STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MANUFACTURED HOUSING ASSOCIATION OF FLORIDA, INC.; HUDZ MANUFACTURED HOUSING, INC.; BOB UHL MOBILE HOME MOVERS; and JABO'S MOBILE HOME SERVICE,	)	
Petitioners,	)	
vs.	)	Case No. 99-2061RX
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,	)	
Respondent.	)	

FINAL ORDER

A formal hearing was held in this case before Larry J. Sartin, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, on January 19 and 20, 2000, in Tallahassee, Florida.

APPEARANCES

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STATEMENT OF THE ISSUE

The issue in this case is whether Rules 15C-1.0102(4) and (5); 15C-1.0104(1)(a) and (b), (2)(b), (3), and (4)(a) and (b), Florida Administrative Code, constitute an invalid exercise of delegated legislative authority.

PRELIMINARY STATEMENT

On or about May 3, 1999, a "Complaint Challenging an Existing Administrative Rule" was filed on behalf of Jamie Hewitt, d/b/a Hewitt Mobile Home Movers; Bill Fisher, d/b/a Mobile Tech; Hudz Manufactured Housing, Inc.; Bob Uhl, d/b/a Bob Uhl Mobile Home Movers; Byrds Mobile Homes, Inc.; Stanton Mobile Home Sales, Inc.; Mike Bickerstaff, d/b/a American Mobile Home Service; Park Brittle; Moulder and Sons, Inc.; and M & M Mobile Homes, Inc. The Complaint was designated Case No. 99-2061RX and was assigned to the undersigned.

The parties waived the requirement of Section 120.55(1)(c), Florida Statutes, that the hearing be held within 30 days of the assignment of this matter to the undersigned. The formal hearing was scheduled for September 21, 1999, by Notice of Hearing entered June 2, 1999.

By Order dated June 10, 1999, a Motion to Dismiss for Lack of Standing and Failure to State a Cause of Action under Section 120.56, Florida Statutes, filed by Respondent, was granted. The Complaint was dismissed with leave to file an amended petition.

On June 28, 1999, Petitioners filed an Amended Petition. Respondent was granted leave to file a motion in opposition to the Amended Petition on or before July 29, 1999.

On July 27, 1999, a Motion to Amend Amended Petition for Administrative Determination of Invalidity of Existing Rule was filed. An Amended Petition for Administrative Determination of Invalidity of Existing Rule was filed with the Motion. The Motion was granted by an Order entered July 30, 1999. It was noted in the Order that the Petitioners named in the Amended Petition were different from those named in the original "Complaint" originating this case. The style of this case reflects the Petitioners named in the Amended Petition except for two Petitioners who subsequently withdrew.

Respondent filed a Motion to Dismiss Second Amended Petition within 20 days of the Order granting the Motion to Amend Amended Petition. The Motion was granted to the extent that the second Amended Petition alleged that the rules at issue were invalid under Section 120.52(8)(g), Florida Statutes.

On August 2, 1999, Petitioners filed a Motion for Summary Final Order. Respondent responded to the Motion and filed a Cross Motion for Summary Final Order on August 9, 1999. Both Motions were subsequently denied.

A Joint Motion for Continuance was granted by an Order entered September 15, 1999. The formal hearing was rescheduled for January 19 and 20, 2000.

Immediately before the commencement of the formal hearing Respondent filed a Motion for Summary Final Order Dismissing Proceeding for Lack of Standing. The Motion was denied at the commencement of the formal hearing.

A Prehearing Stipulation was filed by the parties. Stipulated findings of fact contained in the Stipulation have been accepted in this Final Order to the extent determined relevant.

The Petitioners who participated in the formal hearing of this case are reflected in the style of this Final Order. Suber's Mobile Home Movers voluntarily withdrew from this matter during the formal hearing.

At the final hearing Petitioners presented the testimony of William E. Fisher, Jr., Ronnie Crum, Leonard Jay Langfelder, Bobby R. Hamilton, Nancy Roberson, and Bob Uhl. Petitioners also offered 11 exhibits. They were accepted into evidence. Petitioners also presented the testimony of Mr. Langfelder in rebuttal. Two exhibits offered as rebuttal exhibits were accepted to the extent they were determined to be rebuttal.

Respondent presented the testimony of Mohammad Mafi, John David Parker, John Doeden, Bert Kessler, and Joseph Ferruzza. Respondent's Exhibits 1-3 were accepted into evidence.

After Petitioners and Respondent had rested their cases-in-chief at formal hearing, Petitioners attempted to offer two exhibits to "rebut" the Department's case. Those exhibits consisted of responses to interrogatories and admissions from the Department. The responses and admissions include some evidence concerning the rationale of the Department for adopting the rules at issue in this case and the evidence relied upon by the Department to support those rules. The responses and admissions are hereby rejected. Because Petitioners had the burden of proving that the rules at issue are arbitrary and capricious and not supported by competent substantial evidence, the exhibits should have been offered as part of Petitioners' case-in-chief. They were not and, therefore, do not constitute rebuttal.

The Transcript of the formal hearing was filed on February 8, 2000. Proposed orders were, therefore, required to be filed on or before February 28, 2000. On February 25, 2000, Petitioners filed a Stipulated Extension of Time to File Proposed Final Orders representing that the parties had agreed to file their proposed final orders on or before March 10, 2000. Petitioners and Respondent filed separate Proposed Recommended

Orders on March 10, 2000. Those proposed orders have been fully considered in entering this Final Order.

FINDINGS OF FACT

A. The Parties.

1. Petitioner, Manufactured Housing Association of Florida, Inc. (hereinafter referred to as the "Association"), is a Florida corporation organized for the purpose of representing its members with regard to regulatory matters involving the installation of mobile and manufactured homes.

2. The membership of the Association consists of manufactured housing dealers, manufactured housing installers, and one manufactured housing manufacturer.

3. Hudz Manufactured Housing, Inc. (hereinafter referred to as "Hudz"), is a licensed dealer of homes. Hudz contracts with installers for the installation of manufactured homes. (Stipulated Facts.)

4. Bob Uhl Mobile Home Sales, Inc. (hereinafter referred to as "Uhl"), is a licensed dealer-installer of manufactured homes. (Stipulated Facts.)

5. Jabo's Mobile Home Services (hereinafter referred to as "Jabo's"), is a licensed installer of manufactured homes. (Stipulated Facts.)

6. Respondent, the Department of Highway Safety and Motor Vehicles (hereinafter referred to as the "Department"), is charged with the authority to regulate manufactured mobile homes in Florida pursuant to Chapter 320, Florida Statutes.

B. Regulating the Installation of Manufactured Homes.

7. Manufactured homes are required under state and federal law to be anchored to the ground in order to withstand a minimum level of wind forces. Anchoring systems consist of a combination of diagonal, vertical, longitudinal, and centerline ties (metal straps). These metal straps are connected at one end to the frame of the manufactured home and the I-beam which runs the length of the home and at the other end to anchors which are augured into the ground and held in place by stabilizing plates. (Stipulated Facts.)

8. The requirement for some form of anchoring system has been a part of federal regulations and state rules for many years. (Stipulated Facts.)

9. Changes were made to the federal regulations in 1994 in response to concerns raised about the adequacy of anchoring systems after Hurricane Andrew struck South Florida in 1992. These changes to the federal regulations became effective on July 13, 1994. The federal regulations, which are administered by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD") required that, after July 13,

1994, manufactured homes and their anchoring systems must be designed to withstand certain wind forces depending on where the homes are to be located. The HUD regulations establish three wind zones in the United States: Wind Zones I, II, and III. All of Florida is located in either Wind Zone II or III. For manufactured homes which are to be located in Wind Zone II, the homes and their anchoring systems must be designed to withstand the forces of winds with a speed of 100 mph. For homes in Wind Zone III, the homes and their anchoring systems must be designed to withstand the forces of winds with a speed of 110 mph. (Stipulated Facts.)

10. As a result of the destruction and deaths that were caused by Hurricane Andrew in 1992, tornadoes that struck central Florida in 1998, and a tornado that struck Hyde Park, Florida, in 1998, the Department concluded that more stringent tie down requirements were required for manufactured homes.

11. The Department adopted Chapter 15C-1 in an effort to carry out its responsibility under Chapter 320, Florida Statutes. Throughout the last several years, the Department has amended these rules several times. The last amendments, which are, in part, the subject of this proceeding, were adopted effective March 31, 1999. (Stipulated Facts.) In particular,

the Department amended Rules 15C-1.0102(4) and (5); 15C-1.0104(1)(a) and (b), (2)(b), (3) and (4)(a) and (b), Florida Administrative Code (hereinafter referred to as the "Challenged Rules"). (Stipulated Facts.)

C. Competent Substantial Evidence to Support the Challenged Rules.

12. In the second Amended Petition, Petitioners have alleged generally that all of the Challenged Rules constitute an "invalid exercise of delegated legislative authority" as defined in Section 120.52(8), Florida Statutes. In particular, Petitioners have alleged that the all of the Challenged Rules, except Rule 15C-1.0104(1)(a) and (b), Florida Administrative Code, are invalid because they are "arbitrary and capricious" and they are "not supported by competent substantial evidence." Section 120.52(8)(e) and (f), Florida Statutes. Petitioners have alleged that Rule 15C-1.0104(1)(a) and (b), Florida Administrative Code, is invalid because it is "vague, fails to establish adequate standards for agency decisions, or vest unbridled discretion in the agency." Section 120.52(8)(d), Florida Statutes.

13. As discussed further in the Conclusions of Law portion of this Final Order, Petitioners had the burden of proving that the Challenged Rules in fact constitute an invalid exercise of delegated authority as alleged in their second Amended Petition.

14. The Challenged Rules are not "arbitrary and capricious" on their face. Therefore, in order for Petitioners to meet their burden of proving that the Challenged Rules are "arbitrary and capricious," Petitioners were required to prove what the Department's rationale for adopting the Challenged Rules was and then offer evidence to refute the Department's rationale. The first step in meeting this burden could have easily been met by calling someone designated by the Department to speak on its behalf and asking that person to explain the Department's rationale for adopting the Challenged Rules. Petitioners did not take this first step and the Department was under no obligation to do so for them.

15. In order for Petitioners to meet their burden of proving that the Challenged Rules are not supported by competent substantial evidence, Petitioners were required to prove what the Department relied upon in adopting the Challenged Rules and then offer evidence to refute the competency of the evidence relied upon by the Department. Again, the first step in meeting this burden could have easily have been meet by calling someone designated by the Department to speak on its behalf and asking that person to explain what evidence the Department relied upon in adopting the Challenged Rules. Petitioners did not take this first step and the Department was under no obligation to do so for them.

16. As a result of Petitioners' failure to provide the starting point for determining whether the Challenged Rules are arbitrary and capricious or are not supported by competent substantial evidence, Petitioners failed to meet their burden of proof in this case. Because the Challenged Rules are not arbitrary and capricious on their face it cannot be concluded that they are arbitrary and capricious without knowing the precise reason for the adoption of the Challenged Rules. Without knowing precisely what evidence the Department relied upon in adopting the Challenged Rules it cannot be concluded that they are not supported by competent substantial evidence.

17. To the extent that evidence was offered in this case to explain the Department's rationale, at least in part, for adopting the Challenged Rules, and to show some of the evidence that the Department relied upon in adopting the Challenged Rules, that evidence supported the Department's adoption of the Challenged Rules.

D. Galvanizing; Rules 15C-1.0102(4) and (5), Florida Administrative Code.

18. Prior to the amendment of Rule 15C-1.0102, Florida Administrative Code, to its present form, the Rule contained no requirement that anchors or stabilizing devices used with manufactured homes be galvanized. (Stipulated Facts.)

19. Rule 15C-1.0102(4), Florida Administrative Code, now provides, in pertinent part, the following:

> all mobile/manufactured homes and park trailers shall be anchored with approved auger anchors, which shall be coated with hot-dipped zinc galvanizing (ASTM Standard #123-89A, which is hereby incorporated by reference); .60 ounces per square foot.

(Stipulated Facts.)

20. Rule 15C-1.0102(5), Florida Administrative Code, now provides, in pertinent part, the following:

> all ground anchors shall have approved stabilizing devices approved by the department, each of which shall be coated with hot-dipped zinc galvanizing (ASTM Standard #123-89A, which is hereby incorporated by reference); .60 ounces per square foot or zinc coated to ASTM (A929/A 929M--96, which is hereby incorporated by reference).

(Stipulated Facts.)

21. The process of galvanizing anchors and other tie down components begins with the cleaning and preparation of ungalvanized, or "black," steel. The black steel is then placed in molten zinc.

22. Iron in black steel reacts chemically and metallurgically with the molten zinc to form alloys of intermetallic layers. The layer immediately next to the steel is about 25 percent iron, the next layer is about 10 percent iron, the next is about 5 percent iron, and the outer layer is about 99 percent pure zinc.

23. The outer layer of zinc makes up about one fifth of the total thickness of the coating and is soft enough to be scratched with a coin. The inner three layers are harder and more resistant to abrasions than the steel it coats.

24. Zinc galvanizing protects the steel from corroding. As the zinc corrodes, it forms zinc compounds that remain in the soil and continue to provide protection to the steel even after the zinc is completely corroded off the steel. Thus, zinc galvanized steel is better protected from corrosion than steel that is not galvanized.

25. If a small gap in the zinc coating occurs, the zinc around the gap will still protect the steel through an electrochemical process. The gap can be up to 6 millimeters or 1/4 of an inch wide.

26. The effectiveness of galvanizing will be reduced if a galvanized anchor strap is attached to an ungalvanized anchor.

27. According to a report prepared by the National Bureau of Standards which included the findings of a 45-year study of the National Bureau of Mines and Standards, the rate of corrosion for steel varied from 2.6 times that of zinc to about 23 times that of zinc, with the average being six times that of zinc, depending of soil conditions. In no case was it found that the rate of corrosion of zinc was greater than the rate of corrosion of steel regardless of the soil conditions.

28. Galvanization provides greater protection for manufactured home anchors from corrosion than paint. Paint is less resistant to scratching. Paint also fails to provide the same protection than galvanization provides in the case of a small scratch.

29. Painted anchors suffer greater scratching when driven into the ground than galvanized anchors.

30. Galvanization will increase the structural life of ground anchors buried into the ground.

31. Manufactured homes between five and ten years old which were destroyed or damaged in 1998 in Hyde Park, Florida, evidenced excessive corrosion on the anchor heads and straps that had been used to secure the homes. These anchor heads and straps were not galvanized.

32. The corrosion of anchor heads and straps found at Hyde Park contributed to the failure of the heads and straps during the storm.

33. Although no tests were performed by the Department concerning the amount of galvanization per ounce which should be required for augers and stabilizing devices required by Rules 15C-1.0102(4) and (5), Florida Administrative Code, the amount of zinc required by these Rules is within the range of reasonable mounts which the Department could have selected.

34. The evidence failed to prove that Rules 15C-1.0102(4) and (5), Florida Administrative Code, are arbitrary and capricious or not supported by competent substantial evidence.

E. Diagonal Tie-Downs; Rule 15C-1.0104(2)(b), Florida Administrative Code.

35. Prior to amendment to its present form, Rule 15C-1.0104(2), Florida Administrative Code, provided the following:

> (2) Frame Ties
> (a) All new manufactured homes shall be certified and manufactured as meeting the Department of Housing and Urban Development Manufactured Housing Construction and Safety Standards.
> (b) New manufactured homes and park trailers shall be anchored to the specifications as provided by the manufacturer.
> (c) New manufactured homes and park trailers shall be anchored to each anchor point as required by the manufacturer's set-up manual.
> (d) Used units where the manufacturer's specifications are not available shall be anchored every six feet (6') with the anchors placed within two feet (2') of each end.

(Stipulated Facts.)

36. Rule 15C-1.0104(2)(b), Florida Administrative Code, now provides, in part, the following:

> (b) Diagonal tie-downs for new and used mobile/manufactured homes, in all wind zones, shall be spaced no farther apart than five feet four inches (5' 4") on center with anchors placed within two feet (2') of each end.

(Stipulated Facts.) Old Rules 15C-1.0104(2)(a)-(c), Florida Administrative Code, were repealed.

37. "Frame ties" or "tie downs" are defined in the Department's rules as "any device or method approved by the department and used for the purpose of securing the mobile/manufactured home or park trailer to ground anchors in order to resist wind forces." Rule 15C-1.0101(6), Florida Administrative Code. (Stipulated Facts.)

38. Prior to promulgating the recent change to Rule 15C-1.0104(2), Florida Administrative Code, the Department conducted field observations in February and March of 1998 of storm damage from several tornadoes that passed through areas of central Florida on February 22 and 23, 1998. (Stipulated Facts.)

39. The Department also discovered that one cause of the damage caused to manufactured homes by Hurricane Andrew in 1992, was the breaking of strapping used to connect anchors to the manufactured homes.

40. The Department relied on two reports in promulgating the change to Rule 15C-1.0104(2), Florida Administrative Code: "The Effects of Central Florida Tornadoes on Manufactured Homes" and "Recommendations on Manufactured Home Tie Down Components and Methods." (Stipulated Facts.)

41. The Department concluded, based upon the reports it relied upon and observations of damage from Hurricane Andrew and the tornadoes in 1998, that additional diagonal tie-downs would improve the stability of manufactured homes.

42. By reducing the space between diagonal tie-downs from six feet to five feet, four inches the load on the straps used to tie down a manufactured home will be distributed between more anchors and will decrease the load on each strap. While the evidence failed to prove that the additional tie-downs will prevent damage to manufactured homes from all storms, the additional tie-downs will result in meaningful additional protection.

43. Tie-downs can reasonably be placed every five feet, four inches on center.

44. Petitioners presented evidence concerning "overlapping cones of influence." For an anchor placed in the ground a cone of influence is in essence the area of dirt around the anchor which helps support and hold the anchor down. The area of influence is shaped like a cone, with the widest area of influence on the surface. If anchors are placed too close together, the area of influence of the cone at ground level will overlap and weaken the influence of the individual cones.

45. While the cone of influence on the anchors required by the Challenged Rules may overlap because they are to be spaced closer than 7.35 feet apart, the evidence failed to prove that the requirement that diagonal tie-downs be placed five feet, four inches on center will not provide additional support. In

fact, more anchors spaced closer together will result in greater overall support even if the cones of influence of the anchors overlap.

46. The evidence failed to prove that Rule 15C-1.0104(2)(b), Florida Administrative Code, is arbitrary and capricious or not supported by competent substantial evidence.

F. Longitudinal Tie-Downs; Rule 15C-1.0104(3), Florida Administrative Code.

47. Prior to adoption of the Challenged Rules, Chapter 15C-1, Florida Administrative Code, did not contain a separate requirement for longitudinal tie-downs. Rule 15C-1.0104(2), Florida Administrative Code, simply required that new manufactured homes be anchored according to the manufacturer's specifications. (Stipulated Facts.)

48. Rule 15C-1.0104(3), Florida Administrative Code, now provides, in part, the following:

> (3) Longitudinal Tie-downs. All new and used mobile/manufactured homes, installed sixty (60) days after the effective date of this rule, must have longitudinal tie-downs or other approved longitudinal stabilizing systems designed to resist horizontal wind loads in the long direction of the home (i.e.: wind load applied to each end of the home). The longitudinal tie-downs are in addition to the anchoring systems required along the exterior side walls and/or marriage walls of the mobile/manufactured home.
>
> (a) . . . . At least four (4) anchors and straps are required (i.e., 16 per double-wide

> home) at the end of each section of the mobile/manufactured home.
>
> . . . .

(Stipulated Facts.)

49. The Department's decision to amend the rule to add a separate requirement for longitudinal tie-downs was based on field observations of the central Florida tornado damage in February of 1998. The Department relied on two reports as the basis for the rule: "Recommendations on Manufactured Home Tie Down Components and Methods," which was not offered into evidence, and "Effects of Central Florida Tornadoes on Manufactured Homes." (Stipulated Facts.)

50. Damage to some homes caused by the 1998 tornadoes and Hurricane Andrew was caused by the lack of longitudinal tie-downs.

51. Without longitudinal tie-downs, little protection is afforded manufactured homes from winds that strike the home at the ends of the home. Wind hitting the end of a manufactured home can cause a "zipper" effect, where the lift at the end pulls the first diagonal tie-down out and then, like a zipper, the rest of the anchors are pulled out down the side of the manufactured home.

52. Evidence concerning the impact of overlapping cones of influence did not prove that the requirement of longitudinal

tie-downs was invalid for the same reasons it did not support such a finding concerning diagonal tie-downs.

53. The evidence failed to prove that Rule 15C-1.0104(3), Florida Administrative Code, is arbitrary and capricious or not supported by competent substantial evidence.

G. Centerline Tie-Downs; Rule 15C-1.0104(4), Florida Administrative Code.

54. Prior to amendment to its present form, Rule 15C-1.0104(4), Florida Administrative Code, provided the following:

> (a) Multiple section homes are to be secured at the centerline with straps or cable to the specifications in the manufacturer's manual or at the locations designated on the home.
> (b) Used multiple section homes shall have anchors installed at all factory installed anchor strap connections including ridge beam column straps, shear wall straps/attachments or other locations designated by the manufacturer.

(Stipulated Facts.)

55. Rule 15C-1.0104(4), Florida Administrative Code, now provides the following:

> (a) Centerline ties are required for all new and used multiple section homes.
> (b) Multiple section homes are to be secured at the centerline with straps to the specifications in the manufacture's manual or at the location designated on the home. In addition to centerline ties specified by the manufacturer, a centerline tie must be attached within two feet (2') of each end of each section of the mobile/manufactured home.

> Where necessary, an approved bracket shall be added by the installer.

(Stipulated Facts.)

56. The Department's decision to amend Rule 15C-1.0104(4), Florida Administrative Code, was based on field observations of damage resulting from the central Florida tornadoes in February 1998. The Department also relied on two reports as the basis for this rule: "Engineering Report by K-2 Engineering" (1998) and "Effects of Central Florida Tornadoes on Manufactured Homes." (Stipulated Facts.)

57. Requiring centerline ties two feet from each end of a multi-unit home will provide additional protection against wind damage. The tie-downs are necessary to counteract wind forces carried to the centerline of a home by the sheer wall system.

58. The evidence failed to prove that Rule 15C-1.0104(4), Florida Administrative Code, is arbitrary and capricious or not supported by competent substantial evidence.

H. Anchor Lengths; Rule 15C-1.0104(1), Florida Administrative Code.

59. Rule 15C-1.0104(1), Florida Administrative Code, provides the following:

> (a) Type I anchor holding power for homes manufactured before July 13, 1994, shall be tested to a working load of three thousand one hundred and fifty (3,150) pounds, with an ultimate load of four thousand seven hundred twenty-five (4,725) pounds.

> (b) Type II anchor holding power for new homes manufactured after July 13, 1994, shall be tested to a working load of four thousand (4,000) pounds with an ultimate load of six thousand (6,000) pounds.

(Stipulated Facts.)

60. Petitioners did not provide evidence to support a finding that the requirements of Rule 15C-1.104(1), Florida Administrative Code, are not clear. Any confusion about this Rule comes from other rules which deal with when Type I or Type II anchors are used. Those rules, however, were not challenged by Petitioners.

61. The evidence failed to prove that Rule 15C-1.0104(1), Florida Administrative Code, is vague, fails to establish adequate standards for agency decisions, or vest unbridled discretion in the agency.

I. Standing.

62. The Association was organized to represent its members in matters involving the regulation of mobile homes and mobile home installation. In particular, the Association has the authority to institute this proceeding on behalf of its members and to seek the relief requested in this case.

63. The Association has approximately 30 members that are dealers and 12 to 15 members that are installers.

64. The cost associated with installing manufactured homes has increased as a result of the Challenged Rules. Those costs

are passed on to consumers. The evidence failed to prove, however, that Hudz, Uhl, or the members of the Association have been adversely impacted by passing on the increased cost caused by the Challenged Rules.

65. Jabo's business, which is limited to the installation of manufactured homes, has declined as a result of increased cost caused by the Challenged Rules.

66. While the evidence failed to prove how many of the members of the Association have lost business as a result of the Challenged Rules or that Hudz or Uhl have lost business as a result of the Challenged Rules, all the Petitioners have been required to comply with the requirements of the Challenged Rules. The Petitioners are, therefore, substantially affected by the Challenged Rules.

CONCLUSIONS OF LAW

A. Jurisdiction.

67. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, this proceeding. Sections 120.56(1) and (3), and 120.57(1), Florida Statutes (1997).

B. Standing.

68. Sections 120.56(1) and (3), Florida Statues, allow any person that is "substantially affected by an agency rule" to

institute a proceeding to determine whether the rule is "an invalid exercise of delegated legislative authority."

69. The evidence in these cases proved that all of the Petitioners and the members of the Association are required to comply with the Challenged Rules. Petitioners, therefore, are "substantially affected" by the Challenged Rules, and have standing to institute this proceeding under Section 120.56, Florida Statutes.

70. The Association was also required to prove that it meets the requirements of standing required of an association. Florida Home Builders Association v. Department of Labor, 412 So. 2d 351 (Fla. 1982). See also Department of Professional Regulation v. Florida Dental Hygienist Association, Inc., 612 So. 2d 646 (Fla. 1st DCA 1993). The Association did so.

C. Burden of Proof.

71. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in a Chapter 120, Florida Statutes, proceeding. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); and Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 249 (Fla. 1st DCA 1977).

72. Petitioners have asserted that the Challenged Rules are invalid. Petitioners, therefore, had the burden of proving the invalidity of the Challenged Rules. See St. Johns River Water Management District v. Consolidated-Tomoka Land Co., 717 So. 2d 72 (Fla. 1st DCA 1998), rev. denied, 727 So. 2d 904 (Fla. 1999). No statutory directory to the contrary applies in this case.

D. Petitioners' Challenge.

73. An "invalid exercise of delegated legislative authority" is defined in Section 120.52(8), Florida Statutes, as "action which goes beyond the powers, functions, and duties delegated by the Legislature." In particular, an existing rule will be considered an "invalid exercise of delegated legislative authority" if any one or more of the following apply:

> (a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1;
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1;
> (d) The rule is vague, fails to establish adequate standards for agency decisions, or vest unbridled discretion in the agency;
> (e) The rule is arbitrary or capricious;
> (f) The rule is not supported by competent substantial evidence; or
> (g) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly

alternatives that substantially accomplish the statutory objectives.

74. Petitioners have alleged that all of the Challenged Rules except Rules 15C-1.0104(1)(a) and (b), Florida Administrative Code, are an invalid exercise of delegated legislative authority as defined in Sections 120.52(8)(e) and (f), Florida Statutes.

75. Petitioners have alleged that Rules 15C-1.0104(1)(a) and (b), Florida Administrative Code, are an invalid exercise of delegated legislative authority as defined in Section 120.52(8)(d), Florida Statutes.

76. Petitioners also challenged Rule 15C-1.0107(4)(c), Florida Administrative Code, in the second Amended Petition. The parties subsequently stipulated, however, that Rule 15C-1.0107(4)(c), Florida Administrative Code, "constitutes a valid exercise of delegated legislative authority."

77. Finally, Petitioners have argued that the Challenged Rules are invalid because they are "contrary to the intent of the Congress and preempted by the express provisions of 42 U.S.C. Section 5403(d)."

E. Federal Preemption.

78. Petitioners have cited no Florida statute or rule which authorizes the invalidation of an existing agency rule for

any reason other than a determination that the rule is an "invalid exercise of delegated legislative authority."

79. The definition of an "invalid exercise of delegated legislative authority" contained in Section 120.52(8), Florida Statutes, does not authorize the invalidation of an existing agency rule based upon Federal preemption. Nor have Petitioners provided any argument to support a conclusion that Federal preemption can constitute an "invalid exercise of delegated legislative authority."

80. The Challenged Rules cannot be declared invalid because of alleged Federal preemption of the areas covered by the Challenged Rules.

F. The Department's Statutory Duty.

81. The Challenged Rules were adopted by the Department pursuant to the authority of Section 320.8325(2), Florida Statutes.

82. Section 320.8325(2), Florida Statutes, authorizes the Department to promulgate rules and regulations setting forth uniform minimum standards for the manufacture and installation of anchors, tie-downs, over-the-roof ties, or other reliable methods of securing mobile homes or park trailers when over-the-roof ties are not suitable due to factors such as unreasonable cost, design of the mobile home or park trailer, or potential

damage to the mobile home or park trailer. (Stipulated Conclusion of Law). The Challenged Rules have been adopted consistent with this authority.

G. Arbitrary and Capricious and Competent Substantial Evidence.

83. A rule is considered arbitrary if it is not supported by logic or reason; it is capricious if it is irrational and not supported by reason. Agrico Chemical Company v. Department of Environmental Regulation, 365 So. 2d 759, 763, (Fla. 1st DCA 1978), cert. denied, 376 So. 2d 74 (Fla. 1979).

84. The issue of "competent substantial evidence" in the context of determining the validity of an agency rule, is new. There is, therefore, little in the way of case law dealing with the standard.

85. The terms have been interpreted in the context of appellate review to mean the following:

> Competent substantial evidence has been defined as such evidence as a reasonable person would accept as adequate to support a conclusion.

Agrico Chemical Co. at 74. See De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957). See also City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982); and Department of Highway Safety and Motor Vehicles v. Favino, 667 So. 2d 305 (Fla. 1st DCA 1995).

86. Guidance as to the extent of evidence a reasonable person would accept as adequate to support a finding that competent substantial evidence exists can also be found in interpretations of the terms "competent substantial evidence" as used in Section 120.57(1)(j), Florida Statutes:

> The agency may not reject the hearing officer's finding unless there is no competent substantial evidence from which the finding could not reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge the credibility of witnesses, or otherwise interpret the evidence to fit its desired conclusion.

Heifetz v. Department of Business Regulation, 475 So. 2d 1277 (Fla. 1st DCA 1985).

87. Determining whether there is a lack of competent substantial evidence to support an agency rule places Administrative Law Judges in virtually the same position as a reviewing court in certiorari or an agency reviewing an Administrative Law Judge's findings of fact.

88. The determination of whether the Challenged Rules are arbitrary and capricious, and whether there is no competent substantial evidence to support the Challenged Rules is clear in this case. Petitioners simply failed to meet their burden of proof.

89. Petitioners' proposed conclusions of law in support of their argument that the Challenged Rules are arbitrary and

capricious and that there is no competent substantial evidence to support the Challenged Rules primarily concern the evidence that Petitioners argue the Department failed to present. Petitioners' proposed conclusions of law, if they were correct, would support Petitioners' position only if the burden of proof in this matter were on the Department. It was not, however.

90. As concluded, supra, the burden of proof in this case was on Petitioners. Therefore, in order for Petitioners to prove that the Challenged Rules are arbitrary and capricious, Petitioners were required to prove that the Challenged Rules are not supported by logic or reason and that they are irrational. In order for Petitioners to prove that the Challenged Rules are not supported by competent substantial evidence, Petitioners were required to prove that there is no evidence a reasonable person would accept as adequate to support the Challenged Rules.

91. In order to prove the lack of reason and evidence to support the Challenged Rules, Petitioners, not the Department, were required to present evidence at hearing concerning the Department's rationale for the Challenged Rules and the evidence the Department believes supports the Challenged Rules. Simply calling witnesses with no involvement in the adoption of the Challenged Rules and asking them whether they know of any rationale and evidence the Department could have relied upon in adopting the Challenged Rules does not meet Petitioners' burden

of proof. Nor was such proof sufficient to require the Department to respond by explaining its rationale or the evidence that supports the Challenged Rules.

92. Based upon the foregoing, Petitioners failed to prove that the Challenged Rules are arbitrary and capricious or that there is not competent substantial evidence to support them.

93. Although not required to do so, the Department did provide some evidence concerning its rationale for adopting the Challenged Rules and the evidence that supports them. That evidence was sufficient to prove that there was in fact logic or reason to support the Challenged Rules, that they are rational, and that there is evidence a reasonable person would accept as adequate to support the Challenged Rules.

H. Vagueness, Adequacy of Standards, and Discretion.

94. A rule is vague or fails to establish adequate standards for agency decisions when the terms of the rule are so vague that persons of common intelligence must guess as to the rule's meaning. See Department of Health and Rehabilitative Services v. Health Care and Retirement Corporation, 593 So. 2d 539 (Fla. 1st DCA 1992).

95. There is nothing complicated or vague about Rules 15C-1.0104(1)(a) and (b), Florida Administrative Code.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that Petitioners failed to prove that Rules 15C-1.0102(4) and (5), 15C-1.0104(1)(a) and (b), (2)(b), (3), and (4)(a) and (b), Florida Administrative Code, constitute an invalid exercise of delegated legislative authority. The Amended Petition for Administrative Determination of Invalidity of Existing Rule filed in this case is, therefore, DISMISSED.

DONE AND ORDERED this 27th day of April, 2000, in Tallahassee, Leon County, Florida.

LARRY J. SARTIN
Administrative Law Judge
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.