



Manufactured Housing Association for Regulatory Reform

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THERE IS NO “CASE” FOR A FEDERAL FIRE SPRINKLER STANDARD

There is no basis for either a mandatory or conditional fire sprinkler standard for manufactured housing.

I. A Mandatory Standard is Not Justified and would Undermine Affordability

1. Current HUD Fire Safety standards assure reasonable protection for manufactured home residents at an affordable cost:
 - The law authorizes HUD to adopt federal safety standards to prevent an “unreasonable risk” of “death or injury” to manufactured home residents.
 - HUD already has federal fire safety standards for manufactured homes (Part 3280, Subpart C) which, according to the Department, “ensure reasonable fire safety” for manufactured home residents without costly fire sprinklers.
 - HUD has never claimed, alleged, or even suggested, that new manufactured homes built in accordance with the existing Subpart C fire safety standards, including smoke alarms, present an “unreasonable risk” of “death or injury” to residents, absent fire sprinklers, and no such showing is made by the NFPA July 2011 report.
 - The NFPA July 2011 report relies on underlying data that are flawed and incomplete as acknowledged by the report itself and as summarized by MHARR in its August 3, 2011 Letter to NFPA President James M. Shannon (attached).
 - Tellingly, there has been no call for a sprinkler standard by either the public or liability insurers that would potentially be liable for paying fire-related claims. To the contrary, a fire loss study by an insurer with a direct interest in properly evaluating the risk of manufactured home fires and fire-related claims in order to establish appropriate premiums and avoid unnecessary losses, concluded that “the chance of a fire occurring in a site-built home is twice that of a manufactured home.”
 - It is NFPA, which represents sprinkler interests -- and has a conflict of interest in advancing this issue as the ostensibly neutral and objective Administering Organization (AO) -- which has contended that there is a case for a sprinkler mandate for manufactured homes.

2. A mandatory sprinkler standard would undermine the affordability of manufactured housing, which already provides reasonable fire safety to residents under the existing HUD standards:
 - Manufactured housing is affordable housing. To maintain that affordability, the law requires that “the public interest in, and need for, affordable manufactured housing” must be “duly considered in all determinations relating to the federal standards.” It also requires the MHCC to consider “the probable effect” of any standard on the cost of manufactured housing to the public.
 - Research indicates that the builder cost to install a sprinkler system ranges from \$2.66 to \$6.88 per square foot, with an even higher cost to the consumer.
 - Documents filed by MHI indicate that the cost of even a conditional sprinkler standard (see, section II below) would be \$3,000-\$3,500 for a double-section home, with additional costs of up to \$3,000 for on-site inspections of sprinkler systems and water hook-ups. And this does not even begin to address upgrades or replacement of existing water systems, a major cost concern for HUD Code communities.
 - Research indicates that over 200,000 potential purchasers are excluded from the general housing market for each \$1,000 added to the price of a home. Accordingly, a federal sprinkler mandate would exclude millions of potential buyers from the manufactured housing market, which, serving lower and moderate-income families, is more inelastic and sensitive to cost than the broader housing market.
3. A mandatory sprinkler standard would be particularly devastating now, in an economic environment where consumers are already confronted with inadequate sources of purchase financing and industry production has declined more than 80% since 1998, including a 9.9% decline, to date, in 2011.
4. Recognizing the debilitating cost impact of sprinkler mandates, particularly in the current economic climate, as well as their marginal impact, the vast majority of jurisdictions to consider the issue, to date, have refused to adopt the residential sprinkler requirement contained in the 2009 International Residential Code (IRC) -- thus the renewed interest by sprinkler proponents in mandating sprinklers for an entire class of homes via a federal (HUD) standard.
5. Beyond issues of justification and cost-impact, the entire matter of sprinklers should be preempted by HUD for the reasons that MHARR has previously explained in detail.

II. A Conditional Standard is not Allowed by Law and would Become Universal

1. The above -- and other factors -- should also rule out a conditional fire sprinkler standard as proposed during 2010 by HUD and MHI:
 - The law does not allow conditional safety standards (See, February 2011 Viewpoint excerpt, attached).
 - Fire is a “safety” issue, as demonstrated by Subpart C of the Part 3280 federal standards, entitled “fire safety.”
 - The law defines “manufactured housing safety” as “the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk ... of death or injury to the user” of the home.
 - Under this definition there is either an “unreasonable risk” of injury or death, or there is not. If there is, HUD may adopt a federal safety standard to remedy that risk. If there is no such risk, HUD cannot adopt a federal standard.
 - In this case, neither HUD nor MHI contend that there is an “unreasonable risk” of injury or death without fire sprinklers. As a result, there is no foundation for a federal standard.
2. If HUD could assure consumers and the industry that such a conditional sprinkler standard would never be extended to become a mandatory requirement for all manufactured homes, such an assurance could open the possibility of consideration. But HUD has specifically stated that it cannot provide any such assurance.
3. Moreover, it is inconceivable that a conditional sprinkler standard would remain restricted and would not be expanded into an across-the-board mandate if the Secretary were challenged to do so.
4. Even a conditional sprinkler standard would expose manufacturers, retailers and community owners to civil liability for fires in homes without sprinklers.
5. Rather than risking the consequences of a conditional federal standard, manufacturers in the few local jurisdictions where sprinkler mandates have been adopted for all single-family homes, should simply follow the existing NFPA 13D sprinkler standard, which is specifically designed for manufactured homes.



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August 3, 2011

VIA FEDERAL EXPRESS

Mr. James M. Shannon
President
National Fire Protection Association
1 Batterymarch Park
Quincy, Massachusetts 02169-7471

Re: NFPA Report – Manufactured Home Fires-July 2011

Dear Mr. Shannon:

I am writing on behalf of the members of Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade association representing the views and interests of producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD).

As a long-standing member of the National Fire Protection Association (NFPA), I, personally, and our association, MHARR, are extremely disappointed with NFPA's July 2011 report, "Manufactured Home Fires" (Report), which was distributed to members of the federal Manufactured Housing Consensus Committee (MHCC) on July 27, 2011. This report, based on data that is acknowledged to be incomplete and, in some instances, unreliable, is unacceptable and represents an unconscionable exploitation of NFPA's ostensibly issue-neutral role as the Administering Organization (AO) of the MHCC to the detriment of the HUD Code manufactured housing industry.

In 1985, the Foremost Insurance Company (Foremost), the then-and-now leading insurer of HUD-regulated manufactured homes, conducted and published a study on fires in manufactured homes. That Fire Loss Study, by an insurer responsible for paying fire-related claims involving manufactured homes -- with a direct interest in properly evaluating the risk of manufactured home fires and fire-related claims in order to establish appropriate premiums and

remain in business -- concluded that "manufactured homes compare favorably to site-built homes in terms of fire frequency," noting that "the chance of a fire occurring in a site-built home is twice that of a manufactured home." The Foremost Study further concluded that the HUD fire safety standards (24 C.F.R. 3280.201, et seq.) have had "a positive impact on fire safety in manufactured housing, emphasizing that post-standard manufactured homes have "significantly lower fire severities" than pre-standard homes.

If anything, today's manufactured homes -- full-fledged housing under the Manufactured Housing Improvement Act of 2000 -- constructed with upgraded and more advanced fire resistant materials and components, are safer than their "trailer" counterparts of nearly three decades ago. Combined with stringent and proven-effective HUD Code fire safety standards, modern manufactured homes offer a high degree of fire safety to residents.

Yet, while the NFPA report, in fact, confirms the Foremost findings that manufactured homes have a lower rate of fire and a lower rate of civilian fire injuries than other types of one or two-family homes (see, Report at p. 10), the report minimizes these and other findings demonstrating the positive and beneficial impact of the current HUD fire safety standards, in order to present an overwhelmingly negative assessment of the fire safety of manufactured homes -- all leading to the conclusion that there is a "strong" case for fire sprinklers in manufactured homes (See, Report at p. 11). In doing so, the report relies on data that it acknowledges are flawed and incomplete. Thus, the Report is littered with warnings, cautions, caveats and other footnotes explaining the limitations and faults of the underlying information, including, among others, the following:

- "This means NFIRS [the National Fire Incident Reporting System] may be subject to systematic biases." (See, Report at p.31).
- "No one at present can quantify the size of these deviations from the ideal ... so no one can say with confidence that they are or are not serious problems." (See, Report at p. 31).
- "The figures on numbers of manufactured homes may include some trailers." (See, Report at p. 9).
- "...only 2% of manufactured home fires have unit age reported since the advent of NFIRS Version 5 in 1999...." (See, Report at 9). Consequently, 98% of the most recent data fails to distinguish between pre- and post-HUD standard homes and, therefore, undoubtedly contains significant numbers of pre-standard (i.e., pre-1976) homes which are irrelevant to any analysis of the fire safety of today's manufactured homes and would unfairly skew any conclusions drawn from that data.

- “Table 2-7 provides a comparison of 2005-2009 fire experience rates for manufactured homes and other one- or two-family homes, relative to occupied year-round units. *** [B]uildings that were idle ... were treated as occupied and included.” (See, Report at p. 9). (Emphasis added).
- “National estimates are projections. Casualty and loss projections can be heavily influenced by the inclusion or exclusion of one unusually serious fire.” (See, Report at multiple locations).
- “Percent of occupied manufactured homes in 2005-2009 is calculated as a weighted average of available percentages in 2005, 2007 and 2009. This calculation assumes that the average number of manufactured homes in 2005 and 2007 is a good estimate of the number in 2006, and the average number in 2007 and 2009 is a good estimate for the number in 2008. This will be roughly true if the annual change in the number of new units introduced is steady, except for the newest units, where this approach will slightly underestimate the size of the inventory and so slightly overestimate the fire rate per thousand units for the range with the most current year.” (See, Report at p. 17) (Emphasis added).

In fact, though, manufactured home production declined rapidly through this period (146,881 units in 2005, 117,373 in 2006, 95,752 in 2007, 81,457 in 2008 and 49,683 in 2009), so the “number of new units introduced” was declining, not “steady.” Nor does this account for reductions in the number of occupied units due to foreclosure, repossession and eviction, which increased significantly during this period.


In addition to these acknowledged limitations on the reliability of the underlying data, the Report also engages in arbitrary manipulation of certain key data. For example, regarding fire deaths – which the Report uses to support its advocacy of a fire sprinkler mandate for manufactured homes -- the Report excludes data from 1999-2002 because that information “reflected what proved to be two unusually low years for fire deaths in manufactured homes.” As a result, positive information is arbitrarily excluded in order to advance a pre-conceived narrative regarding manufactured homes and fire sprinklers.

And these are only a few examples of the inadequate and incomplete data that are used to convey a negative image of the fire safety of manufactured homes, when modern manufactured homes consistently perform better than site-built homes in nearly all fire safety parameters.

The Report, accordingly, appears to be little more than an insider effort to influence the deliberations of the MHCC, promote the adoption of a federal fire sprinkler standard for manufactured homes and then parlay that action to resuscitate the-now losing effort to mandate residential sprinklers at the state and local level. As such, it lacks the credibility of the Foremost Study and represents an abuse of NFPA’s position as AO that should be carefully examined and

considered by HUD. At a minimum, the Report should be withdrawn from any consideration by the MHCC and NFPA should recuse itself from any further involvement in the substantive debates of the MHCC for as long as it is the AO.

Sincerely,

A handwritten signature in black ink, appearing to read "Danny D. Ghorbani". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke at the end.

Danny D. Ghorbani
President

cc: Mr. Henry Czauski
MHCC Members
HUD Code Industry Manufacturers

EXCERPTED FROM THE FEBRUARY 2011 MHARR VIEWPOINT

* * *

First some background. There are two proposed “when/where required” sprinkler standards pending before the Manufactured Housing Consensus Committee (MHCC) (albeit “tabled” for the moment) -- one submitted by HUD and the other by MHI. Both, on their face, would apply whenever “a manufacturer elects to install a fire sprinkler system or a state or local authority ... requires that a fire sprinkler system be installed for all detached single family dwellings and manufactured homes” -- thus the “when/where required” label (although that label is misleading). Under the HUD proposal, manufacturers would be required to comply with the National Fire Protection Association’s (NFPA) 13D “Standard for the Installation of Sprinkler Systems ... in Manufactured Homes.” Under the MHI proposal, manufacturers would be held to either the NFPA 13D standard or an alternative set of prescriptive requirements incorporated in a new proposed section of the HUD standards. Based on MHARR research, however, HUD does not have authority to adopt such a conditional standard.

Fire is a “safety” issue. Thus, the existing HUD Code fire standards are entitled “Fire Safety.” But “manufactured home safety” has a specific meaning under the law. The National Manufactured Housing Construction and Safety Standards Act of 1974 defines “manufactured housing safety” as “the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of ... accidents ... or any unreasonable risk of death or injury to the user” of the home. (Emphasis added). This definition was not changed by the 2000 law.

Putting aside the antiquated reference to manufactured home “accidents,” the essential prerequisite to the adoption of a federal manufactured home safety standard is the existence of an “unreasonable risk” of injury or death to the resident of a manufactured home. The existence of such an unreasonable risk, moreover, must be determined by HUD, as the agency charged by federal law with developing, maintaining and enforcing the federal standards.

Under this definition, there either is an “unreasonable risk” of injury or death as determined by HUD, or there is not. If there is an “unreasonable risk,” HUD can adopt a federal safety standard to remedy that risk. If there is not an “unreasonable risk,” HUD cannot adopt such a standard -- period.

In the case of fire sprinklers, HUD has never determined, claimed or even implied that the absence of fire sprinklers creates an “unreasonable risk” of injury or death in manufactured homes that otherwise comply with the existing HUD fire safety standards. Indeed, the existing HUD fire safety standards -- which do not require the use of sprinklers -- state that, if followed, they “will ensure reasonable fire safety to the

occupants” of manufactured homes. (Emphasis added). And this has been borne out by data gathered by both private and government entities. Consequently, if the current federal standards ensure “reasonable” fire safety without sprinklers -- and they do -- then, per se, there is no “unreasonable risk” to be remedied by sprinklers. And if there is no “unreasonable risk” to be remedied by sprinklers, then there is no valid prerequisite for a federal fire sprinkler standard, even if a conditional federal standard would be “helpful” to some manufacturers (which, coincidentally, also shows why the existing federal fire safety standards should preempt state and local sprinkler standards).

Some have argued that the “horse is already out of the barn,” because states and localities that have adopted sprinkler requirements have concluded for themselves that there is an “unreasonable risk.” Another version of this argument goes that the IRC committee, by establishing a sprinkler mandate, has already made such a determination. But as the Department itself has been quick to point out in other contexts, HUD cannot delegate the fundamental statutory duties and responsibilities imposed on it by federal law to either a private body, such as the IRC committee, or to state or local officials acting under non-federal grants of authority. If there is a finding to be made, HUD must make it -- it cannot subcontract that federal responsibility to someone else. And since HUD has made no such finding -- and could not legitimately make any such finding -- there is, again, no prerequisite for a federal sprinkler standard.

In MHARR’s view, a “when/where required” federal sprinkler standard would not only be bad policy, but would not pass legal muster and should be dropped altogether.