

Clearinghouse Rule 96-164

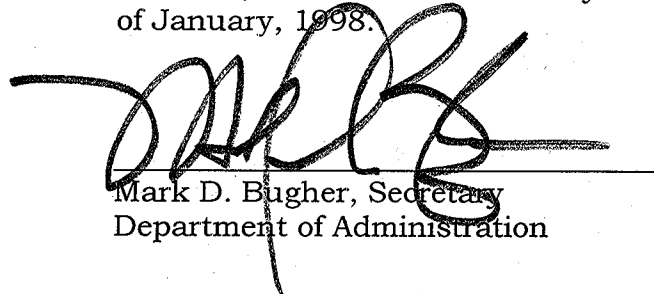
RULES CERTIFICATE

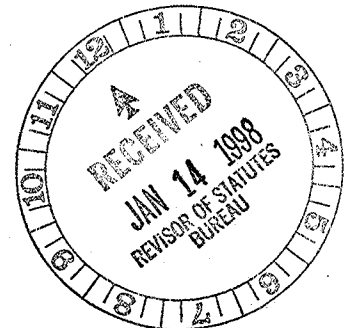
State of Wisconsin)
) ss.
Department of Administration)

I, Mark D. Bugher, Secretary of the Wisconsin Department of Administration, and custodian of the official records, certify that the attached administrative rule relating to manufactured home dealer financial eligibility, was duly approved and adopted by the Department of Administration on January 12, 1998.

I further certify that this copy has been compared by me with the original on file with this Department and that it is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have
Hereunto set my hand in the City of
Madison, Wisconsin this 12th day
of January, 1998.


Mark D. Bugher, Secretary
Department of Administration



3-1-98

96-164

ORDER OF THE DEPARTMENT OF ADMINISTRATION

The Wisconsin Department of Administration proposes an order to create Chapter Adm 66.

Analysis prepared by the Department of Administration:

Statutory Authority: ss. 16.004(1) and 218.01(5)(c), Stats.

Statutes Interpreted: ss. 218.01(5), 218.11(3), Stats.

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. This Chapter establishes the financial qualifications for applicants for manufactured/mobile home dealer licenses.

Manufactured/mobile home dealers have been regulated under the former chapter Trans 140 since the program was transferred to the Department of Administration in July, 1992. Chapter Trans 140 is not being repealed by the Department because it was amended by the Department of Transportation in March 1996, and now applies only to dealers that sell recreational vehicles, as those dealers continue to be licensed by the Department of Transportation, Division of Motor Vehicles.

TEXT OF RULE:

SECTION 1: Chapter Adm 66 is created to read:

Chapter Adm 66

MANUFACTURED HOME DEALER FINANCIAL ELIGIBILITY

Adm 66.01 PURPOSE AND SCOPE. This chapter is promulgated under the authority of ss. 16.004(1) and 218.01(5)(c), Stats., to implement s. 218.11, Stats. This chapter applies to any sole proprietorship, partnership, or corporate entity applying for or holding a Wisconsin dealer's license under ss. 218.11 and 218.12, Stats.

Adm 66.02 DEFINITIONS. In this chapter: (1) "Department" means the department of administration.

(2) "Discounted" means an asset which is not considered at full value when determining financial statement net worth.

(3) "Financial statement" means a balance sheet showing assets, liabilities and net worth.

(4) "GAAP" means generally accepted accounting principles.

(5) "Intangible asset" means an asset which does not have a readily determined value, such as goodwill, and is not generally offered for sale.

(6) "Major liability" means a liability equal to or greater than 10% of the total liabilities listed on the financial statement.

(7) "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, electrical systems contained in the manufactured home. Calculations used to determine the number of square feet in a structure shall be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions shall 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.

(8) "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 Trans 142.02(7).
2. Governmental units or agents performing their official duties.
3. Advertising media and agents performing their official 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.

(9) "Mobile home" has the meaning given in s. 340.01(29), Stats.

(10) "Net worth" means the difference between the asset and liability values on a balance sheet. Negative net worth is the excess of liabilities over assets.

(11) "Pro-forma statement" means a statement presented anticipating some event or events which will occur in the future.

(12) "Substantial portion of the assets" means a value greater than 30% of all assets.

Adm 66.03 SECURITY; FORMS AND TYPES. (1) The only acceptable forms of security to fulfill the financial ability requirement of s. 218.11(3), Stats., are as follows:

(a) Surety bond. The bond shall be filed on a form prescribed by the department and issued by a bonding company licensed by this state. The bond shall be payable for the benefit of any person sustaining a loss because of an act of the licensee constituting grounds for the suspension or revocation of a license under s. 218.11(6).

(b) Balance sheet information. The balance sheet shall be prepared in accordance with GAAP and be dated not more than 90 days prior to the date of application. A small business as defined in s. 227.114(1)(a), Stats., which does no interim financial reporting may submit a balance sheet from the close of the businesses' most recent fiscal year. The balance sheet shall contain all of the following:

1. Assets.
2. Liabilities.
3. Net worth.
4. The signature of one of the corporate officers, partners or owners.
5. The name of any bank or financial institution used by the applicant.
6. A schedule of securities owned, if any.
7. A schedule of all real property held, its fair market value, book value, and the amount and terms of any indebtedness.

(2) Pro-forma statements shall not be accepted.

(3) If the department determines that there has been a misstatement on a financial statement, the department may deny or revoke the license.

Adm 66.04 ASSET REPORTING. (1) VALUATION. The financial statement shall present assets in terms of historical cost or book value of assets. In lieu of a statement presented with historical cost of fixed assets or book value of assets, the department may consider a statement presenting fair market value information of fixed assets if clearly labeled and accompanied by an appraisal report of a certified appraiser or tax appraisal.

(2) CASH. Whenever a substantial portion of the assets of an entity is in the form of cash, confirmation of the amount is required from the financial institution holding the cash.

(3) RECEIVABLES. When a substantial portion of the assets of an entity are in the form of receivables from another individual, partnership, or corporation, all or part of the receivables shall be discounted in considering the net worth of the applicant. In order to evaluate the quality of a receivable, a financial statement from the individual, partnership or corporation shall be required. In no case will the department discount factory receivables.

(4) INVENTORY. The financial statement shall include the number of units in inventory and the number of units floor planned or used for loan collateral.

(5) CERTAIN ASSETS NOT TO BE CONSIDERED. The department shall not consider the following assets in evaluating the financial statement of an applicant:

(a) As specified in s. 815.20, Stats., equity in homestead property up to \$40,000.

(b) As specified in s. 815.18(3), Stats., items of personal property which are exempt from execution.

(c) Any intangible asset values.

(d) Leasehold improvements.

(e) All other assets subject to prior liens, security arrangements or other pledges.

Adm 66.05 LIABILITY REPORTING. (1) REPORTING. All liabilities and contingent liabilities shall be reported. The terms, amounts and conditions of any major liabilities shall be separately scheduled. The schedule shall list the names of individuals or institutions that hold the debt, the amount of the debt and the terms of repayment. A list of customers and the amounts on deposit with the dealer shall be attached to the financial statement.

(2) **RATIO ANALYSIS.** A ratio analysis comparing liabilities with assets shall be used to evaluate a dealer's financial potential. If current liabilities exceed current assets, the department may deny, suspend or revoke a dealer's license. An exception to this subsection shall be made when the current ratio is less than 1 to 1 solely due to the manner the dealership has chosen to account for leasing operations.

Adm 66.06 NET WORTH REPORTING. (1) **TREASURY STOCK.** Treasury stock held by a corporation shall be reported separately on the balance sheet and clearly labeled as treasury stock.

(2) **PREVIOUS PROFIT.** Profit from the previous period of operations shall be reported separately in the net worth section of the balance sheet.

(3) **NEGATIVE NET WORTH.** A financial statement with a negative net worth is evidence of a lack of financial ability to conduct business and the license shall be denied or revoked.

Adm 66.07 TYPES OF ENTITIES. (1) **SOLE PROPRIETORSHIPS.** A sole proprietorship shall report the entire value of assets jointly owned by the sole proprietor and by one or more persons on its financial statement. The financial statement shall be signed by the sole proprietor.

(2) **PARTNERSHIPS.** Partnerships shall submit a statement for the partnership as a whole and individual statement for each of the general partners. If the partnership agreement provides for anything other than an equal sharing by the partners, it shall be prominently noted on the statements. The provisions of sub. (1) relating to the listing of jointly owned assets also apply to this subsection.

(3) **CORPORATIONS.** A corporation shall submit a financial statement. A financial statement of a controlling corporation, parent corporation, or an interlocking corporation may be submitted but shall not be substituted for the financial statement of the corporate [applicant].

See Trans 140
1996

(4) **LIMITED LIABILITY COMPANIES.** A limited liability company shall submit a financial statement and a copy of its currently effective operating agreement, or if no operating agreement is in effect, or if the operating agreement does not list each member's contribution, a statement of the value of each member's contribution to the limited liability company.

Adm 66.08 COPIES REQUIRED. Dealers shall file their statements in duplicate. The department shall forward the duplicate copy to the collicensor, the department of financial institutions.

Adm 66.09 GENERAL REQUIREMENTS. (1) OPERATING STATEMENT. The department may require a dealer to submit an income statement or other financial information for any of the following:

- (a) An initial license.
- (b) Renewal of a license.
- (c) A change in the licensee.
- (d) If any questions arise regarding the dealer's financial condition.

(2) ACCEPTABLE NET WORTH. (a) The following table shall be used in determining the acceptable minimum level of net worth of an applicant:

Annual Home Sales Volume

<u>Number of Homes Sold Per Year</u>	<u>Amount</u>
New Dealer	\$25,000
1-20	\$25,000
21-50	\$40,000
51-75	\$65,000
76-up	\$100,000

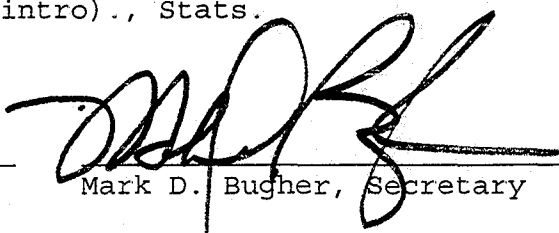
(b) The department may deny the license of any applicant who fails to meet the net worth criteria set out in par. (a).

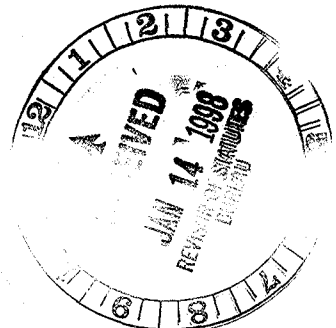
Final Regulatory Flexibility Analysis:


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: Jan 12, 1998


Mark D. Bugher, Secretary



<p style="text-align: center;"> <input type="checkbox"/> ORIGINAL <input checked="" type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL </p>		1996 Session
		LRB or Bill No./Adm. Rule ADM 66-68
		Amendment No. if applicable
FISCAL ESTIMATE DOA-2048 (R10/92)		
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: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation <input type="checkbox"/> Increase Existing Appropriation <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation		<input type="checkbox"/> Increase Costs - May be possible to absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
Local: <input type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Units affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> VTAE Districts
Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input checked="" type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		Affected Ch. 20 Appropriations s. 20.505(7)(ji)
Assumptions Used in Arriving at Fiscal Estimate <p>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.</p> <p>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.</p> <p>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.</p> <p>Under the existing rule dealers with two salespeople would pay \$266, under the new rule they would pay \$346, or an additional \$80 every two years. On average the change results in an additional \$40 per year per dealer. Assuming 158 dealers, DOH estimates that the new fees would generate an additional \$6,320 annually (158 x 40), which is the amount needed to meet the costs required to administer the program based on FY 98 projections.</p>		
Long-Range Fiscal Implications None.		
Agency/Prepared by: (Name & Phone No.) Ryan Gill, 6-6497	Authorized Signature/Telephone No.  Paul McMahon 6-1355	Date November 18, 1997

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR
MARK D. BUGHER
SECRETARY



Mailing Address:
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Madison, WI 53707-7864

January 14, 1998

✓ Mr. Gary Poulson
Revisor of Statutes
131 W. Wilson Street, Suite 800
Madison, WI 53703

Douglas LaFollette
Secretary of State
30 W. Mifflin St., 10th Fl.
Madison, WI 53703

TRANSMITTAL OF RULE ADOPTION - ADM 66

RE: Manufactured Home Dealer Financial Eligibility

Dear Messrs. Poulson and LaFollette:

Pursuant to s. 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the Officers of the Secretary of State and the Revisor of Statutes.

Enclosed, please find a rule certificate form, the order of adoption and rule in final draft form, as well as the fiscal estimate.

Pursuant to s. 227.114, Stats., the rule herein is not expected to negatively impact on small businesses.

Respectfully Submitted,


Mark D. Bugher
Secretary

