



Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

August 29, 2017

VIA FEDERAL EXPRESS

Mr. Norman Wang
Director of Maryland Codes Administration
Maryland Department of Housing and Community Development
7800 Harkins Road
Lanham, Maryland 20706

Re: Your August 11, 2017 Memorandum Entitled “Requirement
Of Fire Sprinkler System in Manufactured (HUD) Homes”

Dear Mr. Wang:

The Manufactured Housing Association for Regulatory Reform (MHARR) is a Washington, D.C.-based national trade organization representing producers of federally-regulated manufactured housing.

We have received a copy of your attached August 11, 2017 memorandum to Maryland local building officials and the Office of the Maryland State Fire Marshall entitled “Requirement of Fire Sprinkler System in (HUD) Manufactured Homes.”

In part, you state in that memorandum:

“Section 604 (d) of the Manufactured Housing Improvement Act of 2000 provides that if a home is built to the HUD Code, state and local building authorities may not apply their own codes that are ‘applicable to the same element of performance.’” When HUD Code (sic) does not address the ‘same element (sic) performance,’ states and local authorities are permitted to enforce their own code provisions on these elements.

“The issue of fire sprinkler systems is among the items which (sic) HUD Code does not currently address. Although HUD has general fire safety standards, HUD has no standard for mechanical fire suppression (fire sprinkler system). HUD has long held that state and local fire sprinkler requirements are not preempted by the general fire safety standards. This allows states and local governments to require sprinkler

systems that a manufactured home must have in order to be installed in a jurisdiction. ***

“Under the current Code of Maryland Regulations (COMAR) 05.02.04.15, the Department does not require fire sprinklers in manufactured homes. However, the Department’s position does not preclude a local government from setting its requirement of fire sprinkler (sic) in manufactured homes.”

(Emphasis added).

Based on significant amendments to section 604(d) that were adopted by Congress as part of the Manufactured Housing Improvement Act of 2000 and the most recent pronouncements by HUD’s Office of General Counsel (OGC) regarding the scope and proper application of federal preemption under that section as amended, MHARR strenuously objects not only with your characterization of federal preemption under the 2000 law, but also your ultimate conclusion that local jurisdictions may impose sprinkler requirements -- uniquely on HUD-regulated manufactured homes or otherwise – consistent with that law.

Congress, in the Manufactured Housing Improvement Act of 2000, substantially enhanced the scope and reach of federal preemption under section 604(d). In particular, Congress added a new sentence to section 604(d) stating that: “Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate state or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the federal superintendence of the manufactured housing industry as established by this title.” (Emphasis added). Based on this statutory directive to HUD to interpret, construe and apply federal preemption under the 2000 law, “broadly and liberally,” pre-2000 law OGC fire sprinkler preemption opinions, which were based on an extremely narrow construction of the key phrase “same aspect of performance” (as clearly shown by copies of those opinions released by HUD to MHARR pursuant to the Freedom of Information Act), are outdated, inconsistent with currently applicable law, and irrelevant. MHARR asserts and maintains that those opinions – which you cite as the legal basis for your memorandum and its conclusions -- provide no basis whatsoever for the post-2000 law construction of section 604(d) in relation to the preemption of state or local fire sprinkler mandates or, for that matter, any other preemption matter.

This point is supported – and the proper post-2000 law application of section 604(d) and related HUD regulations is illustrated – by a July 2014 HUD OGC preemption opinion (copy attached). In that matter, the state of Minnesota sought a HUD ruling regarding the preemption of an on-site “blower-door test” for manufactured homes prior to occupancy. That test, according to state authorities, would be required for all new residential construction, including manufactured homes, effective in 2015, pursuant to amendments to the Minnesota State Energy Code derived from the International Energy Conservation Code (IECC). In relevant part, Minnesota’s Department of Labor and Industry (DLI) acknowledged that federal preemption does not allow state or local codes to exceed the federal manufactured home construction standards, but maintained (as does your memorandum) that when the federal standards are silent or do not address a specific code or standard, the state may impose additional standards as it wishes.

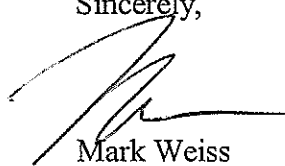
In response, HUD OGC, citing section 604(d) and 24 C.F.R. 3282.11, and without engaging in a hair-splitting “same aspect of performance” analysis, broadly concluded: “The blower-door test is essentially a standard requiring remedial actions above and beyond what is required by the federal standards and it does not fall into the consumer protection or warranty exception of 3282.11(c) or the 3282.303 exceptions (e.g., monitoring dealer lots for safety, transportation of manufactured homes, etc.). Thus, the Act and ... 3282.11(b) and (c) preempt Minnesota’s enforcement of the IECC standard.” (Emphasis added).

The exact same rationale and legal standard would apply to the attempted enforcement of a fire sprinkler mandate for manufactured homes by either the state of Maryland, acting as such, or by any political subdivision (i.e., locality) within the state of Maryland. Whether the federal standards address or contain standards relating to “mechanical fire suppression” is irrelevant. As your memorandum acknowledges, the Part 3280 HUD standards do specifically address and contain broad standards and criteria designed to ensure the “fire safety” of manufactured homes.¹ To the extent that a local (or state) fire sprinkler mandate for manufactured homes would “require remedial actions above and beyond what is required by the federal [fire safety] standards,” that mandate would be federally preempted in accordance with the July 2014 HUD OGC opinion.

In view of the foregoing, we hereby ask that you rescind your memorandum of August 11, 2017 and that you forward this communication to the legal counsel for your Department in order to assure proper compliance with section 604(d) and related HUD regulations in the future.

Thank you.

Sincerely,



Mark Weiss
President and CEO

cc: Hon. Larry Hogan
Hon. Ben Carson
Hon. Paul Compton
Mr. Michael Henretty (SEBA)

¹ See, 24 C.F.R. 3280, Subpart C, “Fire Safety.” Section 3280.201 of Subpart C states that “The purpose of this Subpart is to set forth requirements that will assure reasonable fire safety to the occupants [of manufactured homes] by reducing fire hazards and by providing measures for early detection.” Significantly, the success of these standards has been confirmed by data collected and analyzed in 2011 and 2013 studies of manufactured housing fire safety by the National Fire Protection Association (NFPA). Both of those reports show that fire occurrence and fire injury rates in HUD Code manufactured homes are, in fact, lower than the same statistics for site-built homes, while the rate of fire deaths in manufactured homes is “comparable” with that for other types of residential structures.



LARRY HOGAN
Governor

BOYD K. RUTHERFORD
Lt. Governor

KENNETH C. HOLT
Secretary

TONY REED
Deputy Secretary

MEMORANDUM

Date: August 11, 2017

To: Maryland Local Building Officials
Office of Maryland State Fire Marshal

From: Norman Wang, RA Director of Maryland Codes Administration

Ref: Requirement of Fire Sprinkler System in Manufactured (HUD) Homes

Manufactured Homes (formerly known as mobile homes) are built to the federal Manufactured Home Construction and Safety Standards (HUD Code) and must display a red certification label on the exterior of each transportable section.

Section 604 (d) of the Manufactured Housing Improvement Act of 2000 provides that if a home is built to the HUD code, state and local building authorities may not apply their own codes that are "applicable to the same element of performance". When HUD Code does not address the "same element performance", states and local authorities are permitted to enforce their own code provisions on these elements.

The issue of fire sprinkler systems is among the items which HUD Code does not currently address. Although HUD has general fire safety standards, HUD has no standard for mechanical fire suppression (fire sprinkler system). HUD has long held that state and local fire sprinkler requirements are not preempted by the general fire safety standards. This allows states and local governments to require sprinkler systems that a manufactured home must have in order to be installed in the jurisdiction.

Maryland Public Safety Article (PS Article), §12-305(d) stipulates that Department of Housing and Community Development (DHCD) may adopt regulations related to issues of construction or safety of manufactured homes for which a federal standard has not been established and which are not reserved to a local government. Under the current Code of Maryland Regulations (COMAR) 05.02.04.15, the Department does not require fire sprinklers in manufactured homes. However, the Department's position does not preclude a local government from setting its requirement of fire sprinkler in manufactured homes.



HUD Office of General Counsel Preemption Opinion on Minnesota Blower Door Test

National Manufactured Housing Construction and Safety Standards Act of 1974, section 604(d) (the Act)

(d) Whenever a Federal manufactured home construction and safety standard established under this title is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard. Federal preemption under this subsection shall be broadly and liberally construed to ensure that disparate State or local requirements or standards do not affect the uniformity and comprehensiveness of the standards promulgated under this section nor the Federal superintendence of the manufactured housing industry as established by this title. Subject to section 605, there is reserved to each State the right to establish standards for the stabilizing and support systems of manufactured homes sited within that State, and for the foundations on which manufactured homes sited within that State are installed, and the right to enforce compliance with such standards, except that such standards shall be consistent with the purposes of this title and shall be consistent with the design of the manufacturer.

This is implemented in the regs at 24 CFR 3282.11:

(a) No State manufactured home standard regarding manufactured home construction and safety which covers aspects of the manufactured home governed by the Federal standards shall be established or continue in effect with respect to manufactured homes subject to the Federal standards and these regulations unless it is identical to the Federal standards.

(b) No State may require, as a condition of entry into or sale in the State, a manufactured home certified (by the application of the label required by § 3282.362(c)(2)(i)) as in conformance with the Federal standards to be subject to State inspection to determine compliance with any standard covering any aspect of the manufactured home covered by the Federal standards. Nor may any State require that a State label be placed on the manufactured home certifying conformance to the Federal standard or an identical standard. Certain actions that States are permitted to take are set out in § 3282.303.

(c) States may participate in the enforcement of the Federal standards enforcement program under these regulations either as SAAs or PIAs or both. These regulations establish the exclusive system for enforcement of the Federal standards. No State may establish or keep in effect through a building code enforcement system or otherwise, procedures or requirements which constitute systems for enforcement of the Federal standards or of identical State standards which are outside the system established in

these regulations or which go beyond this system to require remedial actions which are not required by the Act and these regulations. A State may establish or continue in force consumer protections, such as warranty or warranty performance requirements, which respond to individual consumer complaints and so do not constitute systems of enforcement of the Federal standards, regardless of whether the State qualifies as an SAA or PIA.

(d) No State or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The test of whether a State rule or action is valid or must give way is whether the State rule can be enforced or the action taken without impairing the Federal superintendence of the manufactured home industry as established by the Act.

The Blower Door test is essentially a standard requiring remedial actions above and beyond what is required by the federal standards and it does not fall into the consumer protection or warranty exception of 3282.11(c) or the 3282.303 exceptions (e.g., monitoring dealer lots for safety, transportation of manufactured homes, etc.). Thus, the Act and the 3282.11 (b) and (c) preempt Minnesota's enforcement of the IECC standard.

As you know, the installations standards are at 24 CFR part 3285. They are minimal standards so the states can add more restrictive standards (unlike the construction standards of part 3280 which may not be altered). 24 CFR 3285.5 provides the definitions.

Installation standards. Reasonable specifications for the installation of a new manufactured home, at the place of occupancy, to ensure proper siting; the joining of all sections of the home; and the installation of stabilization, support, or anchoring systems.

This part covers such items as site preparation, foundations, anchoring systems, etc., and we cannot see how the Blower Door test would fit into such standards. Additionally, if a home fails the Blower Door test (regardless of whether the test was conducted in the factory or at the site), you have advised that the correction would have to be made at the factory. If so, it would be more of a construction defect than an installation problem.