

**ARTICLE 108-02
THIRD-PARTY INSPECTIONS PROGRAM**

Chapter
108-02-01 Third-Party Inspections Program

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108-02-01-01. History.

The fifty-seventh legislative assembly, in House Bill No. 1210, directed the division of community services to develop rules to certify third-party inspection agencies and to develop procedures for these agencies to follow in inspecting the construction of modular residential and commercial structures built in a factory. To implement this program, the division of community services has elected to become a "participating state" under the industrialized buildings commission. In 2011, the sixty-second legislative assembly passed Senate Bill No. 2284 enacting the interstate compact on industrialized or modular buildings becoming a "compacting state" which is codified as North Dakota Century Code chapter 54-21.4. The industrialized buildings commission provides for the certification of third-party agencies and the procedures for these agencies to follow in assuring that industrialized modular buildings are designed, manufactured, handled, stored, delivered, and installed according to adopted state construction standards. In 2011, the sixty-second legislative assembly, in Senate Bill No.2366, amended North Dakota Century Code section 54-21.3-07 to make the law mandatory for manufacturers producing two or more modular residential and commercial structures per year. In 2003, the fifty-eighth legislative assembly, in House Bill No. 1345 amended North Dakota Century Code section 54-21.3-03, requiring that modular residential structures or prebuilt homes placed in the state must be constructed in compliance with the state building code and amendments to the state building code adopted by the jurisdictions in which the modular residential structure or prebuilt home is placed.

History: Effective July 1, 2003; amended effective July 16, 2003; July 1, 2020.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07, 54-21.4

108-02-01-02. Administration.

The administration of this program is the responsibility of the division of community services as a participating state under the industrialized buildings commission.

History: Effective July 1, 2003.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-03. Inquiries.

Inquiries about this program may be addressed to:

Third-party Inspections Program Manager
North Dakota Department of Commerce
Division of Community Services
Phone: 701-328-5300

History: Effective July 1, 2003; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-04. Scope.

This chapter governs the process for certification of third-party inspection agencies for those manufacturers of industrialized modular residential and commercial buildings built in a factory. It also governs the procedures to be employed for approving the design, manufacture, inspection, handling, storage, delivery, and installation of industrialized modular buildings built in a factory. Industrialized modular buildings certified according to this chapter shall be deemed to comply with all requirements of this chapter and shall not be subject to required state or local inspections for any building component in the factory. This chapter does not govern manufactured homes built in a factory under the United States department of housing and urban development code pursuant to the Manufactured Housing and Safety Standards Act, nor does it cover any onsite construction, including construction related to the installation of industrialized modular buildings.

History: Effective July 1, 2003; amended effective July 16, 2003.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-05. Effective date.

This chapter is applicable to all modular residential and commercial structures intended for siting anywhere in North Dakota on or after July 1, 2003.

History: Effective July 1, 2003.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-06. Applicability of state or local law.

Land use and zoning requirements, building setback requirements, side and rear yard requirements, property line requirements, and onsite development, construction, and inspection requirements are specifically and entirely reserved for state or local government, except as provided by or pursuant to these rules. Upon installation, state or local government code enforcement agencies may conduct nondestructive walkthrough inspections of any industrialized modular building or building component certified in accordance with this chapter, for the purpose of identifying and reporting to the division of community services any code violation. If a person or agency shall deliver, sell, lease, or install any industrialized modular building or building component in any jurisdiction in North Dakota that is not certified in accordance with this chapter, the state and local code enforcement agencies may inspect the building and all building components according to state and local codes and amendments or other related procedures and requirements.

History: Effective July 1, 2003.

General Authority: NDCC 54-21.3-07

108-02-01-07. Definitions.

For purposes of this chapter:

1. "Act" means the laws of the participating state governing industrialized modular construction as amended and supplemented by the enabling legislation of the interstate compact on industrialized modular buildings.
2. "Approved" means approved by the industrialized buildings commission, a participating state, or a designated evaluation inspection agency.
3. "Building component" means any subsystem, subassembly, or other system of closed construction designed for use in or as part of a structure, which may include structural, electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety.
4. "Building system" means the method of constructing a type of industrialized modular building or building component described by plans, specifications, and other documentation which together establish a set of limits meeting the building codes, standards, and other requirements of these regulations for that type of industrialized modular building or building component, which may include structural, electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety.
5. "Certification" means the process by which participating states and local building inspection agencies are assured that elements of closed construction, not practical to inspect at the building site, conform to the building codes.
6. "Certification label" means an approved insignia or seal evidencing certification in accordance with the uniform administrative procedures.
7. "Closed construction" means any building, building component, assembly, or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected at the building site without disassembly, damage, or destruction. The definition shall not include products, such as structural, electrical, and plumbing fixtures and equipment which are tested, listed, labeled, and certified by a nationally recognized testing laboratory.
8. "Code" means the codes, standards, specifications, and requirements adopted pursuant to section 108-02-01-08.
9. "Commission" means the industrialized buildings commission.
10. "Compliance assurance documents" means approved building system documents, an approved compliance assurance manual, and approved onsite installation instructions.
11. "Compliance assurance program" means the policies and procedures which assure that industrialized modular buildings and building components, including their manufacture, storage, delivery, assembly, handling, and installation, conform with these model rules and regulations and the uniform administrative procedures.
12. "Designated" means selected by the commission to perform one or more of the inspection or evaluation, or both, functions described under the uniform administrative procedures.
13. "Evaluation agency" means a designated person or organization, private or public, determined by the commission to be qualified by reason of facilities, personnel, experience, and demonstrated reliability and independence of judgment, to investigate and evaluate

industrialized modular buildings, building components, building systems, or compliance assurance programs.

14. "Factory" means an individual or entity that manufactures two or more residential or commercial industrialized modular buildings per year. Residential industrialized modular buildings manufactured by high schools, vocational technical centers, and colleges or universities as part of a bona fide educational program are excluded. A manufacturer that does not meet this definition must provide a yearly certification to the division of community services that is exempt from this definition. Any industrialized modular building that is excluded from the modular residential and commercial structure third-party inspection program is subject to inspection from state or local enforcement agencies.
15. "Independence of judgment" means not being affiliated with or influenced or controlled by building manufacturers or by producers, suppliers, or vendors of products or equipment used in industrialized modular buildings and building components, in any manner which is likely to affect capacity to render reports and findings objectively and without bias.
16. "Industrialized modular building" means any building of closed construction, i.e., constructed in such a manner that concealed parts or processes of manufacture cannot be inspected at the site, without disassembly, damage, or destruction, and which is made or assembled in manufacturing facilities, off the building site, for installation, or assembly and installation, on the building site. Industrialized modular building includes modular housing which is factory-built single-family and multifamily housing, including closed-wall panelized housing, and other modular, nonresidential buildings. Industrialized modular building does not include any structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974.
17. "Inspection agency" means a designated person or organization, private or public, who is determined by the commission to be qualified by reason of facilities, personnel, experience, and demonstrated reliability and independence of judgment, to monitor compliance assurance programs.
18. "Installation" means the process of affixing, or assembling and affixing, industrialized modular buildings or building components on the building site.
19. "Interim reciprocal agreement" means a formal reciprocity agreement as defined in the enabling legislation of the interstate compact on industrialized modular buildings.
20. "Local enforcement agency" means the agency or agencies of the participating states or local government with authority to inspect buildings and enforce the law, ordinances, and regulations which establish standards and requirements applicable to the construction, installation, alteration, repair, or relocation of buildings.
21. "Modular residential or commercial structure" means an industrialized modular building.
22. "Module" means a closed-wall structure or substantial part of a closed-wall structure incorporating one or more rooms used as habitable, occupiable, or mechanical or equipment space.
23. "Nonconformance" means the failure to adhere to the requirements of an approved building system or, where the building system is not specific, to the code.
24. "Participating state" means any compacting state or any noncompacting state acting under the purview of an interim reciprocal agreement.

History: Effective July 1, 2003; amended effective July 16, 2003; July 1, 2020.

General Authority: NDCC 54-21.3-07

108-02-01-08. Standards.

Building systems must comply with:

1. Primary codes.

- a. Building codes - International building code (IBC) and international residential code (IRC) published by the international code council (ICC), as adopted and amended in the North Dakota state building code and any local amendments to the North Dakota state building code submitted by July first of each year to the division of community services for distribution to the industrialized buildings commission and manufacturers on or about July first of each year.
- b. Mechanical code - International mechanical code (IMC) published by the international code council (ICC), as adopted and amended in the North Dakota state building code and any local amendments to the North Dakota state building code submitted by July first of each year to the division of community services for distribution to the industrialized buildings commission and manufacturers on or about July first of each year.
- c. Fuel gas code - International fuel gas code (IFGC) published by the international code council (ICC), as adopted and amended in the North Dakota state building code and any local amendments to the North Dakota state building code submitted by July first of each year to the division of community services for distribution to the industrialized buildings commission and manufacturers on or about July first of each year.
- d. Plumbing code - Uniform plumbing code (UPC) published by the international association of plumbing and mechanical officials (IAPMO), as adopted and amended as the North Dakota state plumbing code.
- e. Electrical code - National electrical code (NEC) published by the national fire protection association (NFPA), as adopted and amended as the laws, rules, and wiring standards of North Dakota.
- f. Barrier-free code - Americans with Disabilities Act accessibility guidelines.
- g. Energy code - Energy conservation standards as adopted and amended in the North Dakota state building code.

2. Alternates. The provisions of this chapter are not intended to prevent the use of any technologies, techniques, or materials not specifically prescribed by these codes, standards, specifications, and requirements, provided any such alternate has been approved.

- a. Applications for such alternates must be filed in writing with the evaluation agency. This application must contain the current requirements of the codes, standards, or specifications from which an alternate is sought and a statement of how the proposed alternate would adequately protect the health, safety, and welfare of both the occupants and the public.
- b. The evaluation agency may approve any such alternate, provided that it determines that the proposed design is satisfactory and that the material, method, or work offered is, for the purpose intended, consistent with the adopted codes and standards as to quality, strength, effectiveness, fire resistance, durability, and safety. The evaluation agency shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding the use of any such alternate. The evaluation agency shall notify the

applicant of the determination. If the application is denied, the notification shall state the reasons for the denial.

History: Effective July 1, 2003; amended effective July 16, 2003; July 1, 2020.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-09. Manufacturer's data plate.

Repealed effective July 1, 2020.

108-02-01-10. Serial number.

Repealed effective July 1, 2020.

108-02-01-11. Compliance assurance documents.

Repealed effective July 1, 2020.

108-02-01-12. Uniform administrative procedures.

1. The 2018 version of the uniform administrative procedures of the industrialized buildings commission, hereby incorporated by reference, shall constitute the procedures by which the division of community services shall assure itself and the commission of the compliance of industrialized modular building construction with the state building, plumbing, electrical, and accessibility codes, assess the adequacy of the building systems, and verify and assure the competency and performance of evaluation and inspection agencies.
2. Copies of the uniform administrative procedures may be obtained from the industrialized buildings commission, suite 210, 505 huntmar park drive, Herndon, Virginia 20170.
3. The division of community services shall approve those evaluation or inspection agencies that the commission designates as meeting the requirements of part VI, section 1, of the uniform administrative procedures and that the commission finds otherwise qualified to perform the functions delegated to it.
4. The division of community services shall take such enforcement action against a manufacturer, inspection agency, or evaluation agency as recommended by the commission if, pursuant to the uniform administrative procedures, the commission determines that such manufacturer, inspection agency, or evaluation agency has failed to fulfill its responsibilities under the uniform administrative procedures.
5. Any notice or order issued pursuant to this chapter must be in writing and must be served upon the respondent party by certified mail and return receipt requested.
6. Any party aggrieved with an enforcement action taken by the division of community services may appeal under North Dakota Century Code chapter 28-32.

History: Effective July 1, 2003; amended effective July 1, 2020.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-13. Consumer complaints.

In accordance with the uniform administrative procedures of the industrialized buildings commission, a consumer may complain directly to a manufacturer for any alleged code violation.

However, the consumer may also submit complaints in writing to the division of community services. Prior to submitting a complaint, the consumer should take every step possible to resolve problems with the manufacturer and indicate those efforts and results in the written complaint to the division of community services.

History: Effective July 1, 2003.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07

108-02-01-14. Fees for state inspections of sited structures.

If, as a result of a consumer complaint, the division of community services decides to arrange for an onsite inspection of an installed industrialized modular residential or commercial structure subject to these rules, the manufacturer will be responsible for paying all costs related to the inspection. For state inspections performed by the state plumbing board, state electrical board, or state fire marshal, the fees shall be paid according to their respective rates.

History: Effective July 1, 2003.

General Authority: NDCC 54-21.3-07

Law Implemented: NDCC 54-21.3-07