



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia  
Secretary Of State

## NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Labor

RULE TYPE: Legislative

TITLE-SERIES: 42-19

RULE NAME: Board of Manufactured Housing  
Construction and Safety Rule

CITE AUTHORITY: W. Va. Code §21-9-4

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Mitchell E Woodrum -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 42  
LEGISLATIVE RULE  
DIVISION OF LABOR

SERIES 19  
WEST VIRGINIA BOARD OF MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS  
BOARD

**§42-19-1. General.**

1.1. Scope. -- This legislative rule governs all matters arising pursuant to the Board of Manufactured Housing Construction and ~~Safety Standards' Board's~~ Safety's statutory authority and as a State Administrative Agency under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 *et seq.*

1.2. Authority. -- W. Va. Code §21-9-4 ~~and 21-9-5.~~

1.3. ~~Technical Amendment Filed~~ Filing Date. -- ~~July 15, 2021.~~

1.4. Effective Date. -- ~~July 1, 2009.~~

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 2028.

**§42-19-2. Application and Enforcement.**

2.1. Application. -- This legislative rule applies to the Board and to all persons, materials, and transactions governed by or otherwise within the jurisdiction of the Board.

2.2. Enforcement. -- The enforcement of this legislative rule is vested in the Board and the Division of Labor as authorized by the Board.

**§42-19-3. Definitions.**

In addition to the definitions in this section, the definitions in W. Va. Code §21-9-2 are incorporated herein by reference.

3.1. "Act" means the West Virginia Manufactured Housing Construction and Safety Standards Act, W. Va. Code §21-9-1 *et seq.*

3.2. "Advertisement" means any method used by a manufacturer, dealer, distributor, or contractor to promote its business to the general public. If a manufacturer, dealer, distributor, or contractor maintains an internet website, any such advertisement may direct potential customers to its online landing page for a link to the information required.

~~3.1.~~ 3.3. "Aggrieved consumer" means a consumer qualifying for compensation or repairs from the Recovery Fund, bond, or other financial assurance required pursuant to the provisions of in accordance with the Act and this rule.

~~3.2.~~ 3.4. "Board" means the West Virginia Board of Manufactured Housing Construction and Safety

~~Standards Board~~ and its authorized representatives.

~~3.3.~~ 3.5. "Business location" means each physically separate and distinct operation or storage location maintained by a manufacturer, dealer, or distributor of manufactured housing.

3.6. "Cease and desist order" means an order issued by the Division of Labor pursuant to the provisions of the Act and this rule to an unlicensed person or entity who performs work for which a license is required or to a licensee who performs work outside of the license's classifications.

~~3.4.~~ 3.7. "Commissioner" means the Commissioner of the State of West Virginia Division of Labor and his or her authorized representatives.

~~3.5.~~ 3.8. "Contested case" or "formal presentation of views" is synonymous with the definition of "contested case" found at W. Va. Code §29A-1-2(b) "Contested case hearing" means an administrative evidentiary hearing before the Board in which a specific party's rights, interests, privileges, or obligations are determined in accordance with W. Va. Code §29A-5-1 *et seq.*

~~3.6.~~ 3.9. "Contractor" or "installer" means any person, including a primary contractor or subcontractor, who performs operations in ~~the~~ this state at the occupancy site which render a manufactured home fit for habitation. This definition does not include a person who does work on a manufactured home which is owned or leased by that person. The operations include, without limitation: installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. The operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission. ~~These terms specifically include primary contractors and subcontractors.~~

~~3.7.~~ 3.10. "DAPIA" means the Design Approval Primary Inspection Agency specified in the federal standards that is responsible for the evaluation and approval of a manufacturer's home design and its quality assurance manuals.

~~3.8.~~ 3.11. "Dealer" means any person engaged in business in this state in the sale, accepting on consignment, leasing, or distribution of manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale. The phrase "engaged in business in this state" includes operating business locations physically within West Virginia and operating business locations physically outside West Virginia when the dealer knows or should know that the manufactured home is to be ~~first~~ initially located at an occupancy site in West Virginia.

~~3.9.~~ 3.12. "Defect" includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended, but which does not result in an unreasonable risk of injury or death to the occupants of the ~~affected manufactured~~ home.

~~3.10.~~ 3.13. "Distributor" means any person engaged in business in ~~the~~ this state in the sale and distribution of manufactured homes for resale. The phrase "engaged in business in this state" includes operating business locations physically within West Virginia and operating business locations physically outside West Virginia when the distributor knows or should know that the manufactured home is to be resold in West Virginia.

~~3.11.~~ 3.14. "Division" means the West Virginia Division of Labor and its authorized representatives.

~~3.12.~~ "~~Failure to conform~~" means ~~an imminent safety hazard related to the federal standards, a serious defect, defect, or noncompliance and is used as a substitute for all of those terms.~~

~~3.13.~~ 3.15. "Federal standards" means the ~~federal manufactured home procedural and enforcement regulations promulgated under 42 U.S.C. § 5401 et seq~~ National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq. and the federal manufactured housing construction and safety standards regulations codified in 24 C.F.R. parts 3280, 3282, 3284, 3285, 3286, 3288, and 3800.

~~3.14.~~ 3.16. "~~Final grade and water control~~" means ~~footing backfill, installation of a water vapor barrier, and final grading of the lot~~ "Final grading and water control" is an aspect of installation that means footing backfill, installing a water vapor barrier, and final grading of the site.

~~3.15.~~ 3.17. "Home placement evaluation" means ~~conducting a soil evaluation, designing the support system, and physically inspecting the site for the ability to comply with code and installation requirements~~ is an aspect of installation that means a soil compaction test, support system design, and a physical inspection of the site for compliance with all applicable installation standards as specified in section 10A of this rule.

~~3.16.~~ 3.18. "HUD" means the United States Department of Housing and Urban Development and its Secretary.

~~3.17.~~ 3.19. "~~HUD data plate~~" means the ~~permanently affixed data plate placed on each manufactured home pursuant to the federal standards (24 C.F.R. § 3280.5)~~ "HUD certification label" means the permanently affixed label placed on each manufactured home pursuant to 24 C.F.R. § 3280.11.

~~3.18.~~ 3.20. "~~HUD label~~" means the ~~permanently affixed certification label placed on each manufactured home pursuant to the federal standards (24 C.F.R. § 3280.11)~~ "HUD data plate" means the permanently affixed data plate placed on each manufactured home pursuant to 24 C.F.R. § 3280.5.

~~3.19.~~ 3.21. "Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to a failure to comply with an applicable federal standard.

~~3.20.~~ 3.22. "Informal presentation of views" means the opportunity for a manufacturer, dealer, distributor, or contractor to meet with the Division's ~~staff~~ following ~~the issuance of a~~ preliminary determination of a possible imminent safety hazard or serious defect or the issuance of a notice of violation.

3.23. "Inspections," as used in section 8 of this rule, means and includes evaluations of the following: a manufactured home's site location with respect to the home's design, construction, and specific site conditions; site preparation and grading for drainage; foundation construction; anchorage; completion of ductwork, plumbing, fuel supply, and electrical systems; optional features such as skirting; close-up examination of the home's interior and exterior; and operational checks and adjustments.

~~3.21.~~ 3.24. "Installation" means and includes ~~home placement evaluation, site preparation, installing the support system, leveling and trimming the manufactured home, utility connections, installation of optional accessory items, and final grade and water control~~ or "aspect of installation" means the home

placement evaluation, site preparation, installation of the support system, leveling and trimming the manufactured home, utility connections, installation of optional accessory items, and final grading and water control.

~~3.22.~~ 3.25. "Installation of optional accessory items" ~~means installing fascia/skirting and ventilation~~ is an aspect of installation that means installation of fascia/skirting and ventilation.

~~3.23.~~ 3.26. ~~"Installing footings" means digging footings and pouring concrete~~ "Installation of the support system" is an aspect of installation that means installation of footings, piers, foundation walls, or other equivalent support systems.

~~3.24.~~ 3.27. "IPIA" means the Production Inspection Primary Inspection Agency specified in the federal regulations standards.

~~3.25.~~ 3.28. "Level and trim the manufactured home" is an aspect of installation that means positioning and leveling the manufactured home on its support system, anchoring the home, close-in, trim and adjustments, and ~~cross-over connects (non-electrical)~~ non-electrical cross-over connects.

~~3.26.~~ 3.29. "Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes into ~~the~~ this state for resale.

~~3.27.~~ 3.30. "Manufactured home" means a structure, transportable in one or more sections, which in ~~the traveling mode transport~~ is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. ~~except that~~ The term also includes any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with ~~the applicable federal standards (24 C.F.R. § 3282.13).~~ Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. ~~Unless specifically indicated to the contrary in this rule~~ Unless otherwise stated, all references to a "manufactured home" means a new or used manufactured home.

~~3.28.~~ 3.31. "Noncompliance" means a failure of a manufactured home to comply with a federal standard that does not constitute a defect, serious defect, or imminent safety hazard.

3.32. "Notice of violation" means a notice issued by the Board to a licensee that a violation of the federal standards, the Act, or this rule has occurred which specifies the nature of the alleged violation and the amount of time in which the licensee has to correct or contest the violation.

~~3.29.~~ 3.33. "Person" means any individual, trust, estate, partnership, firm, corporation, association, or any other legal business entity recognized by ~~the~~ this state, including any state or political subdivision.

~~3.30.~~ 3.34. "Purchaser" or "consumer" means ~~a person~~ an individual, other than a manufacturer, dealer, distributor, contractor, or transporter, purchasing a manufactured home in good faith for purposes other than resale or contracting for the installation of a manufactured home.

~~3.31.~~ 3.35. "Recovery Fund" means the State Manufactured Housing Recovery Fund ~~as~~ established

pursuant to ~~the provisions of~~ W. Va. Code §21-9-10 and this rule.

~~3.32.~~ 3.36. "SAA" means the State Administrative Agency specified in the federal ~~regulations standards.~~

~~3.33.~~ 3.37. "Serious defect" means any failure to comply with an applicable federal standard that renders the manufactured home or any part of the manufactured home not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home.

~~3.34.~~ "Set up" means "installation," as defined in 3.21 of this section.

~~3.35.~~ 3.38. "Site" or "occupancy site" means ~~that~~ the area encompassing the exterior perimeter of the manufactured home plus 10 feet ~~(10')~~.

~~3.36.~~ 3.39. "Site preparation" is an aspect of installation that means clearing, providing access to, and rough grading the site.

~~3.37.~~ 3.40. "State" means the state of West Virginia.

~~3.38.~~ 3.41. "Support system" means the piers, foundation walls, and other equivalent systems approved in accordance with subsections 10A.2 and 10A.3 of this rule, and their footings, anchorage to the manufactured home, shims, and any combination thereof that, when properly installed, support the manufactured home.

~~3.39.~~ 3.42. "Transporter" or "transporter only contractor" means a person, ~~firm, or corporation~~ who, for compensation, transports a manufactured home upon a public road in this state to an occupancy site and who performs no installation work.

~~3.40.~~ 3.43. "Utility connections" ~~means the connection of utility services, including electric, gas, water, and sewer systems~~ is an aspect of installation that means the connection of utility services, including electric, gas, sewer systems, and water.

#### **§42-19-4. Licensure of Manufacturers.**

4.1. No person may engage in the business of a manufacturer in this state without a license. Each manufacturer who desires to engage in business in this state shall apply to the Board for a license. A manufacturer shall maintain one license for each business location in this state. A manufacturer who maintains all of its business locations out of this state, but who ships, imports, or delivers manufactured homes into this state, and is considered to be engaged in business in this state, shall maintain one license for each out-of-state business location which will ship, import, or deliver manufactured homes into this state.

4.2. A manufacturer's license is valid for up to one year and expires on June 30 of each year, unless sooner revoked or suspended by the Board.

4.3. Any manufacturer who desires to be licensed shall submit an initial application on forms supplied by the Board. Each ~~initial~~ application shall be accompanied by a fee of \$750 for each business location the manufacturer desires to license and shall contain all information required by the Board ~~on its forms,~~

including, but not limited to:

- 4.3.1. The legal and trade name of the manufacturer;
- 4.3.2. The address of ~~the various business locations~~ each business location the manufacturer desires to license;
- 4.3.3. The phone number of each business location the manufacturer desires to license;
- 4.3.4. The names and addresses of the owners, officers, and directors of the manufacturer;
- 4.3.5. Evidence of the manufacturer's legal authority to engage in business in this state;
- 4.3.6. Proof of payment to the Recovery Fund as ~~required by~~ specified in section 15 of this rule;
- 4.3.7. A ~~statement of~~ notarized affidavit stating compliance with all applicable ~~state and~~ federal standards, provisions of the Act, and rules of the Board ~~which is~~ signed by a responsible officer or person ~~representing the applicant who has~~ with full legal authority to bind the applicant to its terms;
- 4.3.8. The name of the DAPIA or DAPIAs who inspect the manufacturer;
- 4.3.9. The name of the IPIA or IPIAs who inspect the manufacturer;
- 4.3.10. A copy of all DAPIA-approved manufactured home designs currently in use;
- 4.3.11. A copy of all DAPIA-approved quality assurance programs currently in use;
- 4.3.12. A copy of all manufacturing plant certification reports issued by an IPIA in the past 12 months; and
- 4.3.13. A list of the names of all dealers and/or distributors in ~~the~~ this state that are authorized to receive the manufacturer's product line.

4.4. Any manufacturer currently licensed in ~~the~~ this state shall submit an application for licensure renewal on or before June 30 of each year. Any renewal application is a valid license for a period of 30 days, unless sooner rejected by the Board. The ~~renewal~~ application shall be accompanied by ~~all information required by the Board on its forms as specified in 4.3 of this section and shall include a renewal fee of \$750~~ a renewal fee of \$750 and shall contain all information required by the Board as specified in 4.3 of this section.

4.5. The Board shall grant or refuse any initial or renewal application for a manufacturer's license within 30 days after a proper and complete application has been filed. If any ~~initial or renewal~~ application is found by the Board to not constitute a proper and complete application, the Board may request additional information.

4.6. The Board shall grant an initial or renewal manufacturer's license if ~~it finds that the applicant is eligible to operate as a manufacturer by virtue of each of the following~~ the manufacturer sufficiently demonstrates each of the following:

4.6.1. The manufacturer's adequate financial capacity;

4.6.2. The manufacturer's record of compliance with any lawful orders of the Board or ~~any~~ other equivalent agency for any other jurisdiction, including the lack of ~~any~~ revocation, suspension, or limitation on the manufacturer's license in this state or ~~any~~ other jurisdiction; and

4.6.3. The manufacturer's compliance with ~~the applicable portions of this rule and with the applicable~~ all applicable federal standards, including receipt of all DAPIA and IPIA approvals and certifications, all applicable provisions of the Act, and rules of the Board.

4.7. The Board may grant initial and renewal licenses for manufacturers for some business locations and deny them for others if the facts justify that action.

4.8. Each manufacturer shall conspicuously display its license at each of its licensed business locations and the license number shall be included in all advertisements.

4.9. A manufacturer's license is not transferable. Any change in the person holding the license, including a change in the ownership of a sole proprietorship, a change of a partner in a partnership, or the creation of a new corporate or other business entity, requires a new license.

**§42-19-5. Licensure of Dealers and Distributors.**

5.1. No person may engage in the business of a dealer and/or distributor in this state without a license. Each dealer and/or distributor who desires to engage in business in ~~the~~ this state shall apply to the Board for a license. A dealer and/or distributor shall maintain one license for each business location in ~~the~~ this state it operates.

5.2. A dealer's and/or distributor's license is valid for up to one year and expires on June 30 of each year, unless sooner revoked or suspended by the Board.

5.3. Any dealer and/or distributor who desires to be licensed shall submit an initial application on forms supplied by the Board. Each ~~initial~~ application shall be accompanied by a fee of \$250 for each business location ~~desiring licensure and all information required by the Board on its forms, including, but not limited to the dealer and/or distributor desires to license and shall contain all information required by the Board, including, but not limited to:~~

5.3.1. The legal and trade name of the dealer and/or distributor;

5.3.2. The address of ~~the various business locations~~ each business location the dealer and/or distributor desires to license;

5.3.3. The phone number of each business location ~~desiring licensure~~ the dealer and/or distributor desires to license;

5.3.4. The names and addresses of the owners, officers, and directors of the dealer and/or distributor;

5.3.5. Evidence of the dealer's and/or distributor's legal authority to engage in business in this state;

5.3.6. Proof of payment to the Recovery Fund as ~~required by~~ specified in section 15 of this rule;

5.3.7. A ~~statement of~~ notarized affidavit stating compliance with all applicable state and federal standards, provisions of the Act, and rules of the Board ~~which is~~ signed by a responsible officer or person ~~representing the applicant who has~~ with full legal authority to bind the applicant to its terms;

5.3.8. The list of the names of all manufacturers in or out of ~~the~~ this state whose product line the dealer and/or distributor is authorized to receive; and

5.3.9. A list of the names of all salespersons employed by the dealer and/or distributor.

5.4. Any dealer and/or distributor currently licensed in ~~the~~ this state shall submit an application for licensure renewal on or before June 30 of each year. Any renewal application is a valid license for a period of 30 days, unless sooner rejected by the Board. The ~~renewal~~ application shall be accompanied by ~~all information required by the Board on its forms as specified in 5.3 of this section and shall include a renewal fee of \$250~~ a renewal fee of \$250 and shall contain all information required by the Board as specified in 5.3 of this section.

5.5. The Board shall grant or refuse any initial or renewal application for a dealer's and/or distributor's license within 30 days after a proper and complete application has been filed. If any ~~initial or renewal~~ application is found by the Board to not constitute a proper and complete application, the Board may request additional information.

5.6. The Board shall grant an initial or renewal dealer's and/or distributor's license if ~~it finds that the applicant is eligible to operate as a dealer and/or distributor by virtue of each of the following~~ the dealer and/or distributor sufficiently demonstrates each of the following:

5.6.1. The dealer's and/or distributor's adequate financial capacity;

5.6.2. The dealer's and/or distributor's record of compliance with any lawful orders of the Board or ~~any~~ other equivalent agency of any other jurisdiction, including the lack of ~~any~~ revocation, suspension, or limitation of the dealer's and/or distributor's license in this state or ~~any~~ other jurisdiction; and

5.6.3. The dealer's and/or distributor's compliance with ~~the applicable portions of this rule and with the applicable~~ all applicable federal standards, provisions of the Act, and rules of the Board.

5.7. The Board may grant initial and renewal licenses for dealers and/or distributors for some business locations and deny them for others if the facts justify that action. However, if one business location qualifies as both a dealer and distributor under this rule, only one license is required for that business location.

5.8. Each dealer and/or distributor shall conspicuously display its license at each of its business locations and at any worksite where the dealer and/or distributor is performing services and the license number shall be included in all advertisements.

5.9. A dealer's and/or distributor's license is not transferable. Any change in the person holding the license, including a change in the ownership of a sole proprietorship, a change of a partner in a partnership, or the creation of a new corporate or other business entity, requires a new license.

**§42-19-5A. Continuing Education for Dealers and Distributors; Proof of Completion Initial Training and Continuing Education for Dealers and/or Distributors; Proof of Attendance.**

5A.1. ~~Each dealer and/or distributor and his or her installer shall attend a continuing education class as required by 42 U.S.C. § 5404 et seq. and obtain proof of attendance~~ Each dealer and/or distributor that performs any aspect of installation shall attend a HUD-approved initial training course as required by 24 C.F.R. § 3286.803(b)(2) and obtain proof of attendance.

5A.2. ~~The continuing education training is a requirement for renewal every three (3) years, or less, if determined necessary by the Board~~ Eight hours of HUD-approved continuing education shall be required for dealer and/or distributor licensure renewal every three years, or less, if determined necessary by the Board.

5A.3. ~~The licensee shall submit proof of attendance to the Board prior to a license being renewed~~ Each dealer and/or distributor shall submit proof of attendance to the Board prior to a license being issued or renewed. The proof of attendance shall have been acquired within the preceding 24-month period from the date of application.

5A.4. ~~The licensee is responsible to pay a fee, as determined by the Board, for the continuing education class~~ Each dealer and/or distributor shall pay a fee directly to the entity providing the training course or continuing education class.

**§42-19-6. Licensure of Contractors/Installers and Transporter-Only Contractors.**

6.1. No person may engage in the business of a contractor in this state without a license. Each contractor who desires to engage in business in this state shall apply to the Board for a license. A contractor is required to maintain only one license. A contractor whose principal office or place of business is out of this state, but who desires to perform contractor services in this state, shall maintain a license.

6.2. A contractor's license is valid for up to one year and expires on June 30 of each year, unless sooner revoked or suspended by the Board.

6.3. Any contractor who desires to be licensed shall submit an initial application on forms supplied by the Board. ~~Each initial application shall be accompanied by a fee of \$125 and all information required by the Board on its forms, including, but not limited to~~ shall contain all information required by the Board, including, but not limited to:

6.3.1. The legal and trade name of the contractor;

6.3.2. The address of the contractor;

6.3.3. The phone number of the contractor;

6.3.4. The names and addresses of the owners, officers, and directors of the contractor;

6.3.5. Evidence of the contractor's legal authority to engage in business in this state, including compliance with the West Virginia Contractor Licensing Act, W. Va. Code §30-42-1 et seq.;

6.3.6. Proof of payment to the Recovery Fund as ~~required by~~ specified in section 15 of this rule; and

6.3.7. ~~A statement of compliance with all applicable state and federal standards. This statement of compliance shall be signed by a responsible officer or person representing the applicant who has full legal authority to bind the applicant to its terms~~ A notarized affidavit stating compliance with all applicable federal standards, provisions of the Act, and rules of the Board signed by a responsible officer or person with full legal authority to bind the applicant to its terms.

6.4. Any contractor currently licensed in ~~the~~ this state shall submit an application for licensure renewal on or before June 30 of each year. Any renewal application is a valid license for a period of 30 days, unless sooner rejected by the Board. ~~The renewal application shall be accompanied by all information required by the Board on its forms as specified in 6.3 of this section and shall include a renewal fee of \$125~~ application shall be accompanied by a renewal fee of \$125 and shall contain all information required by the Board as specified in 6.3 of this section.

6.5. The Board shall grant or refuse any initial or renewal application for a contractor's license within 30 days after a proper and complete application has been filed. If any ~~initial or renewal~~ application is found by the Board not to constitute a proper and complete application, the Board may request additional information.

6.6. The Board shall grant an initial or renewal contractor's license if ~~it finds that the applicant is eligible to operate as a contractor by virtue of each of the following~~ the contractor sufficiently demonstrates each of the following:

6.6.1. The contractor's adequate financial capacity;

6.6.2. The contractor's record of compliance with any lawful orders of the Board or ~~any~~ other equivalent agency for any other jurisdiction, including the lack of ~~any~~ revocation, suspension, or limitation on the contractor's license in ~~the~~ this state or ~~any~~ other jurisdiction; and

6.6.3. The contractor's compliance with ~~the applicable portions of this rule and with the applicable~~ all applicable federal standards, provisions of the Act, and rules of the Board.

6.7. Each contractor shall conspicuously display its license at its business location and at any worksite where the contractor is performing services and the license number shall be included in all advertisements.

6.8. A contractor's license is not transferable. Any change in the person holding the license, including a change in the ownership of a sole proprietorship, a change of a partner in a partnership, or the creation of a new corporate or other business entity, requires a new license.

6.9. A contractor involved solely in the transportation of manufactured homes to the occupancy site, and who is not regulated by the West Virginia Public Service commission, may apply for a "transporter only" contractor license. ~~A transporter shall meet the general requirements of a contractor but is not required to participate in the Recovery Fund identified in section 15 of this rule. In lieu of Recovery Fund participation, the transporter shall maintain a policy of insurance approved by the Board and obtained from an insurer authorized to conduct business in this state in the amount of not less than \$50,000 for~~

~~each manufactured home transported and \$500,000 in the aggregate. The policy shall insure the transporter against liability for damages to a manufactured home in the transit process. The insurer shall provide the Board with at least 30 days' notice of any intent of cancellation, suspension, or non-renewal of the policy.~~

6.9.1. A transporter shall meet the general requirements of a contractor but is not required to participate in payment to the Recovery Fund as specified in section 15 of this rule.

6.9.2. In lieu of Recovery Fund participation, the transporter shall maintain an insurance policy approved by the Board and obtained from an insurer authorized to conduct business in this state in the amount of not less than \$50,000 for each manufactured home transported and \$500,000 in the aggregate. The policy shall insure the transporter against liability for damages to a manufactured home in the transit process.

6.9.3. The insurer shall provide the Board with at least 30 days' notice of any intent of cancellation, suspension, or non-renewal of the policy.

**§42-19-6A. Continuing Education for Contractors and Installers; Proof of Completion Initial Training and Continuing Education for Contractors/Installers; Proof of Attendance.**

~~6A.1. Each contractor or installer shall attend a continuing education class as required by 42 U.S.C. § 5404 et seq. and obtain proof of attendance~~ Each contractor or installer that performs any aspect of installation shall attend an initial training course as required by 24 C.F.R. § 3286.803(b)(2) and obtain proof of attendance.

~~6A.2. The continuing education training is a requirement for renewal every three (3) years, or less, if determined necessary by the Board~~ Eight hours of HUD-approved continuing education shall be required for renewal every three years, or less, if determined necessary by the Board.

~~6A.3. The licensee shall submit proof of attendance to the Board prior to a license being renewed~~ Each contractor or installer shall submit proof of attendance to the Board prior to a license being issued or renewed. The proof of attendance shall have been acquired within the preceding 24-month period from the date of application.

~~6A.4. The licensee is responsible to pay a fee, as determined by the Board, for the continuing education class~~ Each contractor or installer shall pay a fee directly to the entity providing the training course or continuing education class.

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

~~7.1. No person may manufacture, ship, import, deliver, distribute, sell, lease, or install a manufactured home in this state that violates any applicable state or federal standard~~ any applicable federal standard or provision of the Act or rules of the Board.

7.2. The following federal standards are incorporated in this rule in their entirety by reference:

7.2.1. "Manufactured Home Construction and Safety Standards," 24 C.F.R. Part 3280;

7.2.2. "Manufactured Home Procedural and Enforcement Regulations," 24 C.F.R. Part 3282;

7.2.3. "Model Manufactured Home Installation Standards," 24 C.F.R. Part 3285;

7.2.4. "Manufactured Home Installation Program," 24 C.F.R. Part 3286; and

7.2.5. "Manufactured Home Dispute Resolution Program," 24 C.F.R. Part 3288.

7.3. The Board shall maintain its qualifications to continue approval by HUD as a State Administrative Agency (SAA).

**§42-19-8. Business Location Inspections; Private Home Inspections; DAPIAs; IPIAs.**

8.1. The Board may enter any business location of a manufacturer, dealer, distributor, or contractor engaged in business in this state to inspect or otherwise determine compliance with the federal standards, the Act, and rules of the Board.

~~8.1.1. The Board and its authorized agents, employees, and representatives may enter into any business location maintained by a manufacturer, distributor, dealer, or contractor engaged in business in this state for the purpose of inspecting and otherwise ascertaining whether state and federal standards are being met. Any manufacturer, dealer, distributor, or contractor engaged in business in the state is considered to have given its irrevocable consent to such an inspection by the Board. During the course of an inspection, the Board may inspect and copy any and all records maintained by the manufacturer, dealer, distributor, or contractor pursuant to this rule and the federal standards. An inspection may occur, announced or unannounced, at any time between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, or at other reasonable times considered necessary by the Board in the exercise of its duties. During a business location inspection, the Board may inspect and copy all records maintained by the manufacturer, dealer, distributor, or contractor pursuant to the federal standards, the Act, and rules of the Board.~~

~~8.1.2. The Board may provide inspections to private home sites to aid in the resolution of consumer's complaints filed with the Board by the homeowner. The Board may provide, free of charge, one initial inspection and one follow up inspection relative to each consumer complaint: *Provided*, That the Board may charge the licensee an inspection fee for any subsequent follow up inspection which is necessitated by the licensee's failure to comply with an order of the Board. A business location inspection may occur, announced or unannounced, at any time between 8:00 a.m. and 5:00 p.m., Monday through Friday, or at other reasonable times considered necessary by the Board.~~

8.2. ~~The Board may charge an inspection fee of \$29 per hour, not to exceed \$290 per day, plus an amount representing reimbursement of any mileage, per diem, and other reasonable expenses incurred in connection with any inspection authorized in 8.1 of this section. This inspection fee is payable to the Board within 30 days of completion of the inspection. The Board may provide inspections to private manufactured home sites to aid in the resolution of consumer complaints and to comply with its obligations under 24 C.F.R. § 3286.803.~~

8.2.1. To aid in the resolution of consumer complaints filed by a consumer against a licensed manufacturer, dealer, distributor, or contractor, the Board may provide, free of charge, one initial inspection and one follow-up inspection relative to each consumer complaint: *Provided*, That the Board may charge the licensee an inspection fee for any subsequent follow-up inspection which is necessitated by the licensee's failure to comply with an order of the Board.

8.2.2. In order to comply with its obligations under 24 C.F.R. § 3286.803, the Board may conduct random inspections of private manufactured home installations. The Board may provide, free of charge, one initial inspection and one follow-up inspection relative to each random inspection: *Provided*, the Board may charge the licensed manufacturer, dealer, distributor, or contractor an inspection fee for any subsequent follow-up inspection which is necessitated by the licensee's failure to comply with an order of the Board. In order to afford an opportunity to attend a random inspection, the Board shall notify, via email, all licensees that were involved in the installation of the date and time of the random inspection at least five business days in advance.

8.2.3. The Board may charge an inspection fee of \$29 per hour, not to exceed \$290 per day, plus reimbursement for mileage and other reasonable expenses incurred in connection with an inspection authorized in 8.2 of this section. The inspection fee is payable to the Board within 30 days of completion of the inspection.

8.3. The federal ~~regulations~~ standards contemplate the establishment of primary inspection agencies known as DAPIAs and IPIAs. These primary inspection agencies are responsible for the enforcement of the federal ~~regulations and standards. The primary inspection agencies perform four basic enforcement functions and the performance of the following functions:~~

8.3.1. Approval by a DAPIA of a manufacturer's manufactured home design to assure that it is in compliance with federal standards;

8.3.2. Approval by a DAPIA of a manufacturer's quality control program to assure that it is compatible with the design;

8.3.3. Approval by an IPIA of a manufacturer's plant facility and manufacturing process to assure that the manufacturer can perform its approved quality control program and can produce manufactured homes in conformance with its approved design; and

8.3.4. Performance of ongoing inspections of the manufacturing process to assure that the manufacturer is continuing to perform its approved quality control program and, with respect to these aspects of manufactured homes inspected, is continuing to produce manufactured homes in conformance with its approved designs, and in ~~conformance~~ compliance with federal standards.

8.4. The Board may develop a DAPIA and/or an IPIA to carry out the federal enforcement functions. ~~If the Board determines that it will seek to develop a DAPIA and/or IPIA, it~~ The Board may file any and all required applications and plans with HUD needed in order to obtain approval as a DAPIA and/or an IPIA, including a state-exclusive IPIA. The Board may employ any personnel required by federal standards for approved DAPIAs and IPIAs pursuant to {24 C.F.R. § 3282.352}.

8.5. If the Board does not seek or obtain the approval of HUD to act as a DAPIA and/or an IPIA, it may participate in joint team monitoring of DAPIAs and IPIAs in conjunction with HUD. The Board may also independently monitor the performance of DAPIAs and IPIAs acting within ~~the~~ this state in coordination with HUD monitoring.

8.6. The Board may charge the following inspection fees when performing any of its duly authorized functions as an approved DAPIA and/or IPIA:

8.6.1. A fee of \$30 per hour, not to exceed \$300 per day, for conducting manufactured home initial design or design change evaluations;

8.6.2. A fee of \$30 per hour, not to exceed \$300 per day, for conducting manufacturer quality control program evaluations;

8.6.3. A fee of \$30 per hour, not to exceed \$300 per day, for conducting initial and ongoing manufacturing plant inspections; and

8.6.4. An amount representing reimbursement of ~~any mileage, per diem,~~ and other reasonable expenses incurred in connection with any of the inspections ~~or evaluations~~ authorized in 8.6 of this section.

8.6.5. The inspection fees are payable to the Board within 30 days of completion of the inspection.

8.7. ~~The DAPIA and IPIA inspection fees are payable to the Board within 30 days of completion of the inspection.~~ Each manufacturer shall pay a monitoring inspection fee in an amount established by HUD for each transportable section of a manufactured housing unit produced by a manufacturer in this state. This monitoring inspection fee is payable directly to HUD.

~~8.8. Each manufacturer shall pay a monitoring inspection fee in an amount established from time to time by HUD for each transportable section of each manufactured housing unit produced by a manufacturer in the state. This monitoring inspection fee is payable directly to HUD.~~

**§42-19-9. Labeling, Recordkeeping, and ~~Reporting~~ Required Quarterly Reports.**

9.1. The HUD certification label affixed to each transportable section of ~~each a~~ manufactured home for sale or lease in the United States is the only label required by the Board. No manufactured home shall be shipped, imported, delivered, distributed, sold, leased, or installed into or in ~~the~~ this state without a HUD certification label.

9.2. The HUD data plate affixed to each manufactured home for sale or lease in the United States is the only data plate required by the Board. No manufactured home shall be shipped, imported, delivered, distributed, sold, leased, or installed into or in ~~the~~ this state without a HUD data plate.

9.3. No person may remove a HUD certification label or HUD data plate from a manufactured home.

9.4. Each licensed manufacturer shall maintain records of the following for each manufactured home manufactured in this state, or shipped, imported, or delivered to a dealer, distributor, purchaser, or other person in this state:

9.4.1. The information contained on the HUD data plate;

9.4.2. The date the HUD certification label was affixed to the manufactured home; and

9.4.3. The name and address of the dealer, distributor, purchaser, or other person to whom the manufactured home was first shipped, imported, or delivered by the manufacturer.

9.5. Each licensed manufacturer shall report the information ~~outlined~~ specified in 9.4 of this section

to the Board on a quarterly basis, covering the periods July 1 to September 30, October 1 to December 31, January 1 to March 31, and April 1 to June 30. These reports are due no later than October 31, January 31, April 30, and July 31, respectively. If no work is performed during a quarterly period, the licensee shall submit the report marked "NO ACTIVITY".

9.6. Each licensed dealer and/or distributor shall maintain records of the following for each manufactured home shipped, imported, or delivered to it by a manufacturer, distributor, dealer, or ~~another~~ other person:

9.6.1. The information contained on the HUD data plate;

9.6.2. Whether the manufactured home contains a HUD certification label;

9.6.3. ~~That~~ Whether the manufactured home ~~has been~~ was inspected upon delivery to determine if it ~~has been~~ was damaged, and if whether all furniture, appliances, fixtures, and other devices ~~are~~ were in place and operable;

9.6.4. The extent of any damage found upon inspection;

9.6.5. Whether any alterations to the manufactured home were made by the dealer and/or distributor, including any repairs; ~~and~~

9.6.6. The name and address of the purchaser or other person to whom the manufactured home was shipped, imported, delivered, sold, or leased by the dealer and/or distributor; and

9.6.7. The name and license number of each contractor or installer that performed any aspect of installation of a manufactured home sold or leased by the dealer and/or distributor.

9.7. Each licensed dealer and/or distributor shall report the information ~~outlined~~ specified in 9.6 of this section to the Board on a quarterly basis, covering the periods July 1 to September 30, October 1 to December 31, January 1 to March 31, and April 1 to June 30. These reports are due no later than October 31, January 31, April 30, and July 31, respectively. If no work is performed during a quarterly period, the licensee shall submit the report marked "NO ACTIVITY".

9.8. Each licensed contractor shall maintain records of the following for each manufactured home ~~which~~ it transports and/or installs in ~~the~~ this state:

9.8.1. The information contained on the HUD data plate;

9.8.2. Whether the manufactured home contains a HUD certification label;

9.8.3. The ~~manner~~ method of transport and/or installation of the manufactured home;

9.8.4. Whether the manufactured home was damaged in any way during transport and/or installation, and the extent of the damage;

9.8.5. Whether any alterations to the manufactured home were made by the contractor, including any repairs; and

9.8.6. The name and address of the purchaser or other person to whom the manufactured home was transported and/or installed.

9.9. When hired by or working directly for a consumer, each licensed contractor shall report the information ~~outlined~~ specified in 9.8 of this section to the Board on a quarterly basis, covering the periods July 1 to September 30, October 1 to December 31, January 1 to March 31, and April 1 to June 30. These reports are due no later than October 31, January 31, April 30, and July 31, respectively. If no work is performed during a quarterly period, the licensee shall submit the report marked "NO ACTIVITY".

9.10. Nothing in this rule shall be construed to excuse or exempt any manufacturer, dealer, distributor, or contractor from complying with any recordkeeping or reporting requirements mandated by the federal ~~regulations~~ standards.

#### **§42-19-10A. Consumer Manuals; Installation.**

10A.1. The seller shall provide each purchaser of a new manufactured home in ~~the~~ this state with a HUD-approved consumer manual ~~applicable to~~ for the manufactured home purchased. No manufacturer, dealer, distributor, or contractor may interfere with the distribution of a HUD-approved consumer manual.

#### 10A.2.

10A.2.1. ~~All new or used manufactured homes installed in the state shall be installed~~ The initial installation of a new manufactured home installed in this state shall be installed:

10A.2.1.a. In accordance with the home manufacturer's recommendations contained in or accompanying the consumer manual required by ~~this section subsection and~~ 24 C.F.R. Part 3282 and this section: these *Provided*, That such recommendations ~~must~~ equal or exceed the protections provided by the Manufactured Home Installation Standards, 24 C.F.R. Part 3285, the Manufactured Home Installation Standards; or

10A.2.1.b. In accordance with a competent alternate design certified in writing by a registered professional engineer and/or architect prior to installation: *Provided*, That such alternate design is drawn and sealed by a registered professional engineer and/or architect and certified to be consistent with the home design, in compliance with federal standards and the Act, and approved by the manufacturer and the DAPIA pursuant to 24 C.F.R. § 3285.2; or

10A.2.1.c. ~~consistent with the recommendations published by the National Fire Protection Association 225 Model Manufactured Home Installation Standard~~ In accordance with the Manufactured Home Installation Standards, 24 C.F.R. Part 3285.

10A.2.1.d. ~~for used homes only, any generally accepted commercial method submitted to, reviewed, and approved by the Board.~~

10A.2.2. ~~If the dealer contracted with the purchaser to install the manufactured home, the dealer shall maintain in his or her files a written record of which method of installation was followed. If the dealer did not contract with the purchaser to install the home, the dealer shall maintain in his or her files a written record signed by the dealer and purchaser specifying that the purchaser shall make separate arrangements with a licensed installer for installation of the home unless the consumer contracts to install~~

~~the manufactured home as provided in section 10B of this rule. This written record is not required to be maintained longer than a period of five years.~~ A used manufactured home installed in this state shall be installed:

10A.2.2.a. In accordance with the home manufacturer's recommendations contained in or accompanying the consumer manual required by 24 C.F.R. Part 3282 and this section: *Provided*, That such recommendations equal or exceed the protections provided by the Manufactured Home Installation Standards, 24 C.F.R. Part 3285; or

10A.2.2.b. In accordance with a competent alternate design certified in writing by a registered professional engineer and/or architect prior to installation: *Provided*, That such alternate design is drawn and sealed by a registered professional engineer and/or architect and certified to be consistent with the home design, in compliance with federal standards and the Act, and approved by the manufacturer and the DAPIA pursuant to 24 C.F.R. § 3285.2; or

10A.2.2.c. In accordance with the recommendations published by the National Fire Protection Association 225 Model Manufactured Home Installation Standard.

~~10A.2.3. Installation of a manufactured home as defined in subsection 3.21 of this rule shall only be performed by a licensed dealer or installer or by the consumer as provided in section 10B of this rule. If the dealer contracted with the purchaser to install the manufactured home, the dealer shall maintain a written record of which method of installation was used. If the dealer did not contract with the purchaser to install the home, the dealer shall maintain a written record signed by the dealer and purchaser specifying that the purchaser has agreed to make separate arrangements with a licensed installer for installation of the home unless the consumer contracts to install the manufactured home as provided in section 10B of this rule. This written record is not required to be maintained longer than a period of five years.~~

10A.2.4. Installation of a manufactured home as defined in subsection 3.24 of this rule shall only be performed by a licensed dealer or installer or by the consumer as provided in section 10B of this rule.

10A.3. Frostline considerations are mandatory for all manufactured home installations in this state. For the purposes of 10A.2 of this section, a frostline shall be determined by local ordinance of a municipality or county. If the installation of the manufactured home in this state is in a municipality or county that has not provided a specific numerical standard, the frostline may be the designated numerical standard set forth in the consumer manual required by 24 C.F.R. Part 3282, or as determined by a registered professional engineer and/or architect and approved by the Board for the individual site of the manufactured home installation. In the absence of any of these specific designated numerical standards, ~~for all applications,~~ frostline is as follows:

10A.3.1. 30 inches from grade level for all perimeter footings; and

10A.3.2. 30 inches from grade level for footings under the I-beams, center piers, and inset blocking piers if a perimeter fascia enclosure is not to be installed: *Provided*, That the footings may be 12 inches from grade level for footings under the I-beams, center piers, and inset blocking piers if a perimeter fascia enclosure and vapor barrier are installed:

10A.3.2.a. within 21 days of the home installation if the home is installed between November 1 and March 30; or

10A.3.2.b. before November 1 for homes installed after March 30.

**§42-19-10B. Consumer Installation of a Manufactured Home; Installation Deficiencies.**

~~10B.1. For proper performance in accordance with federal design standards, manufactured homes should be installed by a licensed dealer or installer. However, each consumer has the right to and may personally install, or independently hire a licensed dealer or installer for the installation of his or her manufactured home and, if the consumer chooses to exercise that right, the consumer is legally responsible for the choices he or she makes. However, due to safety concerns and the technical expertise required, only a licensed dealer or installer shall conduct the manufactured home placement evaluation and level and trim the manufactured home. This section applies only to those transactions in which the consumer agrees to install all or part of his or her manufactured home. Each dealer shall notify the consumer that the installation of his or her manufactured home must comply with the installation standards enumerated in subsections 10A.2 and 10A.3 of this rule.~~

10B.1.1. To ensure compliance with federal standards, manufactured homes should be installed by a licensed dealer or installer. However, every consumer has the right to personally install or independently hire a licensed dealer or installer for installation of his or her manufactured home: *Provided*, That if a consumer so chooses, the consumer is responsible for any consequences resulting from the consumer's installation: *Provided, however*, That this section applies only to those transactions in which the consumer agrees in writing to assume responsibility for part of the manufactured home installation.

10B.1.2. Only a licensed dealer or installer shall conduct the installation aspects of the manufactured home placement evaluation and the level and trim of the manufactured home due to safety concerns and the technical expertise required.

~~10B.2. Each dealer shall inform each consumer of the following, through one or more of the following means including, but not limited to, video tapes, manuals, brochures, drawings, personal conversations, or other appropriate means, at, or prior to, the date of the final agreement for the purchase or installation of a manufactured home:~~

~~10B.2.1. The risks of improper installation of the manufactured home, including, but not limited to, the impact upon the manufacturer's warranty, decreased performance of the manufactured home, and other relevant concerns known to the dealer, and matters which make time of the essence in completing the consumer's assumed obligations;~~

~~10B.2.2. The legally mandated standards for installation of a manufactured home as enumerated in subsections 10A.2 and 10A.3 of this rule;~~

~~10B.2.3. The requirement that all parties, other than the consumer, who engage in the installation of manufactured homes must be licensed under W. Va. Code §21-9-1 *et seq.*; and~~

~~10B.2.4. The dealer or a licensed installer will conduct an on-site review, in accordance with 10B.4 of this section, to review all aspects of the installation for which the consumer assumed responsibility.~~

10B.2.

10B.2.1. Prior to the execution of a written agreement for the purchase of a manufactured home or prior to the date of installation, a licensed dealer or installer shall inform each consumer of the following:

10B.2.1.a. The risks of improper installation of the manufactured home, including, but not limited to, the impact upon the manufacturer's warranty, decreased performance of the manufactured home, and other relevant concerns known to the dealer or installer, and matters which make time of the essence in completing the consumer's assumed responsibilities;

10B.2.1.b. The installation standards for a new or used manufactured home specified in section 10A of this rule;

10B.2.1.c. The requirement that all parties, other than the consumer, who engage in installation of manufactured homes be licensed pursuant to the Act; and

10B.2.1.d. The dealer or installer will conduct an on-site review for all aspects of installation for which the consumer assumed responsibility as prescribed in 10B.6 of this rule.

10B.2.2. The licensed dealer or installer may inform the consumer of the information specified in 10B.2.1 of this section in any appropriate manner, including, but not limited to, through brochures, manuals, illustrations, videos, written correspondence, or oral communication.

10B.3. If the consumer agrees to assume all or part of the responsibility of installation of his or her manufactured home, as defined in subsection 3.21 of this rule, then the agreement between the consumer and the dealer shall be rendered in writing, specifying each party's installation obligations. If the consumer agrees to assume all or part of the responsibility of installation of his or her manufactured home, the licensed dealer or installer and the consumer shall execute a written agreement that specifies each party's installation responsibilities.

10B.4. The licensed dealer or installer shall conduct an initial home placement evaluation to determine accessibility to the site, proper soil compaction, and whether the site can be improved to assure proper drainage. The dealer or installer shall use an initial home placement evaluation form, as prescribed in 10B.6.2 of this section, provide the consumer with a copy, and maintain the form as a record of the conclusions and findings of the evaluation. A licensed dealer or installer shall conduct an initial home placement evaluation to determine accessibility to the site, feasibility of the chosen method of installation and the applicable installation standards as specified in section 10A of this rule, whether the site can be improved to assure proper water drainage and proper soil compaction. The dealer or installer shall use the on-site review form as prescribed in 10B.6.2 of this section of the rule, provide the consumer with a copy, and maintain the form as a record of the findings and conclusions of the home placement evaluation.

10B.4.1. A licensed dealer or installer shall conduct the initial home placement evaluation in accordance with the Initial Home Placement Evaluation form prescribed by the Division and available from the Division's website (labor.wv.gov).

10B.4.2. The licensed dealer or installer shall document all findings of the evaluation on the Initial Home Placement Evaluation form, provide the consumer with a copy, and maintain a copy as a record of the findings.

~~10B.5. Where the consumer has assumed the responsibility for site preparation that cannot be performed after the home is leveled, as described in the initial home placement evaluation form, in 10B.4 of this section or installing the support system, the licensed dealer or installer shall review these aspects of installation to determine if they have been completed in accordance with the installation standards in subsections 10A.2 and 10A.3 of this rule and document the findings and conclusions. The dealer or installer shall use a consumer site preparation evaluation form, as prescribed in 10B.6.2 of this section, provide the consumer with a copy, and maintain the form as a record of the conclusions and findings of the review~~ Where the consumer has assumed the responsibility for installation of the support system or for site preparation that cannot be performed after the manufactured home is leveled, the licensed dealer or installer shall review such aspects of installation to determine compliance the applicable installation standards as specified in section 10A of this rule.

10B.5.1. The licensed dealer or installer shall conduct the review in accordance with the Consumer Site Preparation Evaluation form prescribed by the Division and available from the Division's website (labor.wv.gov).

10B.5.2. The licensed dealer or installer shall document all findings of the review on the Consumer Site Preparation Evaluation form, provide the consumer with a copy, and maintain a copy as a record of the findings.

~~10B.6. A licensed dealer or installer shall conduct an on-site review in all instances where the consumer has assumed all or part of the responsibilities of the installation of his or her manufactured home, as defined in subsection 3.21 of this rule~~ A licensed dealer or installer shall conduct an on-site review in all instances for which the consumer has assumed all or part of the responsibilities for the manufactured home's installation, as defined in subsection 3.24 of this rule.

~~10B.6.1. The on-site review shall be conducted not less than 60 days nor more than 180 days after the delivery date to the consumer or the date of the final agreement for purchase or installation of the manufactured home~~ A licensed dealer or installer shall conduct the on-site review not less than 60 days nor more than 180 days after the date of execution of the written agreement for the purchase or installation of the manufactured home or after the delivery date of the manufactured home to the consumer.

~~10B.6.2. The licensed dealer or installer shall conduct the on-site review in accordance with a form prescribed or approved by the Division which identifies all elements of installation as defined in subsection 3.21 of this rule~~ A licensed dealer or installer shall conduct the on-site review in accordance with the Dealer/Installer On-Site Review form prescribed by the Division and available from the Division's website (labor.wv.gov) which identifies all aspects of installation, as defined in subsection 3.24 of this rule.

~~10B.6.3. The dealer/installer on-site review form prescribed in 10B.6.2 of this section shall be signed and dated by the dealer or installer conducting the on-site review and the consumer at the time of the review~~ The licensed dealer or installer shall evaluate all aspects of installation for which the consumer assumed responsibility and document any deficiencies in the installation on the On-Site Review form. If deficiencies are found, the dealer or installer shall provide the consumer with a copy of the completed Dealer/Installer On-Site Review form and, in accordance with 10B.7 of this section, written notice to the consumer of the potential risks associated with the consumer's failure to properly comply with his or her assumed installation responsibilities.

~~10B.6.4. The dealer or installer shall evaluate all aspects of the installation which were assumed~~

~~by the consumer and note any deficiencies in the installation directly on the dealer/installer on-site review form~~ The licensed dealer or installer conducting the on-site review and the consumer shall sign and date the On-Site Review form at the time of the review's conclusion.

10B.6.5. The licensed dealer or installer shall maintain a copy of the completed Dealer/Installer On-Site Review form for a period of not less than five years.

#### 10B.7. Reporting Requirement

~~10B.7.1. A copy of the completed dealer/installer on-site review form shall be maintained by the installer or dealer for a period of not less than five years~~ If a licensed dealer or installer finds a deficiency while conducting an on-site review in accordance with 10B.6 of this section, the dealer or installer shall document the deficiency in the Dealer/Installer On-Site Review form as prescribed in 10B.6.3 of this section.

10B.7.1.a. The licensed dealer or installer shall provide a copy of the completed Dealer/Installer On-Site Review form containing the documented deficiencies found to the consumer who assumed responsibility for all or part of the installation of the manufactured home.

10B.7.1.b. The licensed dealer or installer shall also provide notice to the consumer of the potential risks associated with the consumer's failure to comply with his or her assumed installation responsibilities on a form prescribed by the Division and available from the Division's website ([labor.wv.gov](http://labor.wv.gov)).

10B.7.1.c. The licensed dealer or installer shall attach The Dealer/Installer Consumer Installation Deficiency Notice form to the Dealer/Installer On-Site Review form and provide a copy of the completed forms to the consumer.

~~10B.7.2. If the on-site review conducted pursuant to 10B.6 of this section reveals a deficiency, the dealer or installer shall send a copy of the dealer/installer on-site review form to the consumer via certified United States mail, return receipt requested, and attach the form prescribed in 10B.7.3 of this section to notify the consumer of the hazards and risks resulting from his or her failure to comply with his or her assumed obligations~~ All provisions of this section also apply to a licensed installer who contracts with a consumer to install part of the manufactured home.

~~10B.7.3. The Division shall prescribe or approve a form for attachment to the dealer/installer on-site review form which identifies the potential risks associated with the consumer's failure to properly comply with his or her assumed obligations.~~

~~10B.8. All provisions of this rule, except those provisions that deal exclusively with the sale of a manufactured home, also apply to a licensed installer who contracts with a consumer to install part of the manufactured home.~~

#### **§42-19-11. Alterations and Repairs.**

11.1. No alteration or repair shall be made to any manufactured home by a dealer, distributor, or contractor which directly causes a failure of the manufactured home to ~~conform~~ comply with applicable state and federal standards federal standards, provisions of the Act, and rules of the Board.

11.2. Alterations or repairs made to a used manufactured home by a dealer, distributor, or contractor shall be designed to promote compliance with applicable ~~state and federal standards~~ federal standards, provisions of the Act, and rules of the Board. ~~A dealer, distributor, or contractor is not obligated to bring a used manufactured home into full compliance with applicable state and federal standards. It is the intent of this provision to allow and encourage dealers, distributors, and contractors to make desirable alterations and repairs to used manufactured homes, including alterations and repairs which do not bring the used homes into full compliance with all applicable standards, so long as the alterations and repairs made do not directly create a condition of noncompliance which did not previously exist.~~

11.3. A dealer, distributor, or contractor shall not be obligated to bring a used manufactured home into compliance with applicable federal standards, provisions of the Act, and rules of the Board. It is the intent of this provision to allow and encourage dealers, distributors, and contractors to make desirable alterations and repairs to used manufactured homes, including alterations and repairs which do not bring the used homes into compliance with all applicable standards, so long as the alterations and repairs made do not directly create a condition of noncompliance which did not previously exist.

#### **§42-19-12. Transportation.**

12.1. The transportation of ~~any a~~ manufactured home shall be accomplished in a manner that allows the manufactured home to withstand the adverse effects of transportation shock and vibration without its degradation or the degradation of its component parts. In no event shall any transportation method be utilized which causes a failure of any manufactured home to ~~conform~~ comply with applicable ~~state and federal standards~~ federal standards, provisions of the Act, and rules of the Board.

12.2. Manufactured homes shall not be transported at speeds in excess of ~~50~~ 55 miles per hour.

#### **§42-19-13. ~~Complaint Handling~~ Complaints; Notice of Violation; Informal Presentation of Views; Contested Case Hearing.**

13.1. ~~In addition to any requirements of the federal standards, the Board shall handle complaints regarding manufactured housing construction and safety standards or the Board's licensees, including, but not limited to, warranty claims, matters concerning the installation of the home, and all matters covered by this rule~~ Any person alleging a violation of the federal standards, the Act, or rules of the Board may file a complaint with the Board. All complaints shall be in writing and include the name, address, and phone number of the complainant.

13.1.1. Upon receipt of any complaint or other information indicating the possible existence of a noncompliance, defect, serious defect, or imminent safety hazard under the federal standards, the Board shall forward the complaint or information to the manufacturer of the manufactured home and to the SAA of the state where the home was manufactured.

13.1.2. The Division shall review each complaint filed with the Board.

13.1.2.a. If the Division determines that the matters raised in the complaint are outside of the Board's jurisdiction, the Division shall inform the complainant in writing.

13.1.2.b. If the Division determines that the matters raised in the complaint are within the Board's jurisdiction, the Division shall conduct an investigation and an inspection of the manufactured home and the relevant records maintained by the manufacturer, dealer, distributor, or contractor.

~~13.2. All complaints to the Board shall be in writing and shall specify the name, address, and phone number of the person lodging the complaint. The Board, on its own initiative, may file complaints. Any licensee may file a complaint with the Board~~

13.2.1. If, after investigation, the Division determines that no violation of the federal standards, the Act, or rules of the Board occurred, the Division shall inform the complainant and the manufacturer, dealer, distributor, or contractor in writing.

13.2.2. If, after investigation, the Division determines that a violation of the federal standards, the Act, or rules of the Board occurred, the Division shall issue a Notice of Violation to the responsible licensee that specifies the condition found and the federal standard or state law provision violated.

13.2.3. The licensee shall be afforded no longer than 30 days from receipt of notice to correct the condition specified in the Notice of Violation.

~~13.3. Upon receipt of any complaint or other information indicating the possible existence of a noncompliance, defect, serious defect, or imminent safety hazard under the federal standards, the Board shall forward the complaint or information to the manufacturer of the manufactured home and to the SAA of the state where the home was manufactured. Any licensee issued a Notice of Violation may request, within 10 days of receipt, an informal presentation of views to contest either the Notice of Violation or the reasonableness of the amount of time afforded to correct the condition violating the federal standard or state law provision.~~

13.3.1. If a licensee fails to timely request an informal presentation of views, the Notice of Violation becomes a final order of the Board.

13.3.2. If a licensee timely requests an informal presentation of views, the Division shall schedule it within 30 days of receipt of the request.

13.3.3. The time specified in the Notice of Violation to correct the condition is stayed pending the informal presentation of views unless the condition constitutes an imminent safety hazard or serious defect.

13.3.4. The informal presentation of views is not an adversarial proceeding and it may be written or oral. The rules of evidence do not apply, testimony is not required to be taken under oath, nor is cross-examination permitted.

13.3.5. The Division shall inform the licensee in writing by certified mail of its findings within five days of the conclusion of the informal presentation of views.

~~13.4. The Division shall review each written complaint received. If it appears that the matters raised in the complaint are outside the jurisdiction of the Board, the Division shall so inform the complainant in writing. If it appears that the matters raised in the complaint are within the jurisdiction of the Board, the Division shall conduct an investigation and inspection of the manufactured home and the relevant records of the manufacturer, dealer, distributor, contractor, or installer. A licensee may request for the matter to be referred to the Board as a contested case within five days of receipt of notice of the Division's findings after the informal presentation of views.~~

13.4.1. If the licensee timely requests for the matter to be referred to the Board for a contested case hearing, the Board may refer the matter to a hearing examiner within five days of receipt of the request.

13.4.2. The hearing examiner shall schedule the hearing to commence within 45 days of receipt of the referral and shall send written notice to the parties specifying the date, time, and place of the hearing at least 10 days prior to the hearing.

13.4.3. The licensee must request from the hearing examiner, in writing, any additional stay of time to correct the condition specified in the Notice of Violation. The hearing examiner shall grant an additional stay upon good cause shown.

13.4.4. Following the contested case hearing, the hearing examiner may direct the parties to submit proposed findings of fact and conclusions of law within 20 days of the hearing: *Provided*, That if a transcript of the hearing is requested at the hearing, the parties shall have 20 days from receipt of the transcript to submit the proposed findings of fact and conclusions of law.

13.4.5. The hearing examiner shall submit a recommended decision to the Board within 30 days of receipt of the parties' proposed findings of fact and conclusions of law. The hearing examiner may recommend the imposition of any appropriate disciplinary sanction permitted by this rule.

13.4.6. The Board shall accept, reject, or modify the hearing examiner's recommended decision and issue a final order within 30 days of receipt of the recommended decision.

~~13.5. If, upon investigation, the Division determines that no violation of any federal or state manufactured housing standard has occurred, the Division shall inform the complainant in writing.~~

~~13.6. If, upon investigation, the Division determines that a violation of any matter within the Board's jurisdiction as defined by this rule has occurred, the Division shall issue a Notice of Violation to any and all responsible licensees, specifying the condition found and the legal standard violated. If no standard has been violated it shall be so noted in writing to all parties involved. The Board shall afford the licensee receiving a Notice of Violation no longer than 30 calendar days from receipt of notice to correct the violations.~~

~~13.7. Any person issued a Notice of Violation may, within 10 days of receipt, request in writing an informal presentation of views to contest either the Notice of Violation or the reasonableness of the amount of time afforded to correct the condition violating the legal standard. If any person fails to timely request an informal presentation of views, the Notice of Violation becomes a final order of the Board. The informal presentation of views shall be scheduled by the Division within 30 days of receipt of the request. Except when imminent safety hazards or serious defects are involved, the time specified in the Notice of Violation to correct the violations is stayed pending the informal presentation of views.~~

~~13.8. The informal presentation of views is not an adversary proceeding and may be written or oral. Testimony is not required to be taken under oath, nor is cross examination permitted. The rules of evidence do not apply. Following the informal presentation of views, the Division shall notify the licensee by certified mail of its findings within five days of the conclusion of the informal presentation of views. The licensee may request in writing, within five days from receipt of the notice, the case be referred to the Board as a contested case.~~

~~13.9. The Board may refer the matter within five days to a hearing examiner as a contested case hearing. The hearing examiner shall schedule the hearing to commence within 45 days of receipt of the referral. The hearing examiner shall send to the parties a written notice specifying the date, time, and place of the hearing at least 10 days prior to the hearing. Any additional stay of time to correct the violations must be requested, in writing, from the hearing examiner, who shall grant the stay upon good cause shown.~~

~~13.10. Following the hearing, the parties may be directed by the hearing examiner to submit their proposed findings of fact and conclusions of law within 20 days of the hearing, except that if a transcript of the hearing is requested at the hearing, the proposed findings of fact and conclusions of law shall be submitted within 20 days of receipt of the transcript. The hearing examiner shall submit a recommended decision to the Board within 30 days of receipt of the proposals. In the recommended decision the hearing examiner may recommend the imposition of any appropriate disciplinary sanction allowed by this rule. The Board shall accept, reject, or modify the recommended decision and issue a final order within 30 days of the receipt of the decision.~~

#### **§42-19-14. Grounds for Discipline; Disciplinary Sanctions.**

14.1. The Board may impose disciplinary sanctions upon ~~any~~ a licensee for any of the following reasons:

14.1.1. The manufacture, sale, lease, offer for sale or lease, or the introduction, delivery, or importation into this state of any manufactured home on or after the effective date of any applicable ~~state or federal standard~~ federal standards, provisions of the Act, or rules of the Board, which does not comply with that standard: *Provided, however,* That this subsection shall not apply to:

14.1.1.a. Any person who establishes that he or she did not have reason to know in the exercise of due care that the manufactured home is not in ~~conformity~~ compliance with any applicable ~~state or federal standards~~ federal standards, provisions of the Act, or rules of the Board; or

14.1.1.b. Any person who, prior to the first purchase, holds a certificate by the manufacturer or importer of the manufactured home ~~to the effect that the manufactured home conforms to~~ complies with all applicable federal standards, unless the person knows that the manufactured home does not ~~conform~~ comply;

14.1.2. The failure to furnish notification and correction of any defect as required by 42 U.S.C. § 5414 and 24 C.F.R. § 3282.401 through § 3282.416;

14.1.3. The failure to issue a certification required by 42 U.S.C. § 5415, or to issue a certification ~~to the effect that a manufactured home conforms to~~ complies with all applicable federal standards if that person knows or in the exercise of due care has reason to know that the certification is false or misleading in a material respect;

14.1.4. The failure to establish and maintain records, make reports, and provide information as the Board requires under this rule, or the failure to permit, upon request of a person duly authorized by the Board, the inspection or copying of appropriate books, papers, records, or documents, or the failure to permit entry or inspection relative to determining whether a manufacturer, dealer, distributor, or contractor has acted or is acting in compliance with ~~this rule or~~ the federal standards, provisions of the Act, or rules of the Board;

14.1.5. The issuance of a certification pursuant to 42 U.S.C. § 5403(h) if that person knows or in the exercise of due care has reason to know that the certification is false or misleading in a material respect;

14.1.6. The submission of any information or statements to the Board, HUD, a DAPIA, or an IPIA, which are known by the person submitting the information to be false or misleading in a material respect;

14.1.7. The criminal conviction of any person by any competent state or federal court, which directly relates to the business of a manufacturer, dealer, distributor, or contractor;

14.1.8. The application to any person by any competent state or federal authority of any disciplinary action which directly relates to the business of a manufacturer, dealer, distributor, or contractor, including but not limited to, a fine, license suspension, license revocation, or license denial;

14.1.9. The operation of any business location engaged in business in the state as a manufacturer, dealer, distributor, or contractor without a license;

14.1.10. The failure to maintain adequate financial assurance as required by the Act and this rule;

14.1.11. The refusal to allow the Board to conduct inspections as permitted by the Act and this rule;

14.1.12. The failure to pay any fee required by law, this rule, or the federal standards;

14.1.13. The removal of any HUD certification label or HUD data plate from a new or used manufactured home;

14.1.14. The destruction or permanent removal by a manufacturer, dealer, distributor, or contractor of a HUD-approved consumer manual from a manufactured home, thereby depriving a consumer of the use of a manual;

14.1.15. The violation of the state or federal transportation or installation standard applicable to a new or used manufactured home;

14.1.16. Engaging in any deception or false or fraudulent representations or deceitful practices in selling, obtaining financing to consummate a sale, or representing a product whereby injury is or may be sustained by any consumer of a new or used manufactured home or the manufactured home industry. If the violation pertains to prohibited actions in obtaining financing, then the knowledge or complicity of the consumer shall not be considered as a defense to this violation;

14.1.17. The shipment of a manufactured home by a dealer and/or distributor from a manufacturer not properly licensed by this state;

14.1.18. The acceptance of a manufactured home by a dealer and/or distributor from a manufacturer not properly licensed by this state;

14.1.19. The use of contract installation or repair services by a manufacturer, dealer, or contractor/installer that is not properly licensed by this state;

14.1.20. The misappropriation of funds of a consumer or prospective consumer of a new or used manufactured home;

14.1.21. The failure to fulfill any written or implied warranty obligation applicable to any new or used manufactured home;

14.1.22. The failure to comply with any order issued by the Board, or any settlement agreement with the Board or Division; or

14.1.23. The violation of any other rule promulgated by the Board.

14.2. Upon a determination by the Board that a person has committed any of the violations ~~outlined in 14.1 of this section~~ in 14.1 of this section, the Board may apply any one or more of the following sanctions:

14.2.1. A public reprimand;

14.2.2. An administrative penalty not to exceed \$1,000 per violation;

14.2.3. Suspension of the license of a manufacturer, dealer, distributor, or contractor;

14.2.4. Revocation of the license of a manufacturer, dealer, distributor, or contractor; or

14.2.5. Denial of an application for licensure or licensure renewal filed by any manufacturer, dealer, distributor, or contractor.

14.3. The Board may impose an administrative penalty for each separate violation with respect to each manufactured home, except that the maximum penalty shall not exceed \$1 million for any related series of violations occurring within one year from the date of the first violation.

14.4. A suspension may be issued by the Board for any period of time up to and including the remaining term of the current license of the manufacturer, dealer, distributor, or contractor in question. At the end of the designated suspension period, the manufacturer, dealer, distributor, or contractor may apply for reinstatement of a license pursuant to the provisions of subsections 4.3, 5.3, or 6.3 of this rule, as applicable.

14.5. A revocation may be issued by the Board for any period of not less than one nor more than five years. At the end of the designated revocation period, the manufacturer, dealer, distributor, or contractor may re-apply for a license pursuant to the provisions of subsections 4.3, 5.3, or 6.3 of this rule, as applicable.

14.6. A determination by the Board to deny an application for licensure disqualifies the applicant from re-applying at any time during the subsequent 12 month period immediately following the denial, unless the Board agrees to consider a re-application within a lesser time period by designating its willingness to consider a re-application within its order of denial.

14.7. Sanctions may be imposed by the Board only after the person to be disciplined has been afforded an opportunity for hearing.

14.8. Nothing in this rule shall be construed to limit or restrict in any manner other civil or criminal remedies available under law to any person.

**§42-19-14A. Cease and Desist Orders.**

Upon a determination that a person is engaged in manufactured housing business in this state without a valid license, the Division shall issue a cease and desist order requiring that person to immediately cease all operations in this state. The person can immediately engage in manufactured housing business upon issuance of a license. After a hearing as required by W. Va. Code §21-9-12a, the Board may impose a penalty of not less than \$200 nor more than \$1,000 upon any person engaging in manufactured housing business in this state without a valid license.

**§42-19-15. State Manufactured Housing Recovery Fund.**

15.1. The Board shall collect the following annual assessment fee in satisfaction of each licensed manufacturer's, dealer's, distributor's, or contractor's required assurance of financial responsibility:

15.1.1. \$2,500 for each manufacturer's licensed business location;

15.1.2. \$1,000 for each dealer's and/or distributor's licensed business location; and

15.1.3. \$500 for each licensed contractor.

These assessments shall be collected annually at the time of the filing of all initial and renewal license applications: *Provided*, That if the balance of the Recovery Fund on June 30 of any year equals or exceeds \$300,000, then no assessments shall be collected from any previously licensed manufacturer, dealer, distributor, or contractor for the next licensure period. New applicants for licensure shall pay the applicable assessment fee regardless of the balance of the Recovery Fund.

15.2. The Board is authorized at any time to make special assessments upon all licensed manufacturers, dealers, distributors, and contractors if the Board determines that the assessments are necessary to maintain the fiscal integrity of the Recovery Fund. In no event may a special assessment be issued by the Board until or unless the balance of the Recovery Fund falls below \$250,000.

15.3. Payments by the Board from the Recovery Fund.

15.3.1. The Board may make payment from the Recovery Fund for any of the reasons authorized by W. Va. Code §21-9-10(d), after the responsible licensee has been afforded an opportunity to be heard on a Notice of Violation issued, and has failed to correct the violations as directed by the Board.

15.3.2. When a licensee fails to make repairs to a manufactured home as directed by the Board, or as agreed between the licensee and the Board or Division, the Board may determine the fair market value of the cost of obtaining those repairs and contract with a third party licensee to effect those repairs.

15.3.3. Payments from the Recovery Fund shall be made if:

15.3.3.a. The Recovery Fund balance is sufficient to pay the amount directed;

15.3.3.b. The aggrieved consumer has assigned to the Board all rights and claims relating to the repairs that he or she has against the licensee; and

15.3.3.c. The aggrieved consumer has agreed to subrogate the Board to all of his or her rights to the extent of the payment amount directed.

15.4. Payments from the Recovery Fund are limited to a per manufactured home maximum of:

15.4.1. \$10,000 for any one violation by any one licensed manufacturer, dealer, distributor, or contractor;

15.4.2. \$12,500 for any series of violations by any one licensed contractor;

15.4.3. \$25,000 for any series of violations by any one licensed dealer and/or distributor; and

15.4.4. \$75,000 for any series of violations by any one licensed manufacturer.

15.5. Payments from the Recovery Fund are limited to actual expenses incurred, as determined by the Board. The Recovery Fund may not be used to pay for any incidental expenses of the aggrieved consumer, including claims for personal injuries, claims for property damage other than to the home itself, inconvenience, alternate housing, attorney's fees, punitive or exemplary damages, or other legal or court costs.

15.6. The decisions to determine expenses incurred, repairs to be made, the fair market value of the cost of repairs, whether to contract for repairs, and whether to make any payment from the Recovery Fund lie within the sole discretion of the Board.

15.7. Licensee civilly liable to the Board for reimbursement of payments from the Recovery Fund.

15.7.1. When the Board ~~determines to make~~ authorizes payment from the Recovery Fund, the responsible licensee is civilly liable to the Board for any amount paid from the Recovery Fund, plus interest calculated at ~~the rate of 10% per annum~~ the amount of legal interest as established by the West Virginia Supreme Court of Appeals from the date the Board's payment was made. The Board may immediately suspend or revoke the license of the manufacturer, dealer, distributor, or contractor without further proceedings until full reimbursement to the Recovery Fund is made.

15.7.2. Any person that maintains a substantial ownership interest (5% or more) in any licensed manufacturer, dealer, distributor, or contractor that has failed to provide for full reimbursement to the Recovery Fund is disqualified from maintaining any substantial ownership interest in any other licensed manufacturer, dealer, distributor, or contractor. The Board may deny any application for licensure or renewal, where it appears that a person owns 5% or more of the applicant until full reimbursement is made to the Recovery Fund.

15.8. Nothing in this rule shall be construed to limit or restrict in any manner other civil or criminal remedies available under the law to any person.

15.9. The Board may not waive the Recovery Fund requirements of the Act and this rule.