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CAROL OWENS

WISCONSIN STATE REPRESENTATIVE

TO: Assembly Committee on Housing Members
FROM: Representative Carol Owens, Chairperson
DATE: October 23, 1997
RE: **CLEARINGHOUSE RULES**

Today, the following rules were referred to the Assembly Committee on Housing:

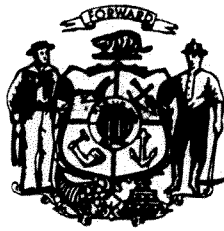
Clearinghouse Rule 96-164, relating to financial qualifications of manufactured home dealer license applicants.

Clearinghouse Rule 96-165, relating to manufactured home dealer trade practices, facilities and records.

Clearinghouse Rule 96-166, relating to length, expiration date and fee for licenses issued to manufactured and mobile home dealers and salespersons and for registration plates issued to dealers.

Please contact my office (267-7990) if you would like a copy of the rules. The deadline for committee action on these rules is **November 24, 1997**. If you are interested in requesting a hearing or submitting comments on any of these rules, please do so prior to the deadline date.

TOMMY G. THOMPSON
GOVERNOR
MARK D. BUGHER
SECRETARY



Mailing Address:
Post Office Box 7864
Madison, WI 53707-7864

October 16, 1997

Honorable Fred A. Risser, President
Wisconsin Senate
119 M.L. King Jr. Blvd., Rm. 102
Madison, WI 53702

Honorable Ben Brancel, Speaker
Wisconsin Assembly
211 West, State Capitol
Madison, WI 53702

Dear Senator Risser and Representative Brancel:

Re: Clearinghouse Rules Nos. 96-164, 96-165 and 96-166

Enclosed, in final draft form are Chapters Adm 66, 67 and 68 relating to Manufactured Home Dealer Financial Eligibility; Manufactured Home Dealer Trade Practices, Facilities and Records; and Licensing Periods and Fees for Manufactured Home Dealers and Salespersons.

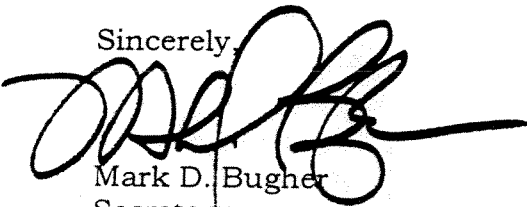
Section 218.101, Stats., created in 1991 Wisconsin Act 269, authorizes the Department of Administration to administer subchapter VI of Chapter 218 as it relates to manufactured/mobile home dealers and salespersons engaged in the sale of primary housing units. In July, 1992, the Mobile Home Program was transferred from the Department of Transportation to the Department of Administration. The proposed rules address the statutory responsibilities and obligations of the Department under Chapter 218, Wis. Stats., and adopt the standards from the rules originally created by the Department of Transportation for the regulation of the mobile home program. Regulations for financial qualifications for applicants for mobile home dealer licenses were delineated in Chapter Trans 140; the regulations for mobile homes dealer trade practices, facilities and records were enumerated in Chapter Trans 141; and licensing periods and fees for mobile home dealers and salespersons were found in Chapter Trans 144.

Chapters Trans 140 and 144 are not being repealed by the Department because the Department of Transportation has amended those chapters to regulate recreational vehicle dealers and salespersons which are licensed by the Department of Transportation, Division of Motor Vehicles.

Honorable Fred A. Risser
Honorable Ben Brancel
October 16, 1997
Page 2

Enclosed are copies of the Legislative Council staff clearinghouse reports. All of the comments of the Clearinghouse have been addressed in the rules. A public hearing was held on April 24, 1997, in Madison, at which Scott Slattery of the Wisconsin Manufactured Housing Association appeared in opposition to the rules. Attached is a summary of the testimony received by the Department at that hearing. In addition to the testimony provided at the hearing, written comments (attached) were also received from Terry Funk of Future Homes. All of the comments have been addressed in an attached summary.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark D. Bugher', with a long horizontal flourish extending to the right.

Mark D. Bugher
Secretary

cc: Revisor of Statutes
Joint Committee for Review of Administrative Rules

PROPOSED ORDER OF THE DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to repeal Chapter Trans 141 and to create Chapter Adm 67.

Analysis prepared by the Department of Administration:

Statutory Authority: ss. 16.004(1), 218.101(1) and 218.16, Stats.

Statutes Interpreted: ss. 218.01(5)(a), 218.11, and 218.12

Section 218.101, Stats., was created in 1991 Wisconsin Act 269, authorizing the Department of Administration to administer subchapter VI of Chapter 218 as it relates to manufactured/mobile home dealers and salespersons engaged in the sale of primary housing units. The rule establishes the standards for manufactured home dealer trade practices, facilities and records.

TEXT OF RULE:

SECTION 1: Chapter Trans 141 is repealed.

SECTION 2: Chapter Adm 67 is created to read:

Chapter Adm 67

MANUFACTURED HOME DEALER TRADE PRACTICES, FACILITIES AND RECORDS

Adm 67.01 PURPOSE AND AUTHORITY. This chapter is promulgated under the authority of ss. 16.004(1), 218.101(1) and 218.16, Stats., to implement ss. 218.01(5)(a), 218.11 and 218.12, Stats. This chapter applies to any person applying for or holding a Wisconsin manufactured home dealer or salesperson license.

Adm 67.02 DEFINITIONS. In this chapter: (1) "Available for delivery" means a home that has been constructed and is ready to be delivered to the purchaser from the home sales location or the point of manufacture.

(2) "Cash price" means dealer asking price including dealer installed options and accessories and additional dealer mark-up, profit and transportation charges, minus the dollar value of cash discounts.

(3) "Damage" means defects caused by reasons other than normal wear through home age and usage.

(4) " Department" means the department of administration.

(5) " Licensee" means any manufactured home dealer or salesperson or any person who is both a manufactured home dealer and a salesperson.

(6) " Manufactured home" or " home" means a mobile home which is transportable in one or more sections, which in the traveling mode, is more than 8 feet 6 inches in width or more than 45 feet in length, or when erected on site, is more than 340 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the manufactured home. 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. These dimensions will include all expandable rooms, cabinets, and other projections contacting the interior space, but do not include bay windows. For purposes of this chapter, the measurement of length shall be determined in accordance with s. 348.07(3), Stats.

(7) " Manufactured home dealer" or " dealer" means any of the following: (a) A mobile home dealer as set forth in s. 218.10(3), Stats., but does not include:

1. A recreational vehicle dealer as defined in s. Trans 142.02(7).
2. Governmental units or agents performing their official duties.
3. Advertising media and agents performing their assigned duties.
4. A licensed realtor involved in a manufactured home sale solely as a result of a real estate transaction including the manufactured home and the real estate site on which the manufactured home is located.

(b) A person not excluded by par. (a) who sells two or more new or used manufactured homes in any one calendar year.

(8) " Mobile home" has the meaning set forth in s. 340.01(29), Stats.

(9) " New home" means a manufactured home that has never been occupied, used or sold for personal or business use.

(10) " Retail purchaser" or " purchaser" means any purchaser not licensed as a manufactured home dealer or salesperson.

(11) " Service agreement" means any repair agreement sold by a licensee.

(12) " Used home" means any untitled or titled manufactured home or mobile home that has been previously occupied, used or sold for personal or business use.

(13) " Site" means any plot of land which is owned or rented, and used or intended to be used for the accommodation of a manufactured home or mobile home for residential purposes.

Adm 67.03 ADVERTISING AND SALES REPRESENTATIONS. (1) TRUTHFUL.

The use of false, deceptive or misleading advertising or representations by any licensee to induce the purchase of a manufactured home constitutes an unfair practice and is prohibited.

(2) FACTUAL. Any licensee, making a statement of fact to the public in an advertisement, written statement or representation concerning the manufactured home offered for sale, the services provided or any other aspects of business operation, shall upon request of the department, furnish evidence of the validity and accuracy of the statement of fact at the time it was made.

(3) DISCLOSURES REQUIRED WHEN ADVERTISING PRICE. When the price of a manufactured home is advertised by a licensee, the advertised price shall include all charges that shall be paid by the purchaser to acquire ownership of the advertised home with the exception of the sales tax and the title registration fees.

(4) NAME. Advertisements for manufactured home sales shall include the licensed business name.

(5) NEW OR USED. When advertising a manufactured home, a licensee shall state whether the home is new or used. If all of the homes in an advertisement are new or used, one reference designating that they are new or used is sufficient.

(6) EXPIRATION TERMS OF SALES OR PROMOTIONS. Whenever a sale or promotion offering gifts, merchandise, equipment, accessories, service, discounts, price reductions or cash is advertised, the

advertisement shall specifically disclose the expiration terms or date of the sale or promotion.

(7) RELOCATIONS. Whenever a licensee advertises a manufactured home on a rental lot site which may have to be moved as a condition of the sale, that fact shall be stated in the advertisement.

Adm 67.04 PURCHASE CONTRACT. (1) USAGE. (a) A licensee shall furnish retail purchasers with a copy of a document entitled "manufactured home purchase contract" that clearly states that the retail purchaser is making an offer to purchase a manufactured home. An exact copy of the purchase contract shall be provided to the purchaser at the time the purchaser signs the offer and again after the offer is accepted by the dealer. Any changes in the purchase contract after signing by the purchaser or subsequent to acceptance by the dealer shall be initialed by all the parties on all copies.

(b) A manufactured home purchase contract shall be executed whenever the licensee accepts a down payment, deposit, or title for a trade-in unit from a prospective retail purchaser.

(2) CONTRACT FACE REQUIREMENTS. A purchase contract shall accomplish all of the following on its face:

(a) Clearly identify the names and addresses of the dealer and the purchaser.

(b) Describe the manufactured home purchased by year, make, model and identification number, and any trade-in unit by year, make and model and specify whether the purchased home is new or used.

(c) State the date and time each signature is affixed.

(d) Include the salesperson's name and license number in an area separate from the signatures of the purchaser and dealer or authorized representative.

(e) Specify an anticipated delivery date and state further in bold faced type next to the anticipated delivery date: **IF THE MANUFACTURED HOME ORDERED BY THE PURCHASER IS NOT AVAILABLE FOR DELIVERY BY THE DEALER WITHIN 15 CALENDAR DAYS AFTER THE ANTICIPATED DELIVERY DATE, EXCEPT WHEN TRIP PERMITS TO TRANSPORT THE HOME CANNOT BE ISSUED, THE PURCHASER MAY CANCEL THIS ORDER. THE PURCHASER SHALL RECEIVE A FULL REFUND OF ANY DOWN PAYMENT AND RETURN OF THE TRADE-IN, OR TITLE FOR THE TRADE-IN OR BOTH BY THE**

CLOSE OF THE DEALER'S NEXT BUSINESS DAY. IF THE TRADE-IN HAS BEEN SOLD, THE PURCHASER SHALL RECEIVE THE TRADE-IN ALLOWANCE SPECIFIED IN THE OFFER.

(f) Clearly state the price due on closing and the known components of that price including, but not limited to, the price of the manufactured home, the price and description of any additional accessories, options or equipment, sales tax if applicable, license, title fees if applicable, down-payment and trade-in allowance. Rebates shall be stated separately by dollar amount and assignment.

(g) Clearly state whether the contract is subject to the purchaser obtaining acceptable financing through the dealer or at the creditor of the purchaser's choice, and how long the purchaser has to obtain financing. If the purchaser is unable to obtain acceptable financing, the purchaser may cancel the contract without penalty and shall, by the close of the dealer's next business day, receive a full refund of any down-payment and return of the trade-in, title for the trade-in or both. The licensee may delay returning a deposited down-payment beyond the close of the dealer's next business day only when the purchaser's personal check or other negotiable instrument has not cleared the payor's bank. If the check or other negotiable instrument clears, the licensee shall return, in person or by mail, the down-payment to the purchaser within 24 hours of receiving evidence of clearance. If the trade-in has been sold, the purchaser shall receive the trade-in allowance specified in the offer.

(h) Specify all other negotiated conditions of the sale not stated elsewhere on the contract.

(3) TERMINATION OF OFFER TO PURCHASE. (a) Unless otherwise specified in the contract, the offer to purchase is automatically voided if the licensee fails to accept or reject the offer by the close of the dealer's next business day.

(b) The licensee shall not sell the manufactured home to any other party until the offer is rejected by the licensee or the offer is voided in accordance with this section, or the purchaser cancels the contract in accordance with sub. (4).

(c) Any down payment, deposit or title shall be returned to the prospective retail purchaser within 2 working hours of the time the offer to purchase is rejected by the licensee. If the prospective purchaser is not present or available during the 2 hour period,

those items shall be returned in person or mailed by the close of the dealer's next business day.

(4) PENALTIES FOR CANCELLATION BY PURCHASER. (a) The purchase contract shall clearly state that cancellation of a manufactured home contract within 24 hours of acceptance by a dealer may subject the purchaser to a penalty of up to 1% of the cash price of the manufactured home and that cancellation after the 24 hour period may subject the purchaser to a penalty not to exceed the penalty amount specified in the contract. Modification of the purchase contract shall not extend the 24 hour period. Documented proof of notification of cancellation is required regardless of the method of notification.

(b) The title and any down-payment or deposit which is not retained by the dealer as a penalty in accordance with par. (a) shall be returned to the purchaser by the close of the dealer's next business day following receipt of the purchaser's notice of cancellation.

(5) PRICE CHANGES. Any increase in price to a retail purchaser after the dealer has accepted an offer is an unfair practice and prohibited except when the price increase is due to any of the following:

(a) The addition of new equipment required by state or federal law.

(b) State or federal tax changes.

(c) The reappraisal of a trade-in unit which has suffered damage as defined in this chapter or is missing parts or accessories which were part of the trade-in unit at the time the purchase contract was executed. Reappraisal by the licensee shall be limited to an amount equal to the retail repair costs of damages incurred, or to the value of parts or accessories removed.

(6) WARRANTIES. (a) Reference to any warranties, service agreements or warranty disclaimers which apply to the manufactured home shall be made on the purchase contract.

(b) If a manufactured home is sold with a warranty, the warranty shall be in writing and shall be provided to the purchaser at the time the home is delivered.

(c) If a manufactured home is sold on an as is, no warranty basis, the purchase contract shall include the following statement in bold face type: " AS IS - NO WARRANTY" - " EXCEPT FOR ANY EXPRESSED OR IMPLIED WARRANTY BY THE MANUFACTURER OR OTHER THIRD PARTY WHICH EXISTS ON THIS MANUFACTURED HOME, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THIS HOME IS WITH THE PURCHASER, AND SHOULD THE HOME PROVE DEFECTIVE FOLLOWING THE PURCHASE, THE PURCHASER SHALL ASSUME THE ENTIRE COST OF ALL SERVICING AND REPAIR."

(d) A warrantor shall service or repair a manufactured home in accordance with the terms and conditions of the warranty or service agreement.

(7) NAME OF PRIOR OWNER. The purchase contract shall include the name and address of the current titled owner if the manufactured home is consigned to or listed by the licensee. The name and address of the previous owner shall be kept on file at the dealer's business office if the manufactured home is owned and offered for sale by the licensee.

(8) ON SITE SALES. If the manufactured home is displayed for sale on a rental lot site or if a licensee represents that a manufactured home may occupy a site in a specified home park, the dealer shall:

(a) Clearly state on the purchase contract whether or not the manufactured home may have to be moved from the site.

(b) Clearly state on the purchase contract that the contract is voidable by the purchaser if the purchaser or home is not acceptable in the home park.

(c) If the home may remain on site, inform the prospective purchaser in writing prior to the execution of the contract that a copy of the current home park lease and rules may be obtained from the current home owner or park operator.

(9) SERVICE FEES. A licensee shall not assess a purchaser an additional service charge or fee for completing any sales-related home inspection forms which are required by law or rule.

(10) WAIVER. The use of a manufactured home purchase contract which requires the purchaser to waive any claims the purchaser may have for breach of contract by the licensee is an unfair practice and is prohibited.

Adm 67.05 SELLING AGREEMENTS. (1) USAGE AND CONTENTS. Whenever a manufactured home dealer lists or offers to sell a home on consignment a written selling agreement shall be completed and shall include:

- (a) The date of the selling agreement.
- (b) The name of the home owner and dealer and any other parties to the agreement.
- (c) The description of the home including year, make and identification number.
- (d) The terms of the agreement including the duration of the agreement, the selling price, the amount of sales commission or fee and when the sales commission or fee is to be paid. The sales commission or fee shall not be charged until the sale of the home.
- (e) A statement by the owner indicating that either the home is clear of any liens, or the amount of any outstanding lien balance.
- (f) Signatures of the home owner and the selling dealer.

(2) ON-SITE SALES ON RENTAL SITES. Manufactured homes selling agreements for units offered for sale on-site shall state whether the home may remain on the same rental lot following the sale. If it may remain, the park operator or owners of the land shall provide the licensee with a copy of the current lease agreement and written rules.

(3) NET SALES PROHIBITED. Licensees shall not obtain, negotiate, or attempt to negotiate any manufactured home selling agreement providing for a stipulated net price to the owner with the excess over the stipulated net price to be received by the licensee as commission.

Adm 67.06 DISCLOSURE OF THE CONDITION OF THE MANUFACTURED HOME.

(1) MODEL YEAR DESIGNATION. Changing the model year of a manufactured home is an unfair practice and is prohibited. If no model year is designated, the year of manufacture applies.

(2) NEW MANUFACTURED HOME DISCLOSURE. The licensee shall, on the face of the new manufactured home purchase contract, disclose all dealer installed options or accessories and whether or not the options or accessories are warranted.

(3) USED MANUFACTURED HOME GENERAL CONDITION DISCLOSURE. (a) Licensees shall inform prospective retail purchasers of used manufactured homes in writing before the execution of the purchase contract in the manner and on the form prescribed by the department, of all significant structural or mechanical defects or damage. If the licensee is unable to determine whether specific damage or defects exist, that fact shall also be noted on the disclosure form. Disclosure of information shall include that which the licensee discovers as a result of a close visual inspection which shall consist of, but is not limited to, a walk-around and interior inspection, an under home inspection, roof inspection and inspection of the appliances. Licensees are not required to dismantle any part of the manufactured home during the inspection process.

(b) Unless otherwise agreed to in the purchase contract, the inspection disclosures shall neither create any warranties, expressed or implied, or affect warranty coverage provided for in the purchase contract.

Adm 67.07 FACILITIES AND RECORDS. (1) BUSINESS FACILITIES
Business facilities required to be provided and maintained by manufactured home dealers shall be as follows:

(a) A business office shall maintain books, records and files necessary to conduct business. The required business office may be established within a residence if it is accessible to an outside entrance and is used primarily for conducting the manufactured home business.

(b) If a display lot is provided, it shall be within the same block or directly across the street from the main business location.

(c) A repair shop, or a service contract with a nearby repair shop, where there are repair tools, repair equipment and personnel to perform the services provided for in a warranty applicable to a home sold by the dealer. Any service contract shall be on the form provided by the department.

(2) RELOCATION. A licensed location may not be relocated without notice to the department.

(3) ZONING. The business premises shall comply with all local zoning, building code and permit requirements.

(4) SIGN. Manufactured home dealers who carry and display inventory shall provide an exterior business sign in compliance with s. 100.13(5), Stats.

(5) TEMPORARY SALES LOCATIONS. Manufactured homes dealers shall be permitted to display and sell homes at a temporary site other than the licensed place of business provided that:

(a) Each licensee furnishes the department with written notification of the sale and location at least 10 days in advance of any temporary sale to last longer than 10 days.

(b) The dealer does not participate in more than 6 sales at a temporary site during each licensing calendar year.

(c) A consigned, listed or model home shall not be considered a temporary sales location.

(d) Whenever a home is sold away from the licensed place of business, the dealer shall furnish the customer with a written notice of the 3-day cooling-off rights pursuant to s. 423.202, Stats.

(6) RECORDS KEPT. The minimum of books and records required to be kept and maintained at the license business premises by a manufactured home dealer under ss. 218.11(3) and (7)(c) and 342.16(2), Stats., shall include:

(a) The title for each used home owned and offered for sale and the manufacturer's statement of origin information for each new home owned and offered for sale. The dealer shall also have either a factory invoice, a completed dealer reassignment form or a purchase contract evidencing trade-in or purchase when a manufacturer or lending institution is holding the title or manufacturer's statement of origin of the manufactured home.

(b) A written selling agreement between the owner and dealer for each manufactured home owned by an individual and offered for sale or listed by the dealer.

(c) The original or a copy of all manufactured home purchase contracts, purchase orders and invoices. The records shall also include a copy of MVI Wisconsin title and registration application forms as additional evidence of the sale as well as information regarding collection of sales tax and Wisconsin title and registration fees, if applicable.

(d) A record of every manufactured home bought, sold, exchanged, consigned, or listed. The information shall be maintained at each licensed location in the following format:

Date Acquired	Acquired From Name & Address	New or Used	Year Make-ID	Date Sold or Disposed of	Disposed of or sold to: Name & Address
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(7) MAINTENANCE OF RECORDS. The records described in sub. (6)(d) shall be maintained for 5 years as required by s. 342.16(2), Stats., and all other required records shall be maintained for a period of 5 years from the date of sale including copies of factory invoices, dealer reassignment forms, selling agreements, purchase contracts, MV1 and MV11 Wisconsin title and registration applications if applicable, regular and conforming power of attorney forms for motor vehicles taken in on trade, and prior owner odometer disclosure statements. The records shall be kept in the place of business during business hours and shall be open to inspection and copying by the department during reasonable business hours.

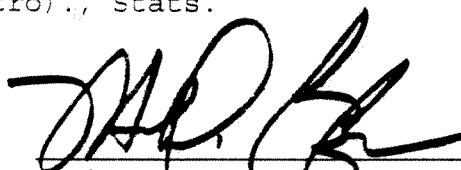
Final Regulatory Flexibility Analysis:

Pursuant to s. 227.114, Stats., the department has determined that the proposed rule will not have any adverse impact on small businesses.

This rule shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro) ., Stats.

Dated

October 14, 1997



Mark D. Bugher, Secretary
Department of Administration

1996 Session
 LRB or Bill No./Adm. Rule
 ADM 66-68
 Amendment No. if applicable

FISCAL ESTIMATE
 DOA-2048 (R 10/92)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject
 Transfer of mobile home regulation administrative rules from DOT to DOA under the Division of Housing, including increase of dealer fees.

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units affected:

Towns Villages Cities
 Counties Others _____
 School Districts VTAE Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations
 s. 20.505(7)(ji)

Assumptions Used in Arriving at Fiscal Estimate

The regulation of mobile home dealers was transferred from the DOT to DOA, Division of Housing (DOH), beginning fiscal 1993 in an effort to centralize mobile home programs under one office. Since then DOA has had until now to carry out the routine, administrative matter of transferring the administrative rules from DOT to DOA. Three DOT chapters covered the regulation of mobile home dealers: Trans 140, 141, & 144. To accomplish the transfer three new DOA rules are created under this proposal: Adm 66, 67, & 68.

The new Adm rule language is identical to the language used under the old Trans chapters with the exception of Chapter Adm 68, which defines the fees that dealers must pay. The new rule proposes a dealer fee increase.

Since DOH took over the responsibility of administering the mobile home dealer program the fund has been inadequately funded due to insufficient fee revenue to cover the costs necessary to administer the program. Fund shortfalls in FY 93 and FY 95 have been prevented through cost shifts or by using limited GPR funds. To eliminate the annual program funding deficiency, the new rule proposes that dealer fees be increased.

Under the existing rule dealers with two salespeople would pay \$266, under the new rule they would pay \$382, or an additional \$116 every two years. On average the change results in an additional \$58 per year per dealer. Assuming 158 dealers, DOH estimates that the new fees would generate an additional \$9,164 annually (158 x 58), which is the amount needed to meet the costs required to administer the program based on FY 98 projections.

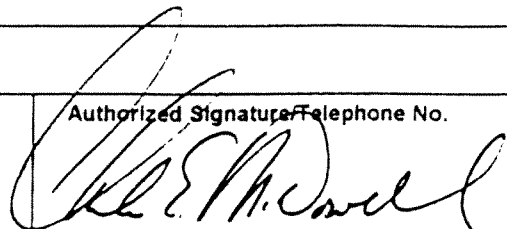
Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

Ryan Gill, 6-6497

Authorized Signature Telephone No.


 Charles E. McDowell 7-3036

Date

July 16, 1997

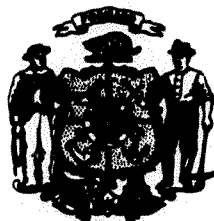
WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

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(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

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P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 96-165

AN ORDER to repeal chapter Trans 141; and to create chapter Adm 67, relating to manufactured home dealer trade practices, facilities and records.

Submitted by **DEPARTMENT OF ADMINISTRATION**

10-21-96 RECEIVED BY LEGISLATIVE COUNCIL.

11-18-96 REPORT SENT TO AGENCY.

RS:WF:jt:kjf

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

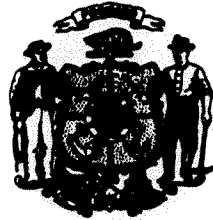
NO

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CLEARINGHOUSE RULE 96-165

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

- a. Section Adm 67.02 (1) should be preceded by introductory material that states "In this chapter:".
- b. In order to preserve alphabetical order, the definition of "mobile home" in s. Adm 67.02 (7) should follow s. Adm 67.02 (8).

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In s. Adm 67.02 (6), in the first sentence, it appears that the word "and" should be inserted before the phrase "electrical systems."
- b. In s. Adm 67.02 (8) (intro.), the phrase "any of the following" should be inserted after the word "means." In par. (a), the word "a" should be capitalized. In par. (a) 1., the notation "s." should precede the cross-reference. Finally, in par. (a) 4., the word "Realtor" should be shown in lowercase.
- c. In s. Adm 67.02 (9), the word "a" should follow the word "means."
- d. In s. Adm 67.04 (2) (intro.), in order that the introductory material more appropriately leads into the following paragraphs, it appears that the word "include" should be replaced by a word such as "accomplish."

- e. In s. Adm 67.04 (7), the word "must" should be replaced by the word "shall."
- f. In s. Adm 67.05 (2), it appears that the comma in the first sentence should be deleted.
- g. In s. Adm 67.06 (2), either a comma should be inserted following the word "shall" or the comma following the word "contract" should be deleted.
- h. In s. Adm 67.07 (5) (a), should the word "and" be deleted? In sub. (5) (b), the phrase "such sales" should be replaced by the phrase "sales at a temporary site."
- i. In s. Adm 67.07 (6) (d), in order to grammatically follow from the introductory material, it appears that the phrase "shall be kept" should be deleted.
- j. Section Adm 67.07 (6) (e) does not follow grammatically from the introduction. Consequently, this provision should be renumbered as s. Adm 67.07 (7). The title of the subsection could be "MAINTENANCE OF RECORDS." Also, the reference in the first sentence to "par. (d)" should be replaced by a reference to "sub. (6) (d)." Finally, it appears that the comma following the phrase "conforming power of attorney forms" should be deleted.

Summary of DOA Public Hearing
For Adm 66, 67 and 68
April 24, 1997

In attendance: Scott Slattery, Wisconsin Manufactured Housing Association (WMHA), appearing in opposition.

Mark Saunders, Lee Martinson, Terri Lenz and Gary Gorlen of DOA.

Listed below is a summary of the testimony presented by Mr. Slattery of the WMHA and the Department's responses.

Comments regarding Adm 66

1. The former Trans 140 referenced that the rule applied to mobile home dealers who were selling recreational vehicles - in 218.11(3) - in licensing for mobile homes relating to the sale of recreational vehicles. The question was raised whether the Department is creating a whole new body of regulation for the industry or if it a transfer of regulations?

Department's Response to No. 1: The regulations in Trans 140 for the mobile home program transferred to the Department of Administration from the Department of Transportation. The Department is adopting new standards based on the former Chapters Trans 140, 141 and 144.

2. A member of the WMHA indicated that they sell both modular and manufactured homes and if they sell only modular homes, there is no financial requirement in Adm 66. Is there any public policy rationale for treating manufactured homes differently than modulars?

Department's Response to No. 2: The Department of Commerce, Division of Safety and Buildings regulates modular homes and the manufacture of "manufactured homes" pursuant to Chapter 101 of the Wisconsin Statutes. The Department of Administration regulates and licenses dealers of manufactured home. In short, the Department has no jurisdiction over modular homes. This is the scheme provided by the Legislature which the Department must follow.

3. In Adm 66.03(1), the word "may" was changed to "shall" making it mandatory to provide all of the items listed on the financial sheet. What is the reason for this change?

Department's Response to No. 3: The Department has determined that applicants must provide all of the items listed in Adm 66.03(1)(a) through (g), in order to properly evaluate applicants; therefore, the "may" has been changed to "shall" to make this information mandatory.

4. Adm 66.08 references only mobile home dealers. Suggest adding mobile or manufactured home to be consistent with the rest of the code.

Department's Response to No. 4: The words "mobile home" have been deleted in Adm 66.08. The section now applies to "dealers" as defined in Adm 66.02(8).

5. In Adm 66.09(2), the Department eliminated the option of a bond. The Association believes that under certain circumstances there may be a need for a bond in order to pay off judgments. An example would be a long-time dealer who has substantial assets but because of how the books are handled, it shows little or no net worth. The Association would like to go to bonding.

Department's Response to No. 5: The Department agrees that the bonding option would be a good idea if there was also a review process for claims and a hearing examiner for handling disputed claims. However, the department is not equipped for a bonding process and, therefore, suggests another option for responding to this concern. The Department has amended Adm 66.09(2)(a) to reduce the financial statement requirements for the number of homes sold and net worth requirements.

Comments Regarding Adm 67

1. In Adm 67.03, the language regarding relocation was eliminated and placed in Adm 67.07. The Association requests moving the language regarding relocation back to Adm 67.03.

Department's response to No. 1: The rule has been amended as requested.

2. In Adm 67.04(1)(f), homes that go onto private property do not pay a sales tax but it is put into a use tax. The dealer can't disclose the sales tax per DOR regulations. In addition, there is no title or title fees for homes on private property. Recommends adding "if applicable" to the sales tax and titling section.

Department's response to No 2: The requested language has been added to this section.

3. Adm 67.04(4), includes a section regarding "cooling off period" which appears to create a 3 day right to cancel on any sale (such as a park listing). Recommend moving language to Adm 67.07(5) under "temporary sales locations."

Department's response to No. 3: The rule has been amended as requested.

4. Recommend adding the words " if applicable" in Adm 67.07(6)(c), because the MV 1 and MV 11 title and registration forms do not need to be completed for realty transactions, which are over 50% of the sales, and title fees are not assessed.

Department's response to No. 4: The requested language has been added to this section.

5. In Adm 67.07(7), recommend deleting the word " books" and making he word " record" plural.

Department's response to No. 5: The language has been amended as requested.

Comments regarding Adm 68

The Association reviewed the fees and it appears there is a segregation of programs but they are co-mingled. It appears there is some evidence that the dealer program has a smaller pool of revenues. The Association would like the Department to justify the large increase.

The Association objects to the large increase in salesperson fees from \$8 to \$50. The Association used Steenberg Homes as an example of a dealership with a large number of salespeople who would be impacted more. They also used the example of modular housing which doesn't have licensing fees for salespersons. The Association stated that if there is a large increase in the registration and plates, it would impact everyone equally, not just larger businesses with a higher number of salespeople. The Association also stated that the increase in branch and sublots is acceptable because it is outside of the regular scope of licensing.

The Association requests the Department to review the current amounts and bring them in line with normal increases. Most groups use the Consumer Price Index or other indexes for references.

The Association observed that the Department's mobile home programs combined have \$100,000 in revenue and as a whole, they are running at a surplus. The industry just saw an increase in park fees and they feel many are getting socked. They request further justification for increases.

The Association is looking for evidence that general program revenue monies were used to supplement the mobile home programs and request

documentation to that effect. If such documentation exists, they would support the licensing function.

Department's response. The Mobile Home Program has been running a deficit since the program was transferred from the Department of Transportation. General purpose revenues have been supplementing the program and staffing has been reduced to ensure continued operation. Attached is a memo dated April 4, 1997, from Bev Tucker to John Eldredge, which provides a summary of the Mobile Home Program revenue and expenditure history.

In response to the concerns raised, the department revised the proposed fee schedule to reflect a higher increase in the dealer registration fee (original amendment was \$200, now \$230) and dropped the salesperson fees (original amendment was \$50, now \$26). These changes will result in a decrease in revenues of \$1,422 from the original amendment request. The fee increase will affect dealers across the board.

Summary of Written Comments
on Adm 66, 67 and 68
and Department's Response

1. Change the term "mobile home" to "manufactured home."

Department's Response to No. 1: "Mobile home" is the term used and defined by the Legislature in s. 218.10, Wis. Stats. However, for clarification, the rules include a definition for "manufactured home." See sections Adm 66.02(7), 67.02(6) and Adm 68.02(6).

2. The 3 day cooling off period should only apply to manufactured homes sold away from the dealership.

Department's Response to No. 2: The language relating to the cooling off period has been moved to Adm 67.07(5), in order to clarify that it applies only to sales away from the dealership, such as expos and trade shows.

3. Object to the proposed hike in license and registration fees.

Department's response to No. 3: The Mobile Home Program has been running a deficit since the program was transferred from the Department of Transportation. General purpose revenues have been supplementing the program and staffing has been reduced to ensure continued operation. Attached is a memo dated April 4, 1997, from Bev Tucker to John Eldredge, which provides a summary of the Mobile Home Program revenue and expenditure history.

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CORRESPONDENCE/MEMORANDUM

State of Wisconsin
Department of Administration
Division of Housing

Date: April 4, 1997
To: John Eldredge
From: Bev Tucker
Subject: Mobile Home Dealers

FY96:

The Mobile Home Dealers annual legislative authority is \$37,000. The revenue received in FY96 was \$20,792. Combined with the prior year revenue carryover of \$6,533, provided a total of \$27,325 available. The FY96 expenses totaled \$27,628, creating a \$304 deficit. This does not include the \$2,000 of expenditures transferred out of dealers in April which would put the actual deficit at \$2,304.

FY95:

In FY95 revenue of \$24,714 was received and combined with the FY94 carryover of \$9,902, had a total of \$34,616 available. The legislative authority was \$37,000. Total expenses were \$28,083 leaving a balance of \$6,533.

FY94:

Revenues received in FY94 were \$23,982 and with the negative carryover from FY93 of \$913 totaled \$23,069 available. The legislative authority was \$34,000. Expenditures in FY94 totaled \$13,167 leaving a balance of 9,902.

FY93:

This was the first year the program was in DOA. Revenues of \$21,430 were received. Legislative authority was \$31,000. The total expenditures of \$22,343 created a deficit of \$913.

The low or no deficits in each fiscal year is deceiving. In the first three fiscal years many of the mobile home costs were picked up by the divisions GPR Admin budget. It is difficult to say what these costs were without spending a lot of time researching it. In addition, we were very careful in keeping the budget to be within the projected revenue. The costs to actually effectively run the program are not necessarily what we budgeted.

cc Terri Schmidt

DOA Public Hearing for
ADM 66, 67, 68

April 24, 1997

REGISTRATION FOR TESTIMONY

Name: SCOTT SLATTERY
Address: 202 STATE ST.
Phone: 608-755-3131
Representing: WI MANUFACTURED HOUSING ASSOC.

Please place a check mark by the appropriate statement.

- () Appearing in favor.
() Appearing in opposition.
() Appearing for informational purposes only.

FUTURE HOMES
W6474 MOON SHADOW DRIVE
GREENVILLE, WI 54942
(414) 730 2594
(414) 757-1025 FAX

Ms. Donna Sorenson
Department of Administration
P.O. Box 7864
Madison, WI 53707-7864

Dear Ms. Sorenson:

Enclosed are some comments regarding the proposed changes in the mobile home dealer regulations:

- A. Change the term "MOBILE HOME" to "MANUFACTURED HOME". This updates the terminology within our industry.
- B. ADM 67.03 Advertising and Sales Representations:
 - a. Update term "USED" to "PRE-OWNED". More inline with our industry.
- C. ADM 67.05 Selling Agreements:
 - a. #4 - Cooling off Period - There should not be a 3-day cooling off period on manufactured homes sold away from the dealership. My reasoning; first of all customers are coming to us, we are not going door to door selling. A dealer who sells only Consignment Homes would face a hardship; first to his own dealership and second to his customer who he is the acting agent for. Furthermore, if people decide to sell their home on their own they would not be subjected to this 3-day cooling off period so why bother listing the home with a dealership. Again, the customer initiated the sale by calling or coming into the dealership therefore it shouldn't matter where the sale is consummated. All consignment sales are usually sold in the home when the home is consigned or set up in a park.
- D. ADM 68.04 License and Registration Fees:
 - a. I am against the proposed hike in fees. The current fees are already substantial. The percentage hike that is proposed is way too high. This is more like a penalty to dealerships and salespersons than the actual cost of doing business. Perhaps the funds that are needed to meet your projections could be obtained through other sources or revenues.

These are my views and suggestions which I hope would be considered and would be equitable to all parties concerned.

Sincerely,

TERRY FUNK, OWNER
FUTURE HOMES

**Wisconsin Department of Transportation**Tommy G. Thompson
GovernorCharles H. Thompson
SecretaryDIVISION OF MOTOR VEHICLES
4802 Sheboygan Avenue
P.O. Box 7949
Madison, WI 53707-7949

November 13, 1992

Terry Funk
Future Homes
W 6490 Greenville Rd
Appleton, Wisconsin 54915

Dear Mr. Funk:

Thanks for your follow up letter to your original inquiry of June 1, 1992. I apologize that you've not received a response any sooner.

You need to know when a 3-day right to cancel applies to the sale of a mobile home offered for sale in a park. The answer is as follows:

The 3-day right to cancel does not apply anytime the customer initiates the sale by contacting the dealer at the dealership regardless of where the sale is consummated.

The 3-day right to cancel does not apply anytime the dealer initiates the sale with a particular customer and consummates the sale at the dealership.

The 3-day right to cancel does apply anytime the dealer initiates the sale with a particular customer and consummates the sale away from the dealership.

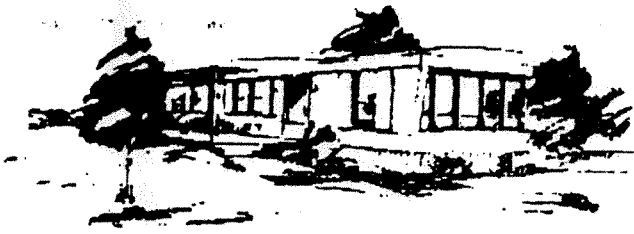
If I understand the situation you've described in the letter, the 3-day right to cancel does not apply because the customer initiated the sale by calling you at the dealership. When that happens, it doesn't matter where the sale is consummated.

We tried to recognize the special situations when there wasn't a straight yes or no answer to when the 3-day right to cancel applies, and further explain those situations below the chart. It wasn't as clear as we'd hoped it would be. I hope this explanation clarifies the situation for you. If you've got more questions, please feel free to give me a call at (608) 267-0404.

Sincerely,

Handwritten signature of Joan Loden in cursive.

Joan Loden
Supervisor
Business Licensing, Dealer Section



Future Homes

W6474 Moon Shadow Drive
GREENVILLE, WISCONSIN 54942
(414) 730-2594 • Fax: (414) 757-1025

TRANSMITTAL COVER LETTER

NAME Donna Sorenson
COMPANY Dept. of Administration
FROM Terry Funk
DATE 4.25.97

TOTAL PAGES (INCLUDING THIS COVER PAGE) 2

MESSAGE My Future Home Views.

ON 3 PM call - F can
See Dealers GOING AGAINST
EACH other. This happens
Now.

RESPONSE REQUIRED

YES _____ **BY FAX** _____ **BY LETTER** _____ **BY PHONE** _____

NO _____