

TO: Mr. Jerry Pickrell

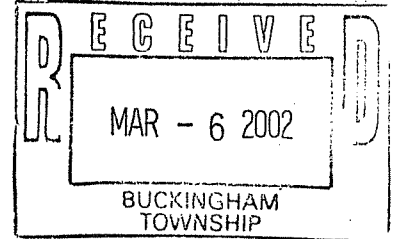
FROM: MHI

12/22/95 15:42:40 PG 004

12/21/95 14:50

202 708 2500  
ASST SECRETARY FOR HOUSING → 97035580401

NO.136 P004/006



Mr. Richard A. VanderMolen  
 Executive Director  
 Mobile Home Commission  
 Department of Commerce  
 Corporation & Securities Bureau  
 P.O. Box 30222  
 Lansing, MI 48909

Dear Mr. VanderMolen:

On July 5, 1995, I sent you a letter providing the U.S. Department of Housing and Urban Development's ("HUD's") interpretation of the preemptive provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974 ("Act") as they relate to local laws requiring sprinklers in manufactured homes. That letter indicated that the Manufactured Home Construction and Safety Standards ("Federal Standards") do not preempt such local laws because the Federal Standards set forth requirements that "assure reasonable fire safety to occupants by reducing fire hazards and by providing measures for early detection." 24 C.F.R. § 3280.201. The Federal Standards do not cover mechanical devices, such as sprinklers, which retard the spread of fire in a home.

Since that letter was issued, HUD has received criticism that the letter failed to adequately explain the basis for this position. Accordingly, this letter will provide additional reasons HUD has taken the position that, in our opinion, the Federal Standards do not preempt local laws requiring sprinklers in manufactured homes. This position is consistent with prior letters issued October 29, 1991, and January 23, 1992, concerning West Stockbridge, Massachusetts, and the letter issued October 22, 1992, concerning a state-wide sprinkler law in California. All these letters relied on the same Federal case law and legal principles. However, the letters relating to West Stockbridge were in response to questions about a specific locality and its specific ordinance. Your letter, like the letter received from California, asked a more general question about the effect of the preemptive provisions of the Act on any state or locality's sprinkler requirements.

TO: Mr. Jerry Pickrell

FROM: MHI

12/22/95 15:43:09 PG 005

12/21/95 14:51

202 708 2580  
ASST SECRETARY FOR HOUSING → 97035580401

NO.136 P005/006

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In Section 604(d) of the Act, 42 U.S.C. § 5403(d), Congress explicitly defined the extent to which it intended the Federal Standards to preempt state standards. From the language in Section 604(d), it is clear that Congress did not intend to occupy the entire field of regulation for manufactured housing. Instead, a state construction and safety standard relating to manufactured housing is preempted only where there exists a non-identical Federal Standard applicable to the "same aspect of performance."

No Federal court cases involving the Act have addressed what constitutes the "same aspect of performance." However, Federal courts, in two important cases, have interpreted the term "aspect of performance" as used in the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. § 1381 *et seq.* ("NTMVSA"). The NTMVSA was the statute from which the National Manufactured Housing Construction and Safety Standards Act of 1974 was modeled and contains the same preemption language. See 15 U.S.C. § 1392(d). The cases involving preemption under the NTMVSA are Chrysler Corp. v. Rhodes, 416 F.2d 319 (1st Cir. 1969) and Chrysler Corp. v. Tofany, 419 F.2d 499 (2nd Cir. 1969).

By analogy to the NTMVSA as interpreted by Rhodes and Tofany, a conclusion can be drawn on the effect of the term "aspect of performance" in the preemption section of the Act. 24 C.F.R. § 3280.201 of the Federal Standards provides the "scope" of the standards relating to fire safety by stating the following:

The purpose of [the] subpart is to set forth requirements that will assure reasonable fire safety to occupants by reducing fire hazards and by providing measures for early detection.

Even though the stated purpose of the subpart is to set forth requirements to "assure reasonable fire safety," the rest of Subpart C, which contains the fire safety standards, has no provisions directly addressing sprinkler systems. Moreover, the fire safety standards fail to contain even a category that could be interpreted to include sprinkler systems such as "fire extinguishing equipment." Instead of extinguishing or subduing fires, the Federal Standards, as noted above, are concerned with "reducing fire hazards" and "providing measures for early detection." Because the Federal Standards fail to contain specific requirements or categories relating to sprinklers and because the Federal Standards basic concern is with reducing fire hazards and providing measures for early detection instead of fire extinguishment, it is HUD's opinion that the Federal Standards would not preempt a state requirement for sprinklers under the tests set forth in Rhodes and Tofany.

TO: Mr. Jerry Pickrell

FROM: MHI

12/22/95 15:43:47 PG 006

12/21/95 14:51

202 708 2500  
ASST SECRETARY FOR HOUSING → 97035580401

NO.136 P006/006

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In addition to the explicit limits of preemption set by Congress in the Act, Congress stated that the purpose of the Act is "to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents. . . ." 42 U.S.C. § 5401. A state requirement for sprinklers in manufactured homes would not frustrate that purpose or stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress under the Act. Nor would it be impossible for a manufacturer to comply with both the Federal Standards and a state requirement for sprinklers in manufactured homes. Accordingly, HUD believes that such a state requirement is not preempted by the Federal Standards.

I hope this clarifies the basis for the interpretation of Section 604(d) of the Act set forth in my July 6, 1995, letter. You should be advised, however, that HUD's opinion with regard to the preemption of local sprinkler laws in no way affects the rights of private parties. Regardless of this letter or my July 6, 1995, letter, manufacturers continue to have the right to sue any locality for injunctive relief to stop the imposition of a requirement for sprinklers that they think is unauthorized by the Act. This letter merely provides HUD's interpretation of Section 604(d) of the Act.

Sincerely,

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David C. Nimmer  
Director  
Office of Manufactured Housing  
and Regulatory Functions