



Manufactured Housing Association for Regulatory Reform

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Missouri Public
Service Commission

Adjudication Division
Public Service Commission

MX-2003-0187

Mr. Dale Hardy Roberts
Secretary
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

Re: Proposed Rules CSR 240-120.085 & 121.065
Manufactured Housing Inspection Fee

Dear Mr. Roberts:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform ("MHARR"). MHARR is a national trade association of producers of federally-regulated manufactured housing. MHARR's members include both national and regional producers of manufactured homes, as well as their retailers. Many of these members market and sell their homes in Missouri.

Manufactured housing is, both by design and by national policy, affordable housing. It is intended -- and manufactured -- to provide the opportunity for affordable homeownership to all Americans, notwithstanding their income bracket. This unique role was recently recognized and, more importantly, elevated to the level of official federal housing policy, in the Manufactured Housing Improvement Act of 2000 ("2000 Act"). The 2000 Act incorporates certain amendments to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401, et seq., ("Act") under which manufactured housing construction and safety first became subject to direct federal regulation. In relevant part, the 2000 Act states that among its purposes are to:

(i) "protect the quality, durability, safety and affordability of manufactured homes;"

(ii) "to facilitate the availability of affordable manufactured homes:" and

- (iii) "to ensure that the public interest in, and need for affordable manufactured housing is duly considered in all determinations relating to the federal standards and their enforcement." (Emphasis added).

Insofar as the rules proposed by the Public Service Commission ("Commission")(4 CSR 240-120.085 & 121.065) violates these policies, as well as the requirements imposed upon the states by section 623 of the Act (as amended) and regulations adopted pursuant thereto, MHARR objects to the final adoption of the rule.

Pursuant to the proposed rule, manufacturers and retailers would each be required to pay \$200.00 to the Commission as "an inspection fee for all complaints or requests for inspections received from homeowners" for new manufactured homes. Manufacturers would be required to pay the full \$400.00 fee for pre-owned manufactured homes. This fee would be a charge over and above the federal "monitoring and inspection fee" currently paid by manufacturers to the U.S. Department of Housing and Urban Development ("HUD") pursuant to the Act, for each home or home segment that is produced -- a portion of which is already paid to the Missouri State Administrative Agency in order to fund the very same inspection activities that are referenced in the proposed rule. The amount of this federal fee (currently \$39.00 per transportable section) was determined by HUD in accordance with the national policies set forth in the 2000 Act. It is apparent, however, that the Commission has not given due consideration to the policy of affordability expressly stated by Congress in the 2000 Act. A fee of \$400.00, that could potentially be levied several times with respect to the same home, will result in a significant cost for manufacturers and retailers. Inevitably this cost will be reflected in the price of manufactured homes sold in Missouri, thereby degarding their affordability in violation of national housing policy.

Moreover, no inspection fee in excess of a State's share of the above-described federal monitoring and inspection fee can be imposed unless the additional fee is part of a State Plan that is specifically approved by the Secretary of HUD. This is because State inspection authority, per se, is delegated under the Act in the form of a "State Plan" that is subject to approval by HUD pursuant to Act section 623.

In relevant part, HUD's regulations provide, at 24 C.F.R. 3282.307, as follows:

"(a) Each approved State shall establish a monitoring inspection fee in an amount required by the Secretary.

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(d) To assure that a State devotes adequate funds to carry out its State Plan, a State may impose an additional reasonable inspection fee to offset expenses incurred by that State in conducting inspections. Such fee shall not exceed that amount which is the difference between the amount of funds distributed to the State [under] this section and the amount necessary to cover the costs of inspections. Such fee shall be part of the State Plan pursuant to [section] 3282.302(b)(11) and (12) and shall be subject to the approval of the Secretary pursuant to [section] 3282.305."

(Emphasis added).

From this section, it is clear that the proposed rule fails to pass muster in at least three basic respects. First, it is not being promulgated as part of an amended State Plan that has been submitted to HUD for approval and has, in fact, been approved by HUD. Section 3282.307(d) is clear and unequivocal in providing that any additional fee must be approved by HUD as part of a State Plan in order to be imposed. Without such approval, any fee imposed under State law would violate the Act and would be preempted by Federal law. Accordingly, unless Missouri has obtained HUD approval of an amended State Plan incorporating the proposed \$400.00 fee -- and it apparently has not -- it is without valid legal authority to impose such a fee.

Second, the information published in the Missouri Register in support of the proposed rule fails to establish the necessary factual predicate for approval of the fee by the Secretary as required by section 3282.307(d). In relevant part, the publication fails to provide any information indicating that the proposed fee does "not exceed the difference between the amount of the funds distributed to" Missouri by HUD from the federal inspection fee "and the amount necessary to cover the costs of inspections." Consequently, there is not any factual basis that has been shown on which a HUD approval could even potentially be obtained.

Third, section 3282.307(d) specifically requires that any additional inspection fee be "reasonable." This requirement is designed to ensure that Congress' policy of affordability is not undermined by State action. The Secretary is charged with enforcing this requirement in determining whether to approve any change to a State Plan incorporating such an additional fee. Again, in this case, the proposed fee is not reasonable. Nor has Missouri even given the Secretary an opportunity to make such a

determination, insofar as the State has not incorporated the proposed fee within an amended State Plan that has been submitted for approval.

For all of the foregoing reasons, then, the proposed rule not only contradicts Federal law in its substance and in its likely substantive impact, but is also being promulgated in a manner that contravenes HUD regulations and stands in violation of federal law. Accordingly, MHARR asks that the Commission withdraw the proposed rule and that it act in full compliance with section 3282.307(d) in any future proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read 'Danny D. Ghorbani', with a long horizontal flourish extending to the right.

Danny D. Ghorbani
President

cc: Mr. Bill Matchneer,
Administrator, HUD Manufactured Housing Program
MHARR Manufacturers
MHARR Affiliated State Associations



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