

Note: Janet Thome Has Never Stated That The Modular Structure Is A Motor Vehicle.

The Preemption Blind Spot: How the ICC Dismissed Federal Law in the Tiny House Standard

1. Introduction: The Incomplete Public Record

In the sphere of regulatory development, administrative transparency is not a courtesy; it is a legal necessity. However, the International Code Council (ICC) has engaged in a strategic gatekeeping of the public record regarding its new ICC/THIA 1215 standard. While the ICC saw fit to publish its formal response to Janet Thome's preemption inquiry, it conspicuously omitted the inquiry itself. By withholding the detailed legal challenge that prompted their response, the ICC is obscuring the substantive arguments regarding federal overreach and sanitizing the administrative record. The public is left with only half the story—a defense without the context of the specific federal laws the ICC is accused of bypassing. As a matter of public safety and legal accountability, we must examine the "half" the ICC attempted to keep off the record.

2. The Core Conflict: Building Metrics vs. Transportation Law

The technical dispute centers on Appendix B of ICC/THIA 1215, which mandates a "Small Residential Unit Data Plate." The standard attempts to regulate structural weight using building code instruments, even when those structures are integrated with a chassis intended for highway travel. This creates a "legal fiction" where the ICC attempts to isolate the "Gross Weight of Structure" as a building metric, ignoring that once mounted and transported, the chassis and structure form a single conveyance governed exclusively by federal transportation law. | ICC 1215 Requirement | Federal Legal Reality || ----- | ----- || **Weight Disclosure:** Appendix B requires "Gross Weight of Structure" to be listed on an interior data plate. | **Weight Disclosure:** Federal law requires VIN-linked certification labels and tire/loading placards affixed to the chassis to declare GVWR and GAWR. || **Placement:** Requires placement on the interior (closet wall or kitchen cabinet). | **Placement:** Mandates labels be externally visible for transportation enforcement and highway safety inspections. || **Verification:** Section 702.1 requires chassis compliance for weights shown on the plate, verified by undefined "documentation." | **Verification:** Mandates "Manufacturer Self-Certification" under 49 CFR Part 567 as the *sole* lawful mechanism for compliance. |

3. The ICC's Defense: Definitions and "Silence"

In a letter dated April 22, 2026, ICC President Mike Boso dismissed these preemption concerns by asserting that modular homes with integrated chassis do not meet the legal definition of "motor vehicles." Boso's defense relies on the claim that federal certification regulations—specifically 49 C.F.R. § 567—are "inapplicable" to these structures. Boso further dismissed the challenge by claiming Janet Thome "provided no support or authority" for the assertion that invoking weight triggers federal transportation law. He argued the data plate is merely for the benefit of Authorities Having Jurisdiction (AHJs) and emergency responders.

Despite the rigorous federal framework already in place for highway-bound loads, the ICC concluded that **“The inclusion of weight information on a data plate inside the structure was unlikely to be preempted by federal law.”**

4. The Legal Rebuttal: Why the Law Speaks for Itself

The ICC’s stance is a direct violation of the Motor Vehicle Safety Act and the Supremacy Clause. Federal law is not "silent" on these matters; it is prescriptive. Because ICC 1215 is not identical to federal standards regarding weight disclosure and placement, it is **automatically preempted** under 49 U.S.C. § 30103(b)(1).

1. **Identity Requirement:** Federal law mandates that state or local standards addressing the same aspect of performance as a federal motor vehicle safety standard *must be identical*. ICC 1215’s deviation from FMVSS requirements for certification and disclosure is a per se violation of 49 U.S.C. § 30103(b)(1).
2. **Obstacle Preemption:** By "smuggling" transportation-regulated weights onto an interior building plate and substituting "documentation" for federal certification, the ICC interferes with the uniform federal regulatory system. It replaces a single federal framework with a fragmented, jurisdiction-specific workaround.
3. **Impossibility Preemption:** Section 702.1 creates an "impossible condition." It requires builders to prove DOT compliance for loads and weights while simultaneously removing the only lawful mechanism recognized by federal law to prove that compliance: the VIN-linked manufacturer self-certification label.

5. Property Classification: The Transition from Personal to Real

A fundamental legal error in ICC/THIA 1215 is the attempt to "skip" the required sequence of property classification. Under federal law (41 CFR § 102-71.20), real property is defined exclusively as land and improvements affixed to land. Personal property is defined as all property other than real property (41 CFR § 102-36.40). During the stages of fabrication and transport, a chassis-based dwelling is not affixed to land; it is personal property subject to motor vehicle and transportation regulations. A building code cannot prematurely reclassify personal property as real property to evade federal oversight. The ICC’s attempt to treat the unit as real property before it has been permanently installed on a site is a jurisdictional overreach that the Supremacy Clause does not permit.

6. The "Loud and Clear" Evidence of Intent

The ICC’s claim that it acted in the absence of federal guidance is contradicted by a "smoking gun" in the administrative record. The complaint highlights a 27-email exchange with David A. Tompos, an ICC-NTA employee, which detailed recommendations to avoid FMVSS compliance, HUD applicability, and motor-vehicle classification. This is not a technical gap; it is a "deliberate rerouting" of federal compliance. As the complaint stated: **"ICC cannot rely on so-called 'Silence' to evade preemption when its own actions are Loud and Clear."** When a private organization explicitly strategizes how to avoid federal oversight while simultaneously regulating chassis weights and loads, it establishes an intentional conflict with the federal record.

7. Stakes for Manufacturers: Civil Penalties and Liability

The ICC/THIA 1215 standard places manufacturers in an untenable position. By imposing non-identical requirements at the point of fabrication, it forces builders to choose between a non-governmental standard and federal law. Choosing the building code over the Motor Vehicle Safety Act exposes manufacturers to massive liability at the point of manufacture and at entry into interstate commerce. **Civil Penalties Under 49 U.S.C. § 578.6:** Violations of motor vehicle safety and certification requirements carry penalties of up to **\$27,874 per violation**, with a maximum penalty of ******\$ 139,356,994** for a related series of violations. By displacing federal certification instruments with interior data plates, the ICC shifts immense financial and legal risk from the regulatory framework onto individual builders, inspectors, and owners—a result fundamentally contrary to Congressional intent.

8. Conclusion: A Call for Legal Consistency

The U.S. Constitution, under Article VI, Clause 2, establishes that federal law is the "Supreme Law of the Land." The ICC cannot exercise jurisdiction over transportation elements—such as chassis, loads, and gross weight—while simultaneously disclaiming the very federal authority that governs those elements. This jurisdictional paradox creates a dangerous vacuum in highway safety and manufacturer liability. The ICC's attempt to redefine the mechanics of transportation compliance is a direct challenge to federal supremacy. As the administrative record demonstrates, the law does not need to be "invoked" by a building code to be valid. **Federal Law is Supreme. Period.** The ICC must yield to the uniform federal system, for the law already speaks for itself.