) at least one person who satisfies the experience requirements set forth in paragraph (1) of this subdivision and who is certified by the Department of State as a mechanic; or

(ii) at least one person who satisfies the experience requirements set forth in paragraph (1) of this subdivision and who is then applying for certification by the Department of State as a mechanic (provided that in such case, the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

(c) *Education requirements.*

(1) A person applying for certification as a mechanic must be a high school graduate or the equivalent of a high school graduate.

(2) A business entity applying for certification as a mechanic must employ:

(i) at least one person who satisfies the education requirements set forth in paragraph (1) of this subdivision and who is certified by the Department of State as a mechanic; or

(ii) at least one person who satisfies the education requirements set forth in paragraph (1) of this subdivision and who is then applying for certification by the Department of State as a mechanic (provided that in such case, the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

(d) *Initial training requirements.*

(1) A person applying for certification as a mechanic must have satisfied the following initial training requirements:

(i) completion of the Article 21-B introductory course; and

(ii) completion of additional courses totaling not less than three hours in such topics related to the servicing of manufactured homes as shall have been approved by the Department of State, the minimum number of class hours to be devoted to each such topic to be as designated by the Department of State; provided, however, that completion of an Article 21-B introductory course or any other course intended to satisfy the initial training requirements set forth in this subdivision more than 6 months prior to application for certification shall not be deemed to satisfy such initial training requirements unless, in the judgment of the Department of State, the topics covered by and the information contained in the course taken by the applicant are substantially similar to the topics covered by and the information contained in the corresponding course offered at the time of such application.

(2) A business entity applying for certification as a mechanic must employ:

(i) at least one person who has satisfied the initial training requirements set forth in this subdivision and who is certified by the Department of State as an installer or mechanic; or

(ii) at least one person who has satisfied the initial training requirements set forth in paragraph (1) of this subdivision and who is then applying for certification by the Department of State as an installer or mechanic (provided that in such case, the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

(e) *Examination requirement.*

(1) Except as otherwise provided in section 1210.8 (Recognition of certification or license issued by another state) of this Part, a person applying for certification as a mechanic must have passed an examination, approved by the Secretary of State and administered by the Department of State or by an instructional provider that has been approved by the Secretary of State, in the servicing of manufactured homes.

(2) A business entity applying for certification as a mechanic must employ:

(i) at least one person who has passed an examination of the type referred to in paragraph (1) of this subdivision (or who is exempt from the examination requirement by reason of section 1210.8 (Recognition of certification or license issued by another state) of this Part) and who is certified by the Department of State as a mechanic; or

(ii) at least one person who has passed an examination of the type referred to in paragraph (1) of this subdivision (or who is exempt from the examination requirement by reason of section 1210.8 (Recognition of certification or license issued by another state) of this Part) and who is then applying for certification by the Department of State as a mechanic (provided, however, that in such case the denial of such person's application for any reason shall be reason for the denial of the business entity's application).

(f) *Limited certificate.* A person may apply for certification as a mechanic without submitting the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond required under subdivision (a) of this section if such person is employed by a person who or a business entity which is certified as an installer and/or mechanic and such employer has provided an acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond in connection with such employer's certification as an installer (if applicable) or mechanic (if applicable); provided, however, that no certification shall be issued to any person pursuant to this subdivision unless such person satisfies all other standards for certification as a mechanic. An application filed pursuant to this subdivision shall satisfy the requirements set forth in subdivision (e) of section 1210.3 (Certification) of this Part and, in addition, shall indicate that applicant is applying for a limited certificate pursuant to this subdivision, shall identify the applicant's employer, and shall state that applicant's employer is certified as an installer and/or mechanic. Any certification issued to a person pursuant to this subdivision shall identify such person's employer, shall authorize such person to act as a mechanic only within the scope of his or her employment by such employer, and shall cease to be valid if such employer ceases to be certified as an installer and/or mechanic, or if such person ceases to be employed by such employer.

(g) *Multiple-category certifications.* A person or business entity certified as a manufacturer, retailer, or installer may apply for certification as a mechanic without submitting the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond required under subdivision (a) of this section, provided that the acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond provided by such person or business entity pursuant to subdivision (b) of section 1210.4 (Standards for certification as a manufacturer) of this Part, or subdivision (a) of section 1210.5 (Standards for certification as a retailer) of this Part, or subdivision (a) of section 1210.6 (Standards for certification as an installer) of this Part, as applicable, indicates that such person or business entity is certified as a manufacturer (if applicable), retailer (if applicable), installer (if applicable), and mechanic, and applies to all acts or omissions of such person or business entity as a manufacturer (if applicable), all acts and omissions of such person or business entity as a retailer (if applicable), all acts and omissions of such person or business entity as an installer (if applicable), and all acts and omissions of such person or business entity as a mechanic. No certification as an installer shall be issued to any person or business entity pursuant to this subdivision unless such person or business entity satisfies all other standards for certification as a mechanic.

**§1210.8 Recognition of certification or license issued by another state.**

(a) *Installers*. A person certified or licensed as an installer by another State within the United States will not be required to pass the examination referred to in paragraph (1) of subsection (e) of section 1210.6 (Standards for certification as an installer) of this Part, provided that:

(1) the requirements for certification or licensing as an installer in such other State are comparable to the requirements for certification as an installer in the State of New York; and

(2) such person otherwise meets the qualifications for certification as an installer in the State of New York.

(b) *Mechanics*. A person certified or licensed as a mechanic by another State within the United States will not be required to pass the examination referred to in paragraph (1) of subsection (e) of section 1210.7 (Standards for certification as a mechanic) of this Part, provided that:

(1) the requirements for certification or licensing as a mechanic in such other State are comparable to the requirements for certification as a mechanic in the State of New York; and

(2) such person otherwise meets the qualifications for certification as a mechanic in the State of New York.

### **1210.9 Separate certifications required.**

(a) *Manufacturers*. Any person or business entity owning or operating more than one manufacturing plant that manufactures, delivers, or sells manufactured homes in the State of New York shall be required to obtain a separate certification as a manufacturer for each such manufacturing plant. Such person or business entity will be required to satisfy all standards for certification as a manufacturer for each such certification; provided, however, that such person or business entity shall not be required to file a separate acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond for each such certification, and the filing of one acceptable deposit account control agreement evidencing a deposit account having a balance of not less than \$50,000, one acceptable letter of credit in the sum of \$50,000, or one acceptable surety bond in the principal amount of \$50,000 shall be deemed to satisfy the financial responsibility requirements for all manufacturer certifications issued to such person or business entity.

(b) *Retailers*. Any person or business entity owning or operating more than one retail sales location in the State of New York shall be required to obtain a separate certification as a retailer for each such retail sales location. Such person or business entity will be required to satisfy all standards for certification as a retailer for each such certification; provided, however, that such person or business entity shall not be required to file a separate acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond for each such certification, and the filing of one acceptable deposit account control agreement evidencing a deposit account having a balance of not less than \$25,000, one acceptable letter of credit in the sum of \$25,000, or one acceptable surety bond in the principal amount of \$25,000 shall be deemed to satisfy the financial responsibility requirements for all retailer certifications issued to such person or business entity.

(c) *Scope*.

(1) Certification as a manufacturer shall not constitute certification as a retailer, or installer. No certified manufacturer shall engage in retail selling or offering for sale, brokering, or distribution of manufactured homes, primarily to purchasers who, in good faith, purchase such homes for purposes other than resale, unless such certified manufacturer is also certified as a retailer. No certified manufacturer shall install or set up a manufactured home for a buyer unless such certified manufacturer is also certified as an installer.

(2) Certification as a manufacturer shall constitute certification as a mechanic, but only for the

purpose of serving manufactured homes manufactured by such manufacturer. No certified manufacturer shall service any manufactured home manufactured by any other person or entity unless such certified manufacturer is also separately certified as a mechanic.

(d) Certification as a retailer shall not constitute certification as a manufacturer, installer, or mechanic. No certified retailer shall manufacture or produce manufactured homes unless such certified retailer is also certified as a manufacturer. No certified retailer shall install or set up a manufactured home for a buyer unless such certified retailer is also certified as an installer. No certified retailer shall service a manufactured home unless such certified retailer is also certified as a mechanic.

(e) Certification as an installer shall not constitute certification as a manufacturer or retailer. No certified installer shall manufacture or produce manufactured homes unless such certified installer is also certified as a manufacturer. No certified installer shall engage in retail selling or offering for sale, brokering, or distribution of manufactured homes, primarily to purchasers who, in good faith, purchase such homes for purposes other than resale, unless such certified installer is also certified as a retailer. However, certification as an installer (other than certification of an owner-occupant installer pursuant to subdivision (h) of section 1210.6 [Standards for certification as an installer] of this Part) shall constitute certification as an installer and certification as a mechanic, and a certified installer (other than a person holding an owner-occupant installer certificate) shall be permitted to service a manufactured home without obtaining separate certification as a mechanic.

(f) Certification as a mechanic shall not constitute certification as a manufacturer, retailer, or installer. No certified mechanic shall manufacture or produce manufactured homes unless such certified mechanic is also certified as a manufacturer. No certified mechanic shall engage in retail selling or offering for sale, brokering, or distribution of manufactured homes, primarily to purchasers who, in good faith, purchase such homes for purposes other than resale, unless such certified mechanic is also certified as a retailer. No certified mechanic shall install or set up a manufactured home for a buyer unless such certified mechanic is also certified as an installer.

(g) Certification under Article 21-B shall not constitute certification or licensure under any other law, and no person or business entity certified under Article 21-B shall engage in any activity which requires certification or licensure under any other law unless such person or entity has the certification or license required by such other law. In particular, but not by way of limitation, no person or business entity certified under Article 21-B shall engage in any activity for which a real estate brokers license or real estate salesperson's license is required under article 12-A of the Real Property Law unless such person or business entity is licensed as a real estate broker or real estate salesperson, as applicable. Section

### **§1210.10 Certified business entity to employ certified person.**

(a) A business entity certified by the Department of State as a manufacturer shall, at all times such certification remains in effect, employ at least one person who is certified by the Department of State as a manufacturer, retailer, or installer. Employment of a person holding a limited certificate as a manufacturer, retailer, or installer shall be deemed to satisfy this requirement. However, employment of a person holding an owner-occupant installer certificate shall not be deemed to satisfy this requirement.

(b) A business entity certified by the Department of State as a retailer shall, at all times such certification remains in effect, employ at least one person who is certified by the Department of State as a retailer. Employment of a person holding a limited certificate as a retailer shall be deemed to satisfy this requirement.

(c) A business entity certified by the Department of State as an installer shall, at all times such certification remains in effect, employ at least one person who is certified by the Department of State as an installer. Employment of a person holding a limited certificate as an installer shall be deemed to satisfy this requirement. However, employment of a person holding an owner-occupant installer certificate shall not be deemed to satisfy this requirement.

(d) A business entity certified by the Department of State as a mechanic shall, at all times such certification remains in effect, employ at least one person who is certified by the Department of State as an installer or mechanic. Employment of a person holding a limited certificate as an installer or mechanic shall be deemed to satisfy this requirement. However, employment of a person holding an owner-occupant installer certificate shall not be deemed to satisfy this requirement.

### **§1210.11 Duration of certifications.**

Except as otherwise provided in subdivision (d) of section 1210.5 (Standards for certification as a retailer), subdivision (f) of section 1210.6 (Standards for certification as an installer), subdivision (h) of said section 1210.6, subdivision (f) of section 1210.7 (Standards for certification as a mechanic), or section 1210.20 (Suspension and revocation of certifications), a certification issued by the Department of State shall be valid for a term of two (2) years, and a certification renewed pursuant to section 1210.12 (Renewal of certifications) of this Part shall be valid for a term of two (2) years.

### **§1210.12 Renewal of certifications.**

(a) An applicant for renewal of a certification as a manufacturer, retailer, installer, or mechanic must establish to the satisfaction of the Department of State that the applicant continues to satisfy the standards for certification set forth in section 1210.4 (Standards for certification as a manufacturer) of this Part, section 1210.5 (Standards for certification as a retailer) of this Part, section 1210.6 (Standards for certification as an installer) of this Part, or section 1210.7 (Standards for certification as a mechanic) of this Part, as applicable. In addition, the applicant must establish to the satisfaction of the Department of State that the applicant has satisfied the applicable continuing education requirements set forth in section 1210.13 (Continuing education requirements) of this Part.

(b) An application for renewal of a certification as a manufacturer, retailer, installer, or mechanic shall be in writing, shall be submitted on a form provided by or otherwise acceptable to the Department of State, and shall be accompanied by the appropriate application fee set forth in section 1210.19 (Fees) of this Part. In addition, the applicant shall provide such additional information and documentation as may be requested from time to time by the Department of State. An application for renewal shall not be deemed to be complete until the applicant has provided all additional information and documentation that may be so requested.

(c) There shall be no limit on the number of times a certificate may be renewed pursuant to this section; provided, however, that an owner-occupant installer certificate may not be renewed.

### **§1210.13 Continuing education requirements.**

(a) Each person certified as a manufacturer must, no less frequently than once every two years, complete continuing education courses totaling not less than three hours in such topics related to the manufacturing of manufactured homes as shall have been approved by the Department of State, the minimum number of class hours to be devoted to each such topic to be as designated by the Department of State. Each business entity certified as a manufacturer must employ at least one person who has satisfied the continuing education requirements set forth in this subdivision and who is certified by the Department of State as a manufacturer, retailer, or installer.

(b) Each person certified as a retailer must, no less frequently than once every two years, complete continuing education courses totaling not less than three hours in such topics related to the retailing of manufactured homes as shall have been approved by the Department of State, the minimum number of class hours to be devoted to each such topic to be as designated by the Department of State. Each business entity certified as a retailer must employ at least one person who has satisfied the continuing education requirements set forth in this subdivision and who is certified by the Department of State as a

retailer.

(c) Each person certified as an installer (other than a person holding an owner-occupant installer certificate) must, no less frequently than once every two years, complete continuing education courses totaling not less than three hours in such topics related to the installation of manufactured homes as shall have been approved by the Department of State, the minimum number of class hours to be devoted to each such topic to be as designated by the Department of State. Each business entity certified as an installer must employ at least one person who has satisfied the continuing education requirements set forth in this subdivision and who is certified by the Department of State as an installer.

(d) Each person certified as a mechanic must, no less frequently than once every two years, complete continuing education courses totaling not less than three hours in such topics related to the servicing of manufactured homes as shall have been approved by the Department of State, the minimum number of class hours to be devoted to each such topic to be as designated by the Department of State. Each business entity certified as a mechanic must employ at least one person who has satisfied the continuing education requirements set forth in this subdivision and who is certified by the Department of State as an installer or mechanic.

(e) Each person who obtains certification as a manufacturer, retailer, installer, or mechanic before completing the Article 21-B introductory course must complete the Article 21-B introductory course within sixty days after obtaining such certification. Each business entity that obtains certification as a manufacturer, retailer, installer, or mechanic at a time when it does not employ at least one person who has completed the Article 21-B introductory course must cause at least one of its employees to complete the Article 21-B introductory course within sixty days after such business entity obtains such certification. The requirements set forth in this subdivision are in addition to, and not in limitation of, the requirements set forth in subdivisions (a), (b), (c), and (d) of this section.

#### **§1210.14 Approval of courses.**

(a) No course may be used to satisfy, in whole or in part, the initial training requirements set forth in section 1210.6 (Standards for certification as an installer) of this Part or section 1210.7 (Standards for certification as a mechanic) of this Part, or the continuing education requirements set forth in section 1210.13 (Continuing education requirements) of this Part, unless:

(1) such course is approved by the Department of State pursuant to this section; and

(2) such course is provided by:

(i) the Department of State or

(ii) a private trade association or other entity that has been approved by the Department of State as an instructional provider pursuant to section 1210.14 (Approval of instructional providers) of this Part.

(b) An instructional provider applying for approval of a course must establish to the satisfaction of the Department of State that such course is appropriate for use in satisfying, in whole or in part, the initial training requirements set forth in section 1210.6 (Standards for certification as an installer) or section 1210.7 (Standards for certification as a mechanic) of this Part, or the continuing education requirements set forth in section 1210.13 (Continuing education requirements) of this Part.

(c) An application for approval of a course shall be in writing, shall be submitted to the Department of State on a form provided by or otherwise acceptable to the Department of State, and shall be accompanied by the applicable fee set forth in section 1210.19 (Fees) of this Part, and shall include:

(1) the name and business address of the instructional provider that will present the course, and a

certification that such instructional provider is approved by the Department of State pursuant to section 1210.14 (Approval of instructional providers) of this Part;

(2) the title of each course to be conducted;

(3) the location or locations where course will be conducted;

(4) the name, address, telephone number and qualifications of each person who will be an instructor for all or any part of the course;

(5) the final examination to be presented for the course, and the answer key for such examination;

(6) a description of the books and other materials that will be distributed to or used by persons participating in such course;

(7) the fee the instructional provider intends to charge each person participating in such course; and

(8) the estimated number of students who will take the course. In addition, the applicant shall provide such additional information and documentation as may be requested from time to time by the Department of State. An application shall not be deemed to be complete until the applicant has provided all additional information and documentation that may be so requested.

(d) An application for approval of a course must be filed with the Department of State, and must be complete, not less than sixty days before the proposed course is to be conducted.

(e) The Department of State may approve of the course and the proposed fee to be charged for the course, or approve the course and disapprove the proposed fee to be charged for the course, or disapprove the course. If the Department of State approves the course and disapproves the proposed fee to be charged for the course:

(1) the applicant shall have a period of fifteen days after applicant's receipt of notice of the Department of State's approval of the course and disapproval of the fee to file a written request for approval of a revised fee;

(2) if the applicant files such request within such time, and if the Department of State grants such request, the course and the revised fee shall be deemed to be approved; and

(3) if the applicant fails to file such request within such time, or if the applicant files such request and the Department of State denies such request, the course shall be deemed to be disapproved. An approved instructional provider may charge each person participating in an approved course provided by such approved instructional provider a fee not to exceed the fee for such course approved pursuant to this subdivision.

(f) Except as otherwise provided in subdivision (g) of this section, an approval of a course by the Department of State shall be effective for a period of two years. An application for renewal of approval of a course shall be in writing, shall be submitted to the Department of State on a form provided by or otherwise acceptable to the Department of State, and shall be accompanied by the applicable fee set forth in section 1210.19 (Fees) of this Part. In addition, the applicant shall provide such additional information and documentation as may be requested from time to time by the Department of State. An application shall not be deemed to be complete until the applicant has provided all additional information and documentation that may be so requested.

(g) The Department of State may revoke approval of any course, or deny the renewal of approval of any course, if:

(1) such course fails to comply with any provision of this Part;

(2) the students taking such approved course demonstrate a significant deficiency in skills and knowledge in the area covered by such course; or

(3) all or any part of the information provided in such course has become outdated.

(h) The instructional provider shall keep records with respect to each course it provides, including the date and location of each presentation of the course, the name and address of each student taking the course, and such other information as may be specified by the Department of State at the time of approval of such course. The instruction provider shall maintain such records for a period of not less than three years.

### **§1210.15 Approval of instructional providers.**

(a) A private trade association or other entity applying for approval as an instructional provider must establish to the satisfaction of the Department of State that the applicant, and persons employed by or affiliated with the applicant, are qualified to provide the courses that the applicant intends to provide. An application for approval as an instructional provider shall be in writing, shall be submitted to the Department of State on a form provided by or otherwise acceptable to the Department of State, and shall be accompanied by the appropriate fee set forth in section 1210.19 (Fees) of this Part. In addition, the applicant shall provide such additional information and documentation as may be requested from time to time by the Department of State. An application shall not be deemed to be complete until the applicant has provided all additional information and documentation that may be so requested.

(b) Except as otherwise provided in subdivision (c) of this section, approval of an instructional provider shall be effective for a period of five years. An application for renewal of approval of an instructional provider shall be in writing, shall be submitted to the Department of State on a form provided by or otherwise acceptable to the Department of State, and shall be accompanied by the applicable fee set forth in section 1210.19 (Fees) of this Part. In addition, the applicant shall provide such additional information and documentation as may be requested from time to time by the Department of State. An application shall not be deemed to be complete until the applicant has provided all additional information and documentation that may be so requested.

(c) The Department of State may revoke approval of any instructional provider, or deny the renewal of approval of any instructional provider, if:

(1) such instructional provider fails to comply with any term or condition of its approval, fails to comply with any provision of this Part, fails to comply with any provision of Article 21-B, or charges any fee for any course in excess of the maximum fee approved for such course; or

(2) the students taking courses provided by such instructional provider demonstrate a significant deficiency in skills and knowledge in the area covered by such courses.

### **§1210.16 Warranty seals.**

(a) Except as otherwise provided in subdivision (i), subdivision (j), or subdivision (k) of this section, no manufactured home may be installed in the State of New York at any time on or after January 1, 2006 unless:

(1) the manufacturer of such manufactured home shall have obtained a manufacturer's warranty seal from the Department of State and shall have attached such manufacturer's warranty seal to such manufactured home; and

(2) the installer of such manufactured home shall have obtained an installer's warranty seal from the Department of State and shall have attached such installer's warranty seal to such manufactured home. The installer shall attach such installer's warranty seal after installation is complete.

(b) The manufacturer's warranty seal and installer's warranty seal shall be attached in a permanent fashion in a built-in closet in the master bedroom of such manufactured home. The seals shall be attached at places within the closet where both seals can be readily seen and read when the closet door is open. For the purposes of this subdivision, if there is one bedroom in the manufactured home, such bedroom shall be deemed to be the master bedroom; if there are two bedrooms in the manufactured home, the larger bedroom shall be deemed to be the master bedroom; if there are three or more bedrooms in the manufactured home, the largest bedroom shall be deemed to be the master bedroom; and if there are more than one built-in closet in the master bedroom, manufacturer's warranty seal and installer's warranty seal shall be attached in the larger (or largest) built-in closet in the master bedroom. If there is no built-in closet in the master bedroom, the manufacturer's warranty seal and installer's warranty seal shall be attached in such other place or places as may be approved by the Department of State in writing.

(c) A manufacturer may submit to the Department of State a request for five or more manufacturer's warranty seals. An installer may submit to the Department of State a request for one or more installer's warranty seals; provided, however, that a person holding a limited certificate issued pursuant to subdivision (f) of section 1210.6 (Standards for certification as an installer) of this Part shall not be permitted to submit any such request; and provided further that a person holding an owner-occupant installer certificate issued pursuant to subdivision (h) of said section 1210.6 shall be permitted to submit a request only for the installer's warranty seal to be attached to the manufactured home which is identified in such owner-occupant installer certificate. Any request for manufacturer's warranty seals or for installer's warranty seal(s) shall be in writing, shall be on a form provided by or otherwise acceptable to the Department of State, and shall be accompanied by the applicable fee set forth in or determined pursuant to section 1210.19 (Fees) of this Part. The requesting party must be certified by the Department of State as a manufacturer or installer, as applicable.

(d) A manufacturer attaching a manufacturer's warranty seal to a manufactured home shall be deemed to warrant to the buyer of such manufactured home:

(1) that the manufacturer is approved to construct manufactured homes by the United States Department of Housing and Urban Development;

(2) that such manufactured home was constructed in accordance with all applicable federal, state, and local statutes, laws, codes, rules, and regulations; and

(3) that the manufacturer is certified by the Department of State (or, in the case of a seal affixed prior to July 1, 2006, that the manufacturer satisfies all applicable standards for certification as a manufacturer and intends to obtain such certification). The warranties set forth in this subdivision shall be in addition to, and not in limitation of or substitution for, the warranty provided for in Article 35 of the General Business Law and any and all other warranties, express or implied, given or made by the manufacturer, whether contractually or by operation of law.

(e) An installer attaching an installer's warranty seal to a manufactured home will be deemed to warrant to the buyer of such manufactured home:

(1) that the installation of such manufactured home meets the standards of the uniform code; and

(2) that the installer is certified by the Department of State (or, in the case of a seal affixed prior to July 1, 2006, that the installer satisfies all applicable standards for certification as an installer and intends to obtain such certification). The warranties set forth in this subdivision shall be in addition to, and not in limitation of or substitution for, any and all other warranties, express or implied, given or made by the installer, whether contractually or by operation of law. The warranty of the installer that the installation of such manufactured home meets the standards of the uniform code shall be deemed

to include, without limitation, a warranty that the foundation or supports on which the manufactured home was installed were inspected and approved by the governmental agency or department or other person or entity responsible for enforcing the uniform code in the jurisdiction in which the manufactured home was installed, and if such foundation or supports were constructed by the installer, such warranty shall also be deemed to include, without limitation, a warranty that such foundation or supports were constructed in accordance with the applicable provisions of the uniform code.

(f) No manufacturer shall charge a fee in excess of the fee set forth in section 1210.19 (Fees) of this Part for attaching a manufacturer's warranty seal to any manufactured home. No installer shall charge a fee in excess of the fee set forth in section 1210.19 (Fees) of this Part for attaching an installer's warranty seal to any manufactured home.

(g) No governmental agency or department or other person or entity responsible for issuing certificates of occupancy in any jurisdiction shall issue a certificate of occupancy for any manufactured home installed in such jurisdiction at any time on or after January 1, 2006 unless:

(1) the manufacturer's warranty seal required by this section has been attached to such manufactured home (unless such manufacturer's warranty seal is not required by reason of subdivision (i), subdivision (j), or subdivision (k) of this section);

(2) the installer's warranty seal required by this section has been attached to such manufactured home; and

(3) the governmental agency or department or other person or entity responsible for issuing certificates of occupancy has independently determined that such manufactured home has been installed in accordance with the applicable provisions of the uniform code. In determining whether such installation was or was not in accordance with the applicable provisions of the uniform code, the governmental agency or department or other person or entity responsible for issuing certificates of occupancy shall not rely upon the presence of the installer's warranty seal, but shall make its own independent determination.

(h) Neither the State of New York nor the Department of State shall be deemed to make any warranty of any kind, express or implied, to any manufacturer, retailer, installer, mechanic, homeowner, or lending entity, or to any buyer of any manufactured home, to any governmental agency or department or other person or entity responsible for issuing certificates of occupancy, or to any other person, entity, or business entity, by reason of the issuance by the Department of State of any manufacturer's warranty seal or installer's warranty seal, or by reason of any manufacturer's warranty seal or installer's warranty seal being attached to or present on any manufactured home. No manufacturer, retailer, installer, or mechanic, and no person employed by or affiliated with any manufacturer, retailer, installer, or mechanic, shall give or make any statement or representation, written or oral, to any manufacturer, retailer, installer, mechanic, homeowner, or lending entity, to any buyer of any manufactured home, to any governmental agency or department or other person or entity responsible for issuing certificates of occupancy, or to any other person, entity, or business entity, which indicates or which is intended to indicate that any manufacturer's warranty seal or installer's warranty seal constitutes, evidences, or gives rise to a warranty of any kind by the State of New York or the Department of State.

(i) A manufactured home which was installed in the State of New York for a bona fide purchaser prior to January 1, 2006 and which is re-installed (whether at its original site of installation or at a new site) on or after January 1, 2006, may be so re-installed without attaching a manufacturer's warranty seal. However, the installer performing such re-installation must attach an installer's warranty seal at the time of such re-installation.

(j) A manufactured home which was installed in the State of New York for a bona fide purchaser on or after January 1, 2006, which bears the required manufacturer's warranty seal and installer's warranty seal

from the original installation, and which is re-installed (whether at its original site of installation or at a new site) on or after January 1, 2006, may be so re-installed without attaching an additional manufacturer's warranty seal. However, the installer performing such re-installation must attach an installer's warranty seal at the time of such re-installation.

(k) A manufactured home which was manufactured prior to January 1, 2006 (as shown by the date of manufacture on the HUD data plate affixed to such manufactured home) may be installed or re-installed on or after January 1, 2006 without attaching a manufacturer's warranty seal. However, the installer performing any such installation or re-installation must attach an installer's warranty seal at the time of such installation or re-installation.

(l) The manufacturer shall type or print the name of the manufacturer in the space provided on the manufacturer's warranty seal, and the manufacturer or an authorized representative of the manufacturer shall sign the manufacturer's warranty seal in the space provided, prior to or at the time of installation of the manufacturer's warranty seal. Except as provided in the preceding sentence, no statement, information, or other matter shall be inserted in or otherwise added to a manufacturer's warranty seal, and no statement, information, or other matter shall be crossed-out, obliterated, or otherwise removed from a manufacturer's warranty seal. A manufacturer's warranty seal that does not comply with the requirements of this subdivision shall not be deemed to be a valid manufacturer's warranty seal.

(m) The installer shall check the appropriate box ("new manufactured" or "relocated manufactured") at the top of the installer's warranty seal, type or print the appropriate information in lines A to I, inclusive, of the installer's warranty seal, and type or print the name of the installer and the name of the authorized person signing the installer's warranty seal on behalf of the installer in the spaces provided in the installer's warranty seal, and the installer or an authorized representative of the installer shall sign the installer's warranty seal in the space provided, prior to or at the time of installation of the installer's warranty seal. Except as provided in the preceding sentence, no statement, information, or other matter shall be inserted in or otherwise added to an installers's warranty seal, and no statement, information, or other matter shall be crossed-out, obliterated, or otherwise removed from an installer's warranty seal. An installer's warranty seal that does not comply with the requirements of this subdivision shall not be deemed to be a valid installer's warranty seal.

### **§1210.17 Manufacturer's and installer's quarterly reports.**

(a) Every installer shall file quarterly reports with the Department of State and, except as otherwise provided in subdivision (d) of this section, every manufacturer shall file quarterly reports with the Department of State. Such reports shall cover the first quarter (January 1 to March 31), second quarter (April 1 to June 30), third quarter (July 1 to September 30) and fourth quarter (October 1 to December 31) of each year. Each such report must be received by the Department of State on or before the thirtieth day after the end of the quarterly reporting period covered by such report.

(b) In the case of a manufacturer, each such report:

(1) shall be on a form provided by or otherwise acceptable to the Department of State;

(2) shall be signed by the manufacturer filing the report (or, if the manufacturer filing the report is a business entity, by an officer, member, or other authorized representative of such business entity);

(3) shall specify the name and address of the manufacturer filing the report;

(4) shall specify the reporting period covered by such report; and

(5) shall specify, with respect to each manufactured home completed by the manufacturer during the reporting period covered by such report:

(i) the type or model of such manufactured home; and

(ii) whether such manufactured home was delivered to a retailer and, if so, the name and address of the retailer to which such manufactured home was delivered.

(c) In the case of an installer, each such report:

(1) shall be on a form provided by or otherwise acceptable to the Department of State;

(2) shall be signed by the installer filing the report (or, if the installer filing the report is a business entity, by an officer, member, or other authorized representative of such business entity);

(3) shall specify the name and address of the installer filing the report;

(4) shall specify the reporting period covered by such report; and

(5) shall specify, with respect to each manufactured home installed by the installer during the reporting period covered by such report:

(i) the location (i.e., the street address, specified in a manner that complies with the applicable 911 numbering system requirements) where such manufactured home was installed;

(ii) the owner of such manufactured home at the time of installation;

(iii) the type or model of such manufactured home;

(iv) the manufacturer of such manufactured home; and

(v) the written certification of the installer that the installation of such manufactured home meets the standards of the uniform code.

(d) In lieu of quarterly reports, a manufacturer may elect to file monthly reports with the Department of State. A manufacturer electing to file monthly reports must file a report for each calendar month in each year. Each such report must be received by the Department of State on or before the thirtieth day after the end of the month covered by such report. Each such report:

(1) shall be on a form provided by or otherwise acceptable to the Department of State;

(2) shall be signed by the manufacturer filing the report (or, if the manufacturer filing the report is a business entity, by an officer, member, or other authorized representative of such business entity);

(3) shall specify the name and address of the manufacturer filing the report;

(4) shall specify the month covered by such report; and

(5) shall specify, with respect to each manufactured home completed by the manufacturer during the month covered by such report:

(i) the type or model of such manufactured home; and

(ii) whether such manufactured home was delivered to a retailer and, if so, the name and address of the retailer to which such manufactured home was delivered.

## **§1210.18 Resolution of disputes.**

(a) Any homeowner, retailer, manufacturer, installer, mechanic, or lending entity may file a complaint with the Department of State seeking resolution of an allegation that a substantial defect exists in the delivered condition, installation, service or construction of a manufactured home. Any such complaint shall be in writing, shall be submitted on a form provided by or otherwise acceptable to the Department of State; and shall specify the name and address of each complaining party, the nature of the substantial defect alleged to exist, the name and address of the manufacturer, the retailer, and the installer of such manufactured home and, if applicable, the name and address of each mechanic who serviced the manufactured home.

(b) A complaint relating to the delivered condition, installation, service or construction of a manufactured home shall be filed with the Department of State within one year and ten days after the date of the service, installation, or issuance of a certificate of occupancy, or the expiration of any applicable provision of a contract or warranty, whichever is later.

(c) The Department of State shall review the complaint to determine whether the complaint, on its face, does or does not allege the existence of a substantial defect in the delivered condition, installation, service, or construction of a manufactured home. A determination by the Department of State pursuant to this subdivision shall not be deemed to constitute a finding on the merits of the complaint, but shall merely be a determination whether the complaint, on its face, does or does not allege the existence of a substantial defect.

(d) If the Department of State determines that a complaint, on its face, fails to allege the existence of a substantial defect, the Department of State shall notify the complaining party of such determination. The complaining party may thereafter file a new complaint, provided that such new complaint is filed within the time period specified in subdivision (b) of this section.

(e) If the Department of State determines that the complaint, on its face, does allege the existence of a substantial defect, the Department of State shall notify the complaining party and each responding party of such determination, and the Department of State shall provide each responding party with a copy of the complaint. Each responding party shall, within thirty days after receipt of such notice and copy of the complaint, file a written response to the complaint with the Department of State, and provide a copy of such response to the complaining party.

(f) The Department of State shall be permitted, but not required, to attempt to resolve any complaint on an informal basis. Such informal complaint resolution process may be commenced at any time after the complaint is filed, and may be continued at any time and from time to time thereafter. During the course of such informal complaint resolution process, one or more employees of the Department of State may participate in telephone calls to or from, or meetings with, any party or parties, with or without the participation by or presence of the other party or parties, and the Department of State may conduct such other investigation into the merits of the complaint as the Department of State may deem appropriate. No administrative law judge who may subsequently hear the matter shall participate in any such telephone call or meeting or any such investigation. At any time during the informal complaint resolution process, the Department of State may propose a manner in which the complaint may be resolved, in whole or in part. If the complaining party and each responding party agree in writing to accept such proposed resolution, the Secretary of State or his or her designee shall make a consent order reflecting such resolution. Any such consent order shall be final and binding when issued.

(g) If the Department of State elects not to attempt to resolve the complaint on an informal basis, or if any attempts to resolve the complaint on an informal basis are unsuccessful, in whole or in part, the Department of State shall resolve the complaint by administrative hearing conducted by the Department of State's Office of Administrative Hearings pursuant to the State Administrative Procedure Act and Part 400 of this Title. The decision resolving the complaint following an administrative hearing shall be made by the administrative law judge who conducted the hearing, shall be in writing, and shall provide the reasons for the decision. If the complaining party prevails, in whole or in part, the decision of the administrative law judge shall:

(1) direct compensation to the complaining party in such amount as the administrative law judge shall determine to be appropriate, which amount shall include, but shall not necessarily be limited to:

(i) filing fees, recording fees, inspection fees, and other required costs that the complaining party would not have incurred had the manufactured home met applicable standards; and

(ii) the cost of conforming repairs or replacements; and

(2) apportion liability between two or more parties, where appropriate. If appropriate, a portion of liability may be attributed to the complaining party, in which case the compensation awarded to the complaining party shall be adjusted accordingly. The amount of compensation awarded to a complaining party shall not be limited by the amount(s) in the deposit account(s) evidenced by the acceptable deposit account control agreement(s), the amount(s) of the acceptable letter(s) of credit, or the amount(s) of the acceptable surety bond(s) provided by the responding party or parties determined to be liable. A copy of the decision of the administrative law judge shall be provided to each complaining party and each responding party. The decision of the administrative law judge shall be final and binding when issued unless an appeal is taken pursuant to subdivision (h) of this section.

(h) Any party may appeal the decision of the administrative law judge to the Secretary of State within thirty calendar days of such party's receipt of a copy of the decision. Such an appeal shall be made by filing with the Secretary of State, and serving on the other party or parties, a written memorandum of appeal stating the appellant's arguments and setting forth specifically the questions of procedure, fact, law or policy to which exceptions are taken, identifying the part or parts of the administrative law judge's decision and order to which objection is made, specifically designating the portions of the record relied upon, and stating the grounds for exceptions. A party upon whom an adverse party has served a memorandum of appeal may, within thirty calendar days after such service, file and serve a memorandum in opposition to appeal, a memorandum of cross-appeal, or both. A party upon whom an adverse party has served a memorandum of cross-appeal may, within fifteen calendar days of such service, file and serve a memorandum in opposition to cross-appeal. The failure of any party to serve a memorandum in opposition to appeal or memorandum in opposition to cross-appeal shall not be deemed a waiver or admission. The record on appeal shall consist of the complaint, the response or responses to the complaint, evidentiary exhibits from the hearing, the transcript of the hearing, the memorandum of appeal, the memorandum or memoranda in opposition to appeal, any memorandum or memoranda of cross-appeal, and any memorandum or memoranda in opposition to cross-appeal. The Secretary of State or his or her designee may, in his or her discretion, stay the effective date of the decision of the administrative law judge pending the appeal. The Secretary of State or his or her designee may, in his or her discretion, direct that there shall be oral argument on the appeal. Unless so directed, there shall be no oral argument. The Secretary of State or his or her designee shall, based solely on the record on appeal (and oral argument, if any) make a written decision and order which shall:

(1) confirm the decision of the administrative law judge;

(2) supersede the decision of the administrative law judge; or

(3) remand the matter to the administrative judge for additional proceedings. Any decision and order superseding the decision of the administrative law judge shall include a statement as to why the Secretary of State, or his or her designee, has not confirmed the decision of the administrative law judge. A decision and order of the Secretary of State, or his or her designee, which confirms the decision of the administrative law judge or supercedes the decision of the administrative law judge shall be final and binding unless a party makes a timely application for judicial review pursuant to article seventy-eight of the civil practice law and rules.

(i) If any party has filed an appeal from the decision of the administrative law judge, such party or any other party may apply to the Secretary of State, or to his or her designee, for an order staying such decision pending determination of the appeal. The application for a stay shall be in writing, shall be based upon evidence and other matter contained in the record on appeal, and shall be served on each other

party. Any party served with an application for stay pending appeal may, within five days after such party receives such application, file and serve papers in opposition to such application. The Secretary of State or his or her designee shall promptly rule on the application.

(j) Any party aggrieved by a decision and order of the Secretary of State, or his or her designee, which confirms the decision of the administrative law judge or supercedes the decision of the administrative law judge may seek judicial review of such decision and order pursuant to article seventy-eight of the civil practice law and rules.

(k) Each person or business entity who applies for, receives, or retains any certification under Article 21-B, and each person or business entity who applies for, receives, or retains a renewal of any such certification, shall be deemed to agree:

(1) to submit to the jurisdiction of the Department of State in connection with the resolution of complaints and disputes pursuant to this section;

(2) to accept service of any notice, complaint, or other paper or document to be given or provided by the Department of State pursuant to this section, or any other provision of this Part, or any provision of Part 400 of this Title, by first class mail, by certified mail (return receipt requested), or in any manner authorized by the Civil Practice Law and Rules for service of a summons; and

(3) to be bound by any consent order, decision, or final decision and order made pursuant to this section (subject, however, to the right to seek administrative or judicial review as provided in this section). Such agreements shall survive any renewal, extension, suspension, revocation, or expiration of such certification.

(l) Each person or business entity who, at any time on or after July 1, 2006, engages in any activity which requires certification as a manufacturer, retailer, installer, or mechanic under Article 21-B, shall be deemed to have made the agreements set forth in subdivision (k) of this section, without regard to whether such person or entity does or does not apply for or obtain such certification. Nothing in this subdivision shall excuse any person or business entity required to be certified from the obligation of obtaining such certification.

(m) Any notice, complaint, or other paper or document to be given or provided by the Department of State to any complaining party or responding party pursuant to this section or pursuant to any provision of Part 400 of this Title may be given or provided by first class mail addressed to the party at the address of such party last known to the Department of State, by certified mail (return receipt requested) addressed to the party at the address of such party last known to the Department of State, or in any manner authorized by the Civil Practice Law and Rules for service of a summons.

(n) Nothing in this section shall preclude any party from requesting the Department of State to attempt to resolve a dispute on an informal basis prior to the filing of a complaint under this section, and nothing in this section shall preclude the Department of State from attempting to resolve a dispute on an informal basis prior to the filing of a complaint under this section; provided, however, that:

(1) the Department of State shall have no obligation to make any such attempt; and

(2) the period of time, as set forth in subdivision (b) of this section, within which a complaint must be filed shall not be extended by reason of any party making any such request or by reason of the Department of State making any such attempt. During the course of any such informal pre-complaint dispute resolution process, one or more employees of the Department of State may participate in telephone calls to or from, or meetings with, any party or parties, with or without the participation by or presence of the other party or parties, and the Department of State may conduct such other investigation into the merits of the dispute as the Department of State may deem appropriate; however, no administrative law judge who may subsequently hear the matter shall participate in any such telephone call or meeting or any such investigation.

## **§1210.19 Fees.**

(a) The fee for filing an application for certification pursuant to section 1210.3 (Certification) of this Part shall be:

(1) \$200 in the case of an application for certification as a manufacturer,

(2) \$200 in the case of an application for certification as a retailer,

(3) \$200 in the case of an application for certification as an installer, and

(4) \$100 in the case of an application for certification as a mechanic. Provided, however, that the fee for filing an application for a limited certificate shall be \$25, and the fee for filing an application for an owner-occupant installer certificate pursuant to subdivision (h) of section 1210.6 (Standards for certification as an installer) of this Part shall be \$25.

(b) The fee for filing an application for renewal of a certification pursuant to section 1210.12 (Renewal of certifications) of this Part shall be:

(1) \$200 in the case of an application for renewal of certification as a manufacturer,

(2) \$200 in the case of an application for renewal of certification as a retailer,

(3) \$200 in the case of an application for renewal of certification as an installer, and

(4) \$100 in the case of an application for renewal of certification as a mechanic. Provided, however, that the fee for filing an application for renewal of a limited certificate shall be \$25.

(c) The fee for filing an application for approval of a course pursuant to section 1210.14 (Approval of courses) of this Part, or for renewal of any such approval, shall be \$50. In addition, the instructional provider providing an approved course shall pay to the Department of State a fee of \$5 for each student who takes the course. Within thirty days following each presentation of an approved course, the instructional provider shall submit a report to the Department of State which shall include the date and location of the presentation, the name and address of each student who took the course, and such other information as the Department of State may request, and which shall be accompanied by the appropriate fee.

(d) The fee for filing an application for approval as an instructional provider pursuant to section 1210.15 (Approval of instructional providers) of this Part, or for renewal of any such approval, shall be \$100.

(e) The fee for requesting one or more manufacturer's warranty seals pursuant to section 1210.16 (Warranty seals) of this Part shall be \$125 for each manufacturer's warranty seal requested. However, if a manufacturer establishes to the satisfaction of the Department of State that a manufacturer's warranty seal is to be attached to a manufactured home with respect to which a required disclosure statement was provided prior to February 1, 2006, and that such required disclosure statement did not include any fee for attaching the manufacturer's warranty seal to such manufactured home, the fee for the manufacturer's warranty seal to be attached to such manufactured home shall be \$0.

(f) The fee for requesting one or more installer's warranty seals pursuant to section 1210.16 (Warranty seals) of this Part shall be \$35 for each installer's warranty seal requested, in the case of a request for five or fewer seals, and \$25 for each installer's warranty seal requested, in the case of a request for six or more seals. However, if an installer establishes to the satisfaction of the Department of State that an installer's warranty seal is to be attached to a manufactured home with respect to which a required disclosure statement was provided prior to February 1, 2006, and that such required disclosure statement

did not include any fee for attaching the installer's warranty seal to such manufactured home, the fee for the installer's warranty seal to be attached to such manufactured home shall be \$0.

(g) The maximum fee that may be charged by a manufacturer for attaching a manufacturer's warranty seal to a manufactured home pursuant to section 1210.16 (Warranty seals) of this Part is the lesser of:

(1) \$150; or

(2) the fee, if any, disclosed in any required disclosure statement provided to the purchaser or purchasers of such manufactured home. The fee permitted by this subdivision is the only fee that a manufacturer may charge with respect to a manufacturer's warranty seal; no manufacturer shall "pass-through" to the purchaser of a manufactured home all or any part of any fee paid by the manufacturer under subdivision (e) of this section, or otherwise require the purchaser to pay all or any part of any fee paid by the manufacturer under subdivision (e) of this section.

(h) The maximum fee that may be charged by an installer for attaching an installer's warranty seal to a manufactured home pursuant to section 1210.16 (Warranty seals) of this Part is the lesser of:

(1) \$50; or

(2) the fee, if any, disclosed in any required disclosure statement provided to the purchaser or purchasers of such manufactured home. The fee permitted by this subdivision is the only fee that an installer may charge with respect to an installer's warranty seal; no installer shall "pass-through" to the purchaser of a manufactured home all or any part of any fee paid by the installer under subdivision (f) of this section, or otherwise require the purchaser to pay all or any part of any fee paid by the installer under subdivision (f) of this section.

(i) The Department of State shall charge each person participating in an initial training course or a continuing education course provided by the Department of State a fee determined in accordance with fee schedules established from time to time by the Department of State.

## **§1210.20 Suspension and revocation of certifications.**

(a) The Department of State may revoke or suspend the certification of a person or business entity certified pursuant to Article 21-B if the Department of State determines:

(1) that such person or business entity has committed a substantial violation of any provision of Article 21-B or of this Part;

(2) that such person or business entity has made a material misstatement in any application for certification or in any application for renewal of certification;

(3) that such person or business entity has committed fraud or engaged in fraudulent practices;

(4) that such person or business entity has engaged in dishonest or misleading advertising;

(5) that such person or business entity has demonstrated untrustworthiness or incompetency to conduct the certified activity;

(6) that such person or business entity has failed to pay any civil penalty levied or assessed against such person or business entity pursuant to Article 21-B or this Part, or has failed to pay or has otherwise failed to comply with any Article 21-B order made against such person or business entity, or has failed to pay or has otherwise failed to satisfy any Article 21-B judgment entered against such person or business entity;

(7) that such person or business entity does not satisfy or has ceased to satisfy the financial responsibility requirements set forth in section 1210.4 (Standards for certification as a manufacturer) of this Part, section 1210.5 (Standards for certification as a retailer) of this Part, section 1210.6 (Standards for certification as an installer) of this Part, or section 1210.7 (Standards for certification as a mechanic), as applicable (or, in the case of a person holding a limited certificate, that the employer named in such person's limited certificate does not satisfy or has ceased to satisfy the financial responsibility requirements set forth in said section 1210.4, section 1210.5, section 1210.6, or section 1210.7, as applicable);

(8) that any deposit account control agreement, letter of credit, or surety bond provided by such person or business entity for the purpose of satisfying the financial responsibility requirements applicable to such person or business entity (or, in the case of a person holding a limited certificate, that the deposit account control agreement, letter of credit, or surety bond provided by such person's employer for the purpose of satisfying the financial responsibility requirements applicable to such employer) is not, or has ceased to be, an acceptable deposit account control agreement, acceptable letter of credit, or acceptable surety bond, as the case may be, for any reason;

(9) that such person or business entity, if certified as a manufacturer, is not approved or has ceased to be approved by the United States Department of Housing and Urban Development to construct manufactured homes; or

(10) that such person or business entity, if subject to subdivision (a) or subdivision (b) of section 1210.13 (Continuing education requirements) of this Part, has failed to comply with the applicable provisions of such subdivisions.

(b) For the purposes of paragraph (8) of subdivision (a) of this section, the events which shall cause a deposit account control agreement to cease to be an acceptable deposit account control agreement, shall include, but shall not be limited to the following:

(1) the bankruptcy or insolvency of the bank with which the deposit account evidenced by such deposit account control agreement is maintained;

(2) the termination of such bank's authority to do banking business in the State of New York;

(3) the reduction of the balance of funds in the deposit account evidenced by such deposit account control agreement below the applicable minimum for any reason; or

(4) the invalidity, non-perfection, or loss of priority of the Department of State's security interest in such deposit account for any reason.

(c) For the purposes of paragraph (8) of subdivision (a) of this section, the events which shall cause a letter of credit to cease to be an acceptable letter of credit, shall include, but shall not be limited to the following:

(1) the expiration of the term of such letter of credit and the failure of such term to be extended;

(2) the receipt by the Department of State of notice of an election by the issuer of such letter of credit not to extend the term of such letter of credit;

(3) the bankruptcy or insolvency of the issuer of such letter of credit;

(4) the termination of such issuer's authority to do business in the State of New York and/or to issue letters of credit in the State of New York; or

(5) the reduction in the amount available under such letter of credit below the applicable minimum for any reason.

(d) For the purposes of paragraph (8) of subdivision (a) of this section, the events which shall cause a surety bond to cease to be an acceptable surety bond, shall include, but shall not be limited to the following:

(1) the expiration of the term (if any) of such surety bond;

(2) the receipt by the Department of State of notice of an election by the surety to terminate such surety bond;

(3) the bankruptcy or insolvency of the surety;

(4) the termination of the surety's authority to do business in the State of New York and/or to issue surety bonds in the State of New York; or

(5) the reduction in the amount available under such surety bond below the applicable minimum for any reason.

(e) Part 400 of this Title shall apply to any proceeding to revoke or suspend a certification pursuant to this section. For the purposes of applying Part 400 of this Title to any such proceeding, the term "license" shall be deemed to include a certification.

### **§1210.21 Civil Penalties.**

(a) Any person or business entity found guilty, after a hearing, of violation of any provision of Article 21-B (excluding the provisions set forth in section 609 of the Executive Law) or any provision of this Part shall be required to pay a civil penalty in such amount, not to exceed one thousand dollars for each such violation, and not to exceed five thousand dollars for more than one violation relating to any single manufactured home, as may be determined by the Department of State.

(b) Any manufacturer or retailer who violates any of the provisions set forth in section 609 of the Executive Law relating to manufactured housing, or any provisions set forth in this Part or in any other rule or regulation previously adopted or hereafter adopted by the Department of State, including provisions of the New York State Uniform Fire Prevention and Building Code relating to manufactured housing, shall be required to pay a civil penalty in such amount, not to exceed \$1,100 for each such violation, as may be determined by the Department of State. Each violation constitutes a separate violation with respect to each manufactured housing unit. However, the civil penalty imposed pursuant to this subdivision for any related series of violations occurring within one year after the first violation in such series shall not exceed \$1,100,000.

(c) The Department of State shall have the power to impose any civil penalty pursuant to this section administratively. Part 400 of this Title shall apply to any proceeding to impose a civil penalty pursuant to this section. For the purposes of applying Part 400 of this Title to any such proceeding, the term "license" shall be deemed to include a certification.

(d) The power of the Department of State to impose civil penalties pursuant to this section shall be in addition to, and not in limitation of, the power of the Department of State to suspend or revoke certifications to section 604 of the Executive Law and section 1210.20 (Suspension and revocation of certifications) of this Part.

(e) Nothing in this Part shall limit the powers and duties of the Attorney General, as defined in section 63 of the Executive Law, and nothing in this Part shall diminish or limit any other right or cause of action existing under any other provision of law.

### **§1210.22 State administrative agency.**

(a) The Department of State shall continue to be the state administrative agency in the State of New York, and shall carry out the state plan and enforce the National Manufactured Housing Construction and Safety Standards Act (42 USC 5401, et seq.) within the State of New York. The Secretary of State may from time to time designate one or more offices within the Department of State to carry out specified responsibilities and obligations under the National Manufactured Housing Construction and Safety Standards Act.

(b) In addition to all other powers and authority granted to the Department of State under article 21-B or under any other provision of this Part, the Department of State and its authorized representatives shall have the powers and authority specified or referred to in subdivisions (1), (3), and (4) of section 609 of the Executive Law.

### **§1210.23 Manufactured housing advisory council.**

Meetings of the advisory council may be called by the Secretary of State, as chairperson, upon his or her initiative. Meetings of the advisory council shall be called by the Secretary of State upon receipt of a written request therefor signed by not less than three other members of the advisory council. Written notice of the time and place of any such meeting shall be given to each member of the advisory council.