



U. S. Department of Housing and Urban Development  
Washington, D.C. 20410-8000

RECEIVED  
HOUSING AND  
COMMUNITY DEVELOPMENT

92 OCT 27 PM 1:58

OFFICE OF THE ASSISTANT SECRETARY  
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

OCT 22 1992

cc = Dick  
Danna  
Kent  
Kym  
K.F.

Timothy Coyle, Director  
Dept. of Housing and Community Development  
State of California  
1800 Third Street, Suite 450  
P.O. Box 952051  
Sacramento, CA 94252-2051

Dear Mr. Coyle:

This is in reply to your letters of May 18, 1992 and August 3, 1992 concerning the National Manufactured Housing Construction and Safety Standards of Act 1974 (the "Act") and the Manufactured Home Construction and Safety Standards (the "Federal Standards") which are administered by the Department. Thank you for informing us about the California Manufactured Housing Association's recommendation concerning sprinkler systems and your proposal to include these systems in all housing, including manufactured housing.

Section 604(d) of the Act, 42 U.S.C. §5403(d), states the following:

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 continued in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such home which is not identical to the Federal manufactured home construction and safety standard.

The Federal Standards, at 24 CFR Part 3280, Subpart C, set forth requirements that will assure reasonable fire safety to the occupants by reducing fire hazards and by providing measures for early detection. These Standards include flame spread limitations, fire protection requirements, kitchen cabinet protection, firestopping and, more specifically, fire detection equipment. However, the Federal Standards do not cover other mechanical devices, such as sprinklers, which will suppress and most times extinguish fire in a home.

-2-

Accordingly, it appears that there would be no conflict between your proposed State regulation and the Federal Standards. However, we cannot make a final determination until the wording of your proposed regulation is reviewed by the Department.

Nevertheless, the Department is concerned that the imposition of this and other State standards may result in State by State differences in construction standards. Such differences would defeat the purpose of having a national preemptive building standard. Accordingly, the Department is exploring the possibility of issuing an amendment to Subpart C of the Federal Standards to address the issue of sprinklers and other methods of protecting the occupants of the manufactured home from fire.

If you would like to discuss these matters further, please contact me at (202) 708-1920.

Sincerely,



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

*Mendler 4154*

Mr. Joseph A. O'Keefe, Sr.  
State Fire Marshal  
Commonwealth of Massachusetts  
Department of Public Safety  
Division of Fire Prevention  
1010 Commonwealth Avenue  
Boston, MA 02215-1201

Re: West Stockbridge Sprinkler By-Laws

Dear Mr. O'Keefe:

This letter is to confirm Mr. Philip O'Sullivan's telephone conversation with the Office of General Counsel. In that conversation Mr. O'Sullivan was informed that the West Stockbridge Sprinkler By-Laws, which require the installation of automatic sprinkler systems in all new single family dwellings, are not pre-empted by the Manufactured Home Construction and Safety Standards.

This opinion is based on two cases under 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 pre-emption language.<sup>1</sup> The cases involving pre-emption 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). The Courts in these cases interpreted the term "aspect of performance" used in the NTMVSA and its limits on the pre-emptive effect of the standards adopted pursuant to the NTMVSA and held that the state regulations in question were not pre-empted. Further, the case law holds that although uniformity through national standards is desirable, it is a secondary objective. If safety is furthered by a traditional type of state regulation under the state police power, a narrow construction of the pre-emptive effect of the NTMVSA and its standards is required.

By analogy to the NTMVSA, a conclusion can be drawn on the effect of the term "aspect of performance" in the pre-emption section of National Manufactured Housing Construction and Safety Standards Act of 1974. Section 3280.201 of the Manufactured Home

---

<sup>1</sup> Compare Section 604(d) of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5403(d), to Section 102(d) of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. §1392(d).

Construction and Safety Standards provides the "scope" of standards relating to fire safety by stating that "[t]he 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." However, Subpart C, which contains the fire safety standards has no provisions directly addressed to sprinkler systems such as those required in West Stockbridge. Moreover, the fire safety standards fail to contain a category that could be interpreted to include sprinkler systems such as "fire extinguishing equipment."

Thus, by relying on the decisions under the NTMVSA, a conclusion can be drawn that the West Stockbridge Sprinkler By-Laws are not pre-empted by the Manufactured Home Construction and Safety Standards.

Thank you for your interest in this matter. If you have any further questions, do not hesitate to contact me at (202) 708-1590.

Sincerely,

David C. Nimmer, Director  
Manufactured Housing and  
Regulatory Functions

cc: GP Kennedy 10270  
GPC Race 10240  
GPC Nemec 10240  
GPC Chron 10240  
HSM Nimmer 9156  
HSMM Fuller 9156  
HSMM Schulte 9156  
HSMMC Mendlen 9154 ✓

H:\GPC\GANEMEC\NIMMER.MAS RVSD:\RMM\10/28/91

July 28 1995

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.

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.

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,

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

cc:  
Chron  
File  
Schulte  
Nimmer  
Nemec  
OGC:NEMEC:jam:11/28/95