

NEBRASKA ADMINISTRATIVE CODE

EFFECTIVE DATE: February 6, 2008

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TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 12 - MANUFACTURED HOUSING RULES AND REGULATIONS

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001 SCOPE, STATE CODE, AND DEFINITIONS:

001.01 Scope and Application: All rules, regulations, and orders of the Nebraska Department of Health and Human Services Regulation and Licensure or its predecessor agency adopted prior to May 1, 1998, in connection with the powers, duties, and functions transferred to the Nebraska Public Service Commission under the Nebraska Uniform Standards for Manufactured Homes Act, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

In regard to any manufactured home displaying the United States Manufactured Home Seal, also referred to as United States Department of Housing and Urban Development (HUD) seal, no suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to May 1, 1998, or which could have been commenced prior to that date, by or against such department or agency, or the director or employee thereof in such director or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the Nebraska Department of Health and Human Services to the Nebraska Public Service Commission.

001.02 State Code for Manufactured Homes: There are hereby adopted the standards and regulations governing the body and frame design and construction and all plumbing, heating, and electrical systems of the United States Department of Housing and Urban Development (HUD) Manufactured Home Standards and Regulations Program, Title 24 CFR, Parts 3280, 3282 and 3283. All rules, regulations, guidelines and directives set forth in HUD Manufactured Home Standards Part 3280, Title 24 CFR, HUD Manufactured Home Regulations Part 3282, Title 24 CFR, and HUD Manufactured Home Consumer Manual Requirements Part 3283, Title 24 CFR shall be incorporated by reference and made a part of these rules and regulations with the same force and effect as if set forth fully herein.

001.03 Definitions: The following definitions shall apply to these standards. Where these definitions differ from those in the Standard adopted in Section 001.02, these shall be controlling.

001.03A Commission: The Nebraska Public Service Commission.

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001.03B Department: The Nebraska Public Service Commission, Housing and Recreational Vehicle Department.

011.03C Person: Any individual, partnership, company, corporation, or association engaged in manufacturing, selling, offering to sell, or leasing manufactured homes.

002 SEALS:

002.01 Application for Seals: Any person, with a manufactured home manufacturing facility in the State of Nebraska, desiring to acquire a seal must meet the requirements of the code adopted in Section 001.02 and plan and quality assurance approval pursuant to either Section 003 or as allowed by HUD. The application form shall be requested from the Department and completed by the manufacturer. The completed form shall be accompanied by the required fee(s) in check form made payable to the Department of HUD and mailed to the Commission. In addition, fees shall be submitted to the Department by check, payable to the Nebraska Public Service Commission, in an amount equal to the number of seals requested multiplied by the seal fee set forth in Section 005.01.

003 PLAN AND QUALITY ASSURANCE REVIEW:

003.01 Application for Plan and Quality Assurance Review: All submissions to the Department for review shall be considered to be certified by the manufacturer that the building plans meet the requirements of these regulations.

003.02 Plan and Quality Assurance Submission Requirements: The manufacturer shall prepare and submit plans and quality assurance material, in triplicate, and at a minimum in accordance with the United States Department of Housing and Urban Development Manufactured Home Regulations, Title 24 CFR, Part 3282.203, incorporated herein by reference.

004 INSPECTIONS:

004.01 Inspections of Manufactured Homes: Only employees of the Department are to conduct inspections to assure compliance with the code for manufactured homes in the State of Nebraska. Such inspections are to be performed at reasonable times, without advance notice, at any factory, warehouse, or other establishment or place in which manufactured homes are manufactured, stored, offered for sale, or held for lease or sale.

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004.02 Inspection of Records: Only employees of the Department are to inspect to assure compliance with the code, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or other establishment or place, and to inspect such books, papers, records, and documents. Each such inspection shall be commenced and completed with reasonable promptness.

004.03 Inspection of Consumer Complaints: Such inspections are to be performed by the Department in accordance with regulations adopted in Section 001.02. Employees of the Department may inspect homes in the possession of consumers in the State of Nebraska at either the request of the homeowner, occupant, dealer or manufacturer. Such inspections are to be performed at a time agreeable with the homeowner or occupant. The Department shall notify the manufacturer and dealer of such inspection prior to the appointment.

004.04 Inspection of Alternate Construction (AC) Homes Manufactured in Nebraska Built to Title 24 CFR Part 3282.14:

004.04A Homes sited in Nebraska shall be site-inspected by the Department. Non-compliances shall be corrected by the manufacturer, or an entity acceptable to the manufacturer. A reinspection shall be made by the Department.

004.04B Homes sited outside of Nebraska shall be site-inspected by the Department or by a person duly designated by the Department. Non-compliances found shall be corrected by the manufacturer, or an entity acceptable to the manufacturer. A reinspection shall be made by the Department or by a person duly designated by the Department.

005 FEES:

005.01 Fees for Seals: A fee as established by the Commission on at least an annual basis after notice and hearing shall be charged for each seal issued by the Department. A seal shall be affixed to each transportable section of each manufactured home.

006 DEPARTMENT NOTIFICATIONS:

006.01 Inspection Reports: The Department will make a written inspection report for observed violations of the regulations during departmental inspections allowed in Section 004. A copy of all reports will be provided to the manufacturer.

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006.01A Factory Inspection Reports and Red-Tags: The report shall reference the section of the regulation violated by the manufacturer and, if necessary, the manufacturer's method of correction to bring the home(s) into compliance with the code if such corrections were made while the departmental representative was at the manufacturing facility. If the manufacturer is unable to complete repair(s) of the violations noted on the factory inspection report while the departmental representative is at the manufacturing facility, the departmental representative shall "Red-Tag" the home(s) for re-inspection and "Red-Tag" removal during the next scheduled factory inspection.

006.01B Record and Consumer Complaint Inspection Reports: Such reports will state any violation of these regulations and will be provided to the manufacturer for manufacturer's response in accordance with the requirements adopted in Section 001.02.

007 PROCEDURES FOR CORRECTIVE ACTION:

007.01 Manufacturers Opportunity for Informal Presentation: If the Department determines that a manufactured home has a violation or contains a failure to conform which does constitute an imminent safety hazard or serious defect, it shall immediately notify the manufacturer of such finding and the Department shall afford such manufacturer an opportunity to present his or her views and evidence in support thereof to establish that there is no failure to conform. If, after such presentation by the manufacturer, the Department determines that such manufactured home does not comply with applicable departmental standards or contains a failure to conform which constitutes an imminent safety hazard or serious defect, the Department shall direct the manufacturer to furnish the notification specified in Section 007.01A.

007.01A Manufacturers Notification and Correction: Every manufacturer shall furnish notification of any failure to conform in any manufactured home produced by such manufacturer which he or she determines, in good faith, violates a standard adopted by the Commission which constitutes an imminent safety hazard or serious defect in a single home or non-compliance determined to be in a class of homes to the purchaser of such manufactured home, within a reasonable time after such manufacturer has discovered the failure to conform. The notification required shall be accomplished by: (a) Certified mail to the first purchaser, not including any dealer or distributor of such manufacturer, of the manufactured home containing the failure to conform and to any subsequent purchaser to whom any warranty of such manufactured home has been transferred; (b) Certified mail

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to any other person who is a registered owner of such manufactured home and whose name and address has been ascertained pursuant to procedures established under Section 007.01B; (c) Certified mail or other more expeditious means to the dealer or dealers of such manufacturer to whom such manufactured home was delivered. The notification required shall contain a clear description of such failure to conform, an evaluation of the risk to manufactured home occupants' safety reasonably related to such defect, and a statement of the measure(s) needed to repair the failure to conform. The notification shall also inform the owner whether the failure to conform is a construction or safety failure to conform which the manufacturer will have corrected at no cost to the owner of the manufactured home, or a failure to conform which must be corrected at the expense of the owner.

If a manufacturer is required to furnish notification of a failure to conform in accordance with this Section, the manufacturer is also required to bring the manufactured home into compliance with the code adopted in Section 001.02 and correct the failure to conform or have the failure to conform corrected within a reasonable period of time at no expense to the owner if the failure to conform presents an unreasonable risk of injury or death to occupants of the affected manufactured home and the failure to conform is related to an error by the manufacturer in design or assembly of the manufactured home.

The Department may direct the manufacturer to make such corrections after providing an opportunity for oral and written presentation of views by interested persons. Nothing in this section shall limit the rights of the purchaser or any other person under any contract or other applicable law.

The manufacturer shall submit a remedy plan for repairing such failure to conform to the Department for its approval, or the manufacturer shall notify the Department of the corrective action it has taken and request departmental approval. Whenever a manufacturer is required to correct a failure to conform, the Department shall approve, with or without modification, after consultation with the manufacturer of the manufactured home involved, the manufacturer's remedy plan including the date when, and the method by which, the notification and remedy required pursuant to this section shall be effectuated. Such date shall be the earliest practicable one, but shall not be more than sixty (60) days after the date of discovery or determination of the failure to conform, unless the Commission grants an extension of such period for good cause shown. The manufac-

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turer shall implement any remedy plan approved by the Commission.

When a failure to conform in a manufactured home cannot be adequately repaired within the sixty days from the date of discovery or determination of the failure to conform, the Commission may require that the manufactured home be replaced with a new or equivalent manufactured home without charge or that the purchase price be refunded in full, less a reasonable allowance for depreciation based on actual use if the manufactured home has been in the possession of the owner for more than one year. Every manufacturer of manufactured homes shall furnish to the Department a true or representative copy of all notices, bulletins, and other communications sent to the dealers of the manufacturer or to purchasers of manufactured homes of the manufacturer regarding any failure to conform in any manufactured home produced by the manufacturer. The Commission shall disclose to the public so much of the information contained in such notices or other information obtained pursuant to the code as it deems will assist in carrying out the purposes of the code, but it shall not disclose any information which contains or relates to a trade secret, or which, if disclosed, would put the manufacturer at a substantial competitive disadvantage, unless it determines that it is necessary to carry out the purposes of the code.

007.01B Manufacturer's Records: Every manufacturer of manufactured homes shall maintain a record of the name and address of the first purchaser of each manufactured home for purposes other than resale and, to the maximum extent feasible and reasonable, shall maintain procedure for ascertaining the name and address of any subsequent purchaser thereof and shall maintain a record of names and addresses so ascertained. Such records shall be kept for each manufactured home produced by a manufacturer.

008 RULES OF PRACTICE IN ADMINISTRATIVE HEARINGS:

008.01 Consideration: Evidence in a hearing involving a refusal to issue a seal will ordinarily be received in the following order: (1) Applicant; (2) Department. Evidence in a hearing involving a suspension or revocation of a seal will ordinarily be received in the following order: (1) Department; (2) Holder thereof.

008.02 Denials and Revocations of Seals: Whenever the Department refuses to issue, suspends, or revokes a seal for a manufactured home, it shall send to the applicant or holder thereof, by either registered

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or certified mail, a notice setting forth the particular reasons for the determination. Such notice shall state that the refusal of issuance, suspension, or revocation shall become final ten (10) days after the receipt of the notice, unless the applicant or holder thereof, within such ten-day period, provides written notice to the Commission of a request for a formal hearing. The Commission shall then schedule a formal hearing to be held before the Commission within thirty (30) days of the receipt of the request.

008.03 Disposition: Parties to a refusal of issuance, suspension, or revocation hearing shall be noticed of the decision and order of the Commission by registered or certified mail.

008.04 Notice of Hearing: The notice of any such formal hearing shall state the name of the person, organization, corporation, or other legal entity which shall appear as applicant or holder of a seal; shall state the time, date, and place of the hearing; shall state the reason(s) for the proposed refusal of issuance, suspension, or revocation; and shall be served on the applicant or holder at least ten (10) calendar days prior to the date set for hearing, by either registered or certified mail.

008.05 Official Record: The Commission shall prepare an official record in all refusal of issuance, suspension, or revocation hearings, including testimony and exhibits.

009 RULE REVISION:

009.01 Ad Hoc Committee: The Commission shall utilize an ad hoc committee to review any proposed revisions to these rules. All ad hoc committee members shall be selected by the Commission and meet in person, via video conference, or through any combination of the aforementioned methods as determined to be convenient to the Commission and the ad hoc committee members. The membership shall consist of, when possible, no more than one person from each of the following groups: manufactured home manufacturer, manufactured home retailer, manufactured home park owner or operator, professional engineer or architect, or city building official. Committee members are ineligible for expense reimbursement.

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009.02 Ad Hoc Committee Meeting Notification: Committee members and the general public shall be notified of the date, time and place of the meeting and proposed agenda as required by the Nebraska Open Meetings Act, §84-1411(1). The Department shall also reasonably notify industry representatives of any meeting of the Ad Hoc Committee prior to such meeting with a copy of the proposed agenda.