



Manufactured Housing Association for Regulatory Reform

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VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

Manufactured Housing Consensus Committee
C/O Home Innovation Research Labs
Administering Organization
400 Prince George's Boulevard
Upper Marlboro, Maryland 20774

Re: Proposed Energy Conservation Standards for Manufactured Housing

Dear Members of the Manufactured Housing Consensus Committee:

The Manufactured Housing Association for Regulatory Reform (MHARR) submits the following comments in connection with the Manufactured Housing Consensus Committee's (MHCC) consideration of a Supplemental Notice of Proposed Rulemaking (SNPR) regarding "Energy Conservation Standards for Manufactured Housing" published by the U.S. Department of Energy (DOE) in the Federal Register on August 26, 2021.¹ MHARR is a national trade association representing producers of manufactured housing subject to federal regulation pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (1974 Act), as amended by the Manufactured Housing Improvement Act of 2000 (2000 reform law), as well as relevant provisions of the Energy Independence and Security Act of 2007 (EISA).

I. INTRODUCTION

The following are MHARR's initial comments regarding the August 26, 2021 DOE manufactured housing energy standards supplemental proposed rule. Because of the compressed time schedule that DOE's sixty-day comment period for the August 26, 2021 proposed standards has effectively imposed on the Manufactured Housing Consensus Committee (MHCC) (and other stakeholders') review, factfinding, analysis, and comment on the proposed standards, these initial comments will focus primarily on policy and cost aspects of the DOE proposal. MHARR will

¹ See, 86 Federal Register, No. 163 (August 26, 2021) at p. 47744.

provide additional comments regarding technical and other aspects of the proposed standards as the MHCC review process moves forward.²

As MHARR has previously emphasized, the fundamental duties and responsibilities of the MHCC, as is made clear both by its composition and by its enumerated statutory functions, are not merely “technical” in nature. While an analysis of the technical merit of any proposal is an important part of the MHCC’s duties, its responsibilities extend much further, to a consideration of: (1) whether a proposal serves to advance the statutory objectives of the 2000 reform law (42 U.S.C. 5401);³ (2) an analysis of the probable effect of the proposed standard, regulation or interpretation on the “cost of the manufactured home to the public” (42 U.S.C. 5304(e)(4));⁴ and (3) whether the benefits of any such proposal outweigh its costs and likely impact on the “availability of affordable manufactured homes.” (42 U.S.C. 5401(b)(2)).

These same duties and functions, moreover, were expressly recognized by Congress in connection with manufactured housing energy standards under EISA. EISA section 413 thus specifically provides a review and comment role for the MHCC, and authorizes the MHCC to consider the impact of DOE-proposed energy standards on the purchase price of manufactured housing.⁵ MHCC consideration of the current DOE proposal, therefore, involves not just an analysis of its purported technical merit, but also a balancing of whether that proposal, even if technically practicable, would produce destructive cost impacts that would override its value in connection with a type of housing that, as a matter of federal policy, is – and must remain – inherently affordable for every American and, particularly, lower and moderate-income homebuyers.

It is critical to note, moreover, in connection with these comments, that the cost burdens of federal regulation and over-regulation fall disproportionately on smaller businesses (and their consumers), including smaller HUD Code producers represented by MHARR, as well as retailers and communities. A landmark 2010 study of this issue by the U.S. Small Business Administration (SBA), found that “small businesses face an annual regulatory cost ... which is 36 percent higher than the regulatory cost facing large firms Defined as firms with 500 or more

² See, however, section II. A, below, regarding a request for an extension of time for comments in response to the DOE proposed rule.

³ The 2000 reform law provides, in relevant part, “The purposes of this title are – (1) to protect the quality, durability, safety and affordability of manufactured homes [and] (2) to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans.”

⁴ The 2000 reform law provides, in relevant part, “The consensus committee, in recommending standards, regulations and interpretations ... shall: *** (4) consider the probable effect of such standard on the cost of the manufactured home to the public.”

⁵ 42 U.S.C. 17071 provides, in relevant part: “(a)(1) Not later than 4 years after December 19, 2007, the Secretary shall by regulation establish standards for energy efficiency in manufactured housing. (2) Standards described in paragraph (1) shall be established after— (A) notice and an opportunity for comment by manufacturers of manufactured housing and other interested parties; and (B) consultation with the Secretary of Housing and Urban Development, who may seek further counsel from the Manufactured Housing Consensus Committee. (b)(1) The energy conservation standards established under this section shall be based on the most recent version of the International Energy Conservation Code (including supplements), except in cases in which the Secretary finds that the code is not cost-effective, or a more stringent standard would be more cost-effective, based on the impact of the code on the purchase price of manufactured housing and on total life-cycle construction and operating costs.”

employees).”⁶(Emphasis added). This differential would undoubtedly be much higher today, following an additional decade-plus of ever-expanding federal regulation. In reviewing the DOE proposed rule, therefore, the MHCC should and must consider not only its likely impact on the purchase cost and availability of manufactured housing generally, but also: (1) the proposed rule’s specific potential impacts on smaller manufactured housing producers, retailers and communities; (2) the future viability and market share of those smaller, independent manufactured housing producers, retailers and communities as a consequence of disproportionately-higher regulatory burdens and costs attributable to the DOE proposed rule; and (3) the exacerbation of regulatory cost impacts on consumers as a result of further and more rapid industry consolidation – and a related loss of full and robust intra-industry competition – as a result of excessive and disproportionate cost burdens attributable to the proposed rule. MHARR will address all of these issues in its comprehensive written comments to DOE and in further comments to the MHCC, as the Committee proceeds with its scheduled review and analysis of the proposed “supplemental” rule.

For all of the reasons set forth below, therefore – and that will be detailed in further forthcoming MHARR comments in this matter – MHARR asks the MHCC to reject DOE’s proposed manufactured housing energy standards rule, in its current form, as a baseless, unnecessary attack on the availability and affordability of manufactured housing, which will needlessly exclude vast numbers of lower and moderate-income Americans from the American Dream of homeownership in order to satisfy the ideological predilections of “climate” extremists.

II. COMMENTS

A. THE MHCC SHOULD REQUEST AN IMMEDIATE EXTENSION OF THE DOE COMMENT DEADLINE

As an initial procedural matter, MHARR urges the MHCC to request an immediate extension of the DOE written comment deadline in this matter in order to provide sufficient time for the MHCC (and other affected stakeholders) to conduct a valid, legitimate and fully-informed review and analysis of the DOE proposed rule.⁷

DOE acknowledges that its August 26, 2021 proposed manufactured housing energy rule – a rule that, to date, it has spent 14 years developing, and that has been fundamentally flawed from its inception through its current iteration -- is a “significant regulatory action” as determined by the Office of Management and Budget (OMB), meaning that it will likely “Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy,

⁶ See, U.S. Small Business Administration, “The Impact of Regulatory Costs on Small Firms,” (Nicole V. Crain and W. Mark Crain) September 2010 at p. 8: “[Regulatory] costs per employee thus appear to be at least 36 percent higher in small firms than in medium-sized and large firms. *** In large firms, these fixed costs of [regulatory] compliance are spread over a large revenue, output, and employee base, which results in lower costs per unit of output as firm size increases. This is the familiar empirical phenomenon known as economies of scale, and its impact is to provide a comparative cost advantage to large firms over small firms.” (Emphasis added).

⁷ This request should have the full, express and specific support of the Department of Housing and Urban Development and its Office of Manufactured Housing Programs as the agency charged by federal law with ensuring that the purposes and objectives of federal manufactured housing law as set forth above, are carried out and achieved.

a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”⁸ Given the significant and, indeed, extreme impacts that this proposed rule would have on both the manufactured housing industry (and especially its smaller businesses) and American consumers of affordable housing, as well as the myriad of technical and related cost considerations entailed in seeking to adapt and conform a code for site-built structures to the unique construction and economic imperatives of federally-regulated manufactured housing, a 60-day comment period (punctuated by at least two federally-designated holidays) is clearly inadequate and fundamentally unfair and inequitable both to the MHCC and to other interested parties, including MHARR, that will submit comment on the proposed rule, likely including comments that reference, rely upon, or amplify comments offered by the MHCC.

While HUD has scheduled three meetings for the MHCC to consider and analyze the DOE proposed rule and prepare responsive comments, with meetings currently scheduled on September 23, 2021, October 8, 2021 and October 20, 2021⁹ – just five days before the current DOE comment deadline – these meetings are based on a highly-compressed time schedule that is unlikely to provide sufficient time for thorough, proper and legitimate MHCC consideration and vetting of the DOE proposed rule from the unique perspective of manufactured housing users, producers, retailers and communities. A thorough vetting of this sort is not only authorized and, indeed, required by applicable statutes, as noted above, but is particularly necessary in this rulemaking, where DOE has repeatedly demonstrated its willingness to deceive, connive, obfuscate, distort the facts, conspire and skirt the law, with successive fundamentally flawed proposals, in order to achieve the policy objectives that it institutionally shares with climate extremists and energy special interests.¹⁰

There is, moreover, recent direct precedent for such an extension. On August 9, 2021, DOE published notice of an extension of the comment deadline for proposed revisions to its so-called “Process Rule” concerning updates to appliance energy standards under the Energy Policy and Conservation Act of 1975.¹¹ In that notice, DOE stated: “On July 29, 2021, interested parties in this matter, the Joint Commenters, requested an extension of the public comment period for the [Notice

⁸ DOE’s August 26, 2021 SNPR states, in relevant part: “The Administrator of the Office of Information and Regulatory Affairs (“OIRA”) in the OMB has determined that the regulatory action in this document is a significant regulatory action under section (3)(f) of E.O. 12866.” See, 86 Federal Register, supra, at p. 47822, col. 3. Section (3)(f) of Executive Order 12866, “Regulatory Planning and Review” (September 30, 1993), in turn, states that a “significant regulatory action” is one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.”

⁹ See, 86 Federal Register No. 171 (September 8, 2021) “Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee,” at p. 50369.

¹⁰ Fully-documented details of DOE’s manipulation of this rulemaking – from its inception – are set forth in MHARR’s August 8, 2016 comments to DOE regarding the initial DOE proposed manufactured housing energy standards rule (MHARR2016 DOE Comments), which the current SNPR allegedly “supplements.” Those comments are attached hereto as Attachment 1. MHARR hereby incorporates those comments herein as if restated in full.

¹¹ See, 86 Federal Register No. 150 (August 9, 2021) “Extension of Public Comment Period,” at p. 43429, attached hereto as Attachment 2.

of Proposed Rulemaking] to September 13, 2021. The Joint Commenters asked for this additional time due to their assertion that the proposed rule is complex and multi-faceted, which requires more time to effectively review it and formulate their comments.”¹²(Emphasis added). If anything, the present rulemaking is even more “complex and multi-faceted” than the DOE process rule because: (1) it is an entirely new proposed rule, not a mere update of an existing rule; (2) it involves and addresses construction of the entire home rather than specific discrete appliances; (3) entails statutory considerations of cost and cost-effectiveness involved in fundamentally transforming an energy code for site-built homes into standards for affordable manufactured homes, that must be completely and properly considered and evaluated in order to avoid potentially irreparable harm to manufactured housing consumers and smaller industry businesses; and (4) must be thoroughly vetted by the MHCC in light of DOE’s egregious 14-year track record of fundamentally flawed and highly-destructive manufactured housing energy proposals.

Accordingly, MHARR asks the MHCC to request a comment deadline extension from DOE for itself and all other commenters – and that it take other steps as necessary to ensure that such an extension is granted – in order to ensure: (1) that all applicable statutory guarantees are observed and honored; (2) that the MHCC can perform its essential vetting and commentary function based on full and complete information and analysis; and (3) to ensure that yet another fundamentally flawed DOE manufactured housing energy proposal is not imposed as a final rule.

B. MANUFACTURED HOME ENERGY USAGE AND COSTS ARE ALREADY LOWER THAN OTHER TYPES OF HOMES

DOE manufactured housing “energy conservation” standards, including the August 26, 2021 proposed standards, are – and always have been – a purported “solution” in search of a problem. Notwithstanding continual efforts by DOE, climate extremists, energy special interests and others to skew, manipulate, obfuscate and distort relevant data, the fact of the matter is that HUD-regulated manufactured homes, under existing HUD manufactured housing standards for energy and energy-related functions, already offer occupants lower monthly energy costs than other types of homes. Indeed, federal government data shows that monthly manufactured housing energy costs have actually fallen further below energy costs for single-family detached site-built homes since DOE published its initial manufactured housing energy standards proposal in 2016.

In its written comments on the 2016 DOE manufactured housing energy rule, MHARR noted:

“As a consequence of ... pre-existing HUD energy standards, manufactured homes, as established by U.S. Census Bureau data, are already energy efficient without regressive, high-cost DOE energy mandates. Specifically, data from the 2013 American Housing Survey shows that the median monthly housing cost for fuel oil was \$92.00 for manufactured homes as compared to \$267.00 for other types of housing. The median monthly cost for piped natural gas was \$34.00 for manufactured homes as compared with \$38.00 for other types of housing, and the median monthly cost for electricity was only slightly higher for manufactured

¹² Id.

homes (at \$119.00) than other types of homes (at \$105.00) – a difference of only \$168.00 per year.”¹³

(Emphasis in original).

Newer data published in the 2019 American Housing Survey (AHS), however, shows that today’s modern, HUD Code manufactured homes, have lower median monthly energy costs than detached site-built homes in all fuel categories. Specifically, the 2019 AHS shows that the median monthly cost for fuel oil was \$83.00 for manufactured homes, as compared with \$125.00 for detached site-built homes.¹⁴ The median monthly cost for natural gas was \$40.00 for manufactured homes, as compared with \$58.00 for site-built detached housing, and the median monthly cost for electricity was \$122.00 for manufactured homes, as compared with \$124.00 for site-built homes.¹⁵ The median monthly fuel cost for HUD-regulated manufactured homes across all types and ages, therefore, is already up to 51% less than the monthly median fuel cost for single-family detached site-built homes.¹⁶ Similarly, the mean monthly fuel cost for current manufactured homes, as calculated by the AHS, is also lower than the mean for single-family, detached, site-built homes with respect to monthly fuel costs. Thus, the mean monthly cost for electricity in manufactured homes is \$133.00, as compared with \$141.00 for detached, single-family, site-built homes, the mean monthly cost for piped gas in manufactured homes is \$60.00, as compared with \$73.00 for site-built homes, and the mean monthly cost for fuel oil is \$88.00 in manufactured homes, as compared with \$143.00 for site-built homes.¹⁷ The mean monthly fuel cost for HUD-regulated manufactured homes across all types and all ages, therefore, is already up to 62% less than the mean monthly fuel cost for detached, single-family, site-built homes.¹⁸

The existing HUD manufactured housing energy standards, accordingly, ensure the energy operating affordability of manufactured homes – on a whole-home basis, as compared with site-built, single-family homes – while maintaining and preserving the overall purchase price affordability of manufactured housing in accordance with, and as required by, applicable federal law. By contrast, alleged “analyses” comparing site-built and manufactured home energy usage and energy costs on a per-square-foot basis, are irrelevant and misleading, because the average size of all manufactured homes in 2020 -- again according to U.S. Census Bureau data – was 1,471 square feet, as contrasted with an average size of 2,527 square feet for a single-family site-built home, a size differential of almost 72%.¹⁹ The MHCC, accordingly, should reject cost comparisons

¹³ See, Attachment 1, supra at p. 23.

¹⁴ See, U.S. Census Bureau, 2019 American Housing Survey, Fuel Cost Comparison Table (extract), attached hereto as Attachment 3.

¹⁵ Id.

¹⁶ The 2019 AHS data thus shows that the median monthly cost for electricity is 1.6% less in current HUD Code manufactured homes than in detached, single-family site-built homes, monthly piped gas costs are 45% lower in current manufactured homes, and monthly fuel oil costs are 50.6% lower in HUD-regulated manufactured homes.

¹⁷ See, Attachment 3.

¹⁸ The 2019 AHS data thus shows that the mean monthly cost for electricity is 6% less in current HUD Code manufactured homes than in detached, single-family site-built homes, mean monthly piped gas costs are 21.6% lower in current manufactured homes, and mean monthly fuel oil costs are 62.5% lower in HUD-regulated manufactured homes.

¹⁹ Even limiting the size comparison to larger, double-section manufactured homes, site-built homes are still 43.5% larger.

and analyses based on “per-square-foot” energy usage,²⁰ and should instead base its analyses and conclusions regarding the efficacy and affordability of manufactured housing energy standards based on “whole house” energy usage and cost comparisons. Analyzed in that manner, using authoritative data from federal sources, it is apparent and, indeed, indisputable, that manufactured homes, under existing HUD Code energy standards, are already both energy-efficient and cost-efficient from the perspective of the homeowner as required by applicable federal law.

This result is also compelled by the fact that the cost-benefit language of EISA section 413, requiring that DOE manufactured housing energy standards be based on the most recent version of the IECC, “except in cases in which the Secretary finds that the code (sic) is not cost-effective” (emphasis added), must be construed and applied consistently with the purposes, objectives and requirements of existing law, in this case, the 1974 Act as amended by the 2000 reform law.²¹ Therefore, the “cost-effective” proviso of EISA section 413 must be construed and applied – consistently with the 1974 Act, as amended – to ensure that non-life-safety DOE energy standards do not result in purchase price increases to manufactured homes that would significantly impair their affordability, availability and accessibility to all Americans, or otherwise decrease homeownership in violation of 42 U.S.C. 5401.

C. THE PROPOSED DOE STANDARDS WOULD RESULT IN CATASTROPHIC PURCHASE PRICE INCREASES

The manufactured housing market -- and manufactured housing regulation -- is based on purchase price affordability. This statutory and regulatory focus on initial purchase price affordability is consistent with the status of manufactured housing as “the largest source of unsubsidized affordable housing in” the United States and an “important source” of low-income homeownership, as noted by the U.S. Consumer Financial Protection Bureau (CFPB).²² Applicable law thus recognizes that manufactured housing is uniquely price-sensitive, as its consumer base is comprised largely of lower and moderate-income purchasers. Purchase price affordability, as a result, is necessarily antecedent to – and more critical to the manufactured housing market – than so-called “life-cycle” affordability, because for potential purchasers excluded from the market altogether by excessive, regulatory-driven purchase price increases, there is no home they can afford to purchase and, therefore axiomatically, no “life-cycle.” Accordingly, the MHCC’s cost analysis of the DOE energy SNPR is crucial should focus first and foremost on its likely purchase price and purchase market impacts.

As currently constituted, the HUD manufactured housing construction and safety standards effectively maintain the purchase price affordability of manufactured homes at monthly energy

²⁰ See e.g., American Council for an Energy Efficient Economy (ACEEE), “A Buildings Efficiency Agenda for 2021 – Manufactured Housing Standards” (October 2020) at p. 1: “Manufactured homes use more than \$12 billion in energy each year.... The average energy cost per square foot is 70% higher than for the average single-family home.”

²¹ See e.g., “Statutory Interpretation, General Principles and Recent Trends,” Congressional Research Service (December 19, 2011) at p. 29, stating: “A court ‘must read two statutes to give effect to each if it can do so.’” Citing Watt v. Alaska, 451 U.S. 259 (1981).

²² See, Consumer Financial Protection Bureau, “Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data” (May 2021), pp. 8-9.

operating cost levels (as demonstrated above), that are well below the comparable monthly energy operating costs of site-built homes. Current HUD standards, moreover, also ensure that the total monthly operating costs of HUD Code manufactured are significantly lower than those of site-built homes. The 2019 American Housing Survey thus documented a monthly median housing operating cost of \$610.00 for manufactured homes, and \$1,106.00 for single-family, detached site-built homes, a savings of nearly 58% under the current HUD manufactured housing standards. Consequently, the existing HUD Code standards --including the existing HUD Code energy standards -- are consistent with the affordability and affordability balancing requirements of federal law, which ensure that manufactured homes are not only energy-efficient but are also available at a range of purchase prices that are affordable for lower and moderate-income Americans. The International Energy Conservation Code (IECC), by contrast, is subject to no similar statutory affordability or balancing mandates. As a result, it is a high-cost code, as was demonstrated initially by MHARR in 2016 with respect to the 2015 IECC and by Home Innovation Research Labs (HIRL) – the research arm of the National Association of Home Builders (NAHB)²³ – with respect to the 2021 IECC.

The 2015 IECC, which was the basis for DOE manufactured housing energy standards initially proposed in 2016²⁴-- as calculated by MHARR – would have resulted in retail level purchase price increases of \$4,601.00 for a single-section manufactured home, and \$5,825.00 for a double-section manufactured home.²⁵These amounts included industry-standard builder and retailer profit margins,²⁶ but did not include regulatory testing, compliance or enforcement costs, which were not estimated or considered by DOE in the June 2016 rulemaking proceeding. Consistent with MHARR’s 2016 findings, a June 2021 HIRL report found that the 2021 IECC, as published, would result in a national incremental construction cost increase of \$6,548.00 to \$9,301.00 for a specified reference home of 2,500 square feet, depending on the compliance mechanism selected.²⁷The same analysis shows a national simple construction cost payback period ranging from 32 to 67 years, again based on the compliance mechanism. Prorating these amounts to the smaller size of an “average” single-section and double-section manufactured home, as defined by the U.S. Census Bureau, and including industry-standard profit margins identical to those used in MHARR’s 2016 calculation, the 2021 IECC, in unmodified form, would yield a minimum incremental retail-level price increase of \$7,958.00 for an “average” single section manufactured home and a minimum incremental retail-level price increase of \$12,908.00 for an “average” double-section manufactured home.²⁸And again, it must be stressed that as large as these amounts are, they are necessarily incomplete, in that: (1) they do not include regulatory testing,

²³ See, Home Innovation Research Labs, “2021 IECC Residential Cost Effectiveness Analysis” (June 2021) (HIRL Report), attached hereto as Attachment 4.

²⁴ See, 81 Federal Register, No. 117 (June 17, 2016), “Energy Conservation Standards for Manufactured Housing,” at p. 39756, et seq.

²⁵ See, MHARR 2016 DOE Comments, at p. 15, note 42.

²⁶ Industry-standard builder and retailer profit margins were calculated as multiples of 2.0 and 1.4 by MHARR, based on input from smaller, independent producers.

²⁷ See, HIRL Report at p. 14.

²⁸ I.e., for a single-section home: $\$6,548.00/2,500$ square feet = $\$2.619$ per square foot x 1,085 square feet (for an “average” single-section manufactured home) = $\$2,842.00$ x 2 (builder profit) = $\$5,684.00$ x 1.4 (retailer profit) = $\$7,958.00$ retail level price increase. For a double section home: $\$6,548.00/2500$ square feet = $\$2.619$ per square foot x 1,760 square feet (for an “average” double-section manufactured home) = $\$4,610.00$ x 2 (builder profit) = $\$9,220.00$ x 1.4 (retailer profit) = $\$12,908.00$ retail level price increase.

compliance or enforcement costs; and (2) do not include costs attributable to future changes to the IECC and the costs of compliance with such future modifications – which are, and would be, totally unnecessary for today’s modern, already energy cost-efficient, HUD Code manufactured homes.

While the August 26, 2021 DOE proposed rule does not incorporate the full 2021 IECC as to either “Tier1” or “Tier 2,” and also includes arbitrary DOE modifications to certain 2021 IECC criteria, MHARR expects that a full purchase price analysis of the DOE proposal, based on current costs for smaller, independent producers, will yield expected purchase price increases between the 2016 MHARR projected amounts and the 2021 HIRL projected amounts. Regardless of the precise amount(s), however, price increases of this magnitude – and anywhere within this potential range -- within the highly cost-sensitive manufactured housing market, would be devastating to lower and moderate-income consumers who rely on the purchase price affordability of manufactured housing, in direct violation of federal law.

First, price increases of this magnitude would exclude millions of Americans from the manufactured housing market and from homeownership altogether. An NAHB analysis presented to the DOE Manufactured Housing Working Group in 2014, demonstrated that for every \$1,000.00 increase in the purchase price of a single-section manufactured home, 347,901 households are excluded from the market. Similarly, for a double-section home, a \$1,000.00 purchase price increase excludes 315,385 households from the market.²⁹ Extrapolating these amounts to the purchase price increases under the full, unmodified 2021 IECC calculated above, 2,748,417 households would be excluded from the single-section manufactured housing market (and homeownership altogether) and 4,068,466 households would be excluded from the double-section manufactured housing market.³⁰ In total, therefore, 6,816,883 households that could afford to purchase a manufactured home now, would be totally excluded from the market under the 2021 IECC. At a 2020 annual production level of 94,390 total homes, this degree of consumer exclusion represents a loss of more than 72 years of manufactured home production. Furthermore, for those excluded from the market altogether due to 2021 IECC-driven price increases, by definition, there would be no “life-cycle” savings whatsoever, and no payback period of any kind.

Extrapolating the same analysis to a median purchase price increase level 50% above that calculated by MHARR for the 2016 IECC, and 50% below the unmodified 2021 IECC to reflect the potential impact of DOE SNPR modifications, the corresponding purchase price increase levels would be \$6,279.00 for a single-section manufactured home and \$9,366.00 for a double-section manufactured home. At these amounts, more than 2,156,986 households would be excluded from the HUD Code single-section market, and more than 2,933,080 households would be excluded from the HUD Code double-section market, for a total of over 5,090,006 households, representing nearly 54 years of production at 2020 market levels.

²⁹ See, MHARR 2016 DOE Comments at p. 25.

³⁰ For single section manufactured homes: \$7,958.00 (minimum retail price increase) x 347,901 (excluded from the market per \$1,000.00 price increase) = 2,748,417 excluded. For double section manufactured homes: \$12,908 (minimum retail price increase) x 315,385 (excluded from the market per \$1,000.00 price increase) = 4,068,466 excluded

Even with substantial modifications to the 2021 IECC, therefore, the impact of the DOE proposed rule on the manufactured housing market, manufactured housing consumers, and manufactured housing producers, retailers and communities, including most especially smaller businesses operating at lower profit margins, would be extreme and extremely destructive. Insofar as it would decimate the affordable manufactured housing market, it should and indeed, must be rejected.³¹

Second, and in addition to this excessive and disproportionate level of total market exclusion that would result from the DOE proposed rule, cost increases of this magnitude would substantially reduce the number of lower and moderate-income purchasers who could qualify to finance a manufactured home purchase. Already, at current retail price levels, the vast majority of applications for manufactured home consumer purchase loans are denied. According to a May 2021 report by the U.S. Consumer Financial Protection Bureau (CFPB),³² only “a minority (27 percent) of consumers who applied for a loan to buy a manufactured home succeeded in obtaining financing.³³ Of those who did not obtain financing, the majority were denied.... An estimated 42 percent of all manufactured home purchase applications were denied, including 50 percent of chattel [loan] applications.... In comparison, only 7 percent of site-built [loan] applications were denied.”³⁴(Emphasis added). By increasing purchase price levels and corresponding cost burdens for consumers potentially remaining in the market, the number of potential manufactured housing purchasers who could qualify for consumer financing would be reduced even further, and the

³¹ DOE, in its August 26, 2021 SNPR, attempts to discredit NAHB’s market exclusion analysis, stating: “DOE reviewed the 2014 NAHB study referenced by MHARR and [the Alabama Manufactured Housing Association] and found the values cited by MHARR and AMHA from that study are not representative of the manufactured housing market’s prospective buyers. The NAHB study estimates the reduction in buyers assuming all American households intend to buy a home. *** Rather than analyzing all American households, DOE’s estimate in this [SNPR] calculates the number of households no longer able to purchase a manufactured home from the pool of households planning to purchase a manufactured home (which is smaller than the total number of American households).” Instead, DOE relies on a 2007 study by two academics concluding that manufactured housing consumers “are not nearly as price-sensitive” as projected, because the price of manufactured housing will still be below that of site-built housing and “low- and moderate-income families have few [other] low-cost choices for home ownership.” See, 86 Federal Register, supra at p. 47797, col.1. (Citations omitted, emphasis added). The sum total of DOE’s argument, accordingly, is: (1) they – and only they, can somehow magically divine the intent of potential home purchasers and can accurately forecast how many potential purchasers “plan” on purchasing a manufactured home, as contrasted with some other type of home; and (2) that those consumers “planning” to purchase a manufactured home will remain in the market because they have nowhere else to go for affordable housing/homeownership. These arguments are absurd on their face, and not worthy of serious consideration. First, there is absolutely no valid or legitimate empirical basis for DOE to assert who is – or is not – “planning” to purchase a manufactured home, either at current price levels or at the price levels that would result from DOE’s proposed standard. Second, DOE’s “no alternative” argument is a disgraceful corollary of “let them eat cake.” It insultingly assumes that because lower and moderate-income purchasers cannot typically afford higher-priced site-built and other types of homes, they will effectively be forced into remaining in the manufactured housing market due to the lack of alternatives. The reality of the matter, however, is that those consumers would more likely drop out of the housing market altogether and effectively be excluded from homeownership – a point that DOE would prefer to ignore.

³² DOE admits in its August 26, 2021 SNPR that it “is aware of the 2021 CFPB report but has not yet reviewed it in detail” and, “accordingly, did not incorporate any new or additional data from the 2021 CFPB report into” its SNPR analysis. See, 86 Federal Register, supra at p. 47758, col. 1.

³³ This contrasts with a success rate of “74 percent of [loan] applications for site-built homes.” See, CFPB Report, supra at p. 4.

³⁴ See, CFPB Report, supra at p. 15. Chattel, or personal property manufactured home purchase loans, moreover, in 2020, represented 78% of all manufactured home placements, according to the U.S. Census Bureau.

affordability of manufactured housing in relation to site-built and other types of housing would disappear, again in violation of existing law.

Furthermore, as the May 2021 CFPR Report emphasizes, the higher level of rejection rates within the chattel or personal property manufactured housing purchase loan sector – which will be significantly exacerbated by the proposed DOE energy standards – will disproportionately impact and harm “Hispanic white, Black and African American and American Indian and Alaska Native borrowers” who make up larger shares of [manufactured home] chattel borrowers than among ... site-built loan borrowers.”³⁵ This will especially be the case for “Black and African American borrowers,” who are “overrepresented in [manufactured home] chattel lending compared to site-built.”³⁶

In summary, then, on cost grounds alone, the IECC, modified or unmodified, is not an appropriate or legitimate code for affordable manufactured homes and cannot be made into an appropriate or legitimate code for manufactured homes through arbitrary and haphazard “modifications.” Furthermore, the IECC has been developed – including in its 2021 iteration – pursuant to a voting system that gave final authority over its provisions to state and local building code officials who are not responsible for the development of manufactured housing standards and have not been responsible for such standards since the enactment of the first federal manufactured housing standards law, nearly 50 years ago. Accordingly, the IECC is fundamentally and organically not an appropriate code for manufactured housing and cannot be transformed into one or shoehorned by DOE through changes and modifications around its periphery. Rather, the only appropriate code for manufactured housing is the HUD Code, subject to all applicable law governing its substance and development procedures.

D. DOE’S “TIER ONE” STANDARDS WOULD AFFECT ONLY A FRACTION OF THE MARKET AND COULD BE EXCLUDED FROM A FINAL RULE

DOE, in its August 26, 2021 SNPR, attempts to paper-over these damning purchase price impacts by – at least for now -- bifurcating its proposed standard into two separate “tiers.” As explained by DOE, “under the tiered proposal, two sets of standards would be established.... Tier 1 would apply to manufactured homes with a manufacturer’s retail list price of \$55,000.00 or less,”³⁷ applying allegedly less costly and more highly-modified 2021 IECC measures to such homes. Tier 2 “would apply to manufactured homes with a manufacturer’s retail list price above \$55,000.00”³⁸ and incorporate a broader range of more costly 2021 IECC measures. Significantly, though, DOE’s August 26, 2021 SNPR includes, as an “alternative proposal,” an “untiered’ approach, wherein energy conservation standards for all manufactured homes would be based only on the 2021 IECC.”³⁹ Put differently, this means that despite all the talk of a “tiered” system, and the use of a tiered proposal to mislead and lure stakeholders, the public and the MHCC into supporting the DOE SNPR, a final rule in this matter could ultimately have no separate cost-based

³⁵ Id. at p. 31.

³⁶ Id.

³⁷ See, 86 Federal Register at pp. 47745-47746.

³⁸ Id. at p. 47746, col.1

³⁹ Id.

“tiers” at all, and subject all manufactured homes to high-cost market-crushing IECC-based energy standards. For this reason alone, the MHCC should reject the DOE proposed rule. But even assuming that the “tiered” DOE proposal is not a tactical deception that will ultimately be withdrawn and discarded, the August 26, 2021 proposed standard would still result in grievous harm to the manufactured housing market, manufactured housing consumers and the manufactured housing industry, with disproportionately destructive impacts on smaller industry producers, retailers, communities and other smaller businesses.

First, the selection of a retail list price of \$55,000.00 as the demarcation line between the “Tier1” proposed standards and the much harsher and more costly “Tier 2” standards appears to be arbitrary and capricious,⁴⁰ and would subject the overwhelming majority of all manufactured homes to the “Tier 2” standards. The most recent U.S. Census Bureau data for manufactured housing, found that the “average” sales price of a single-section manufactured home in 2020, was \$57,300.00.⁴¹ Meanwhile, the “average” price of a double-section manufactured home was \$108,500.00 and the “average” price of all manufactured homes was \$87,000.00.⁴² With material costs having increased in 2021, moreover, these amounts are likely substantially higher today. The \$55,000.00 demarcation line, accordingly, was in 2020 – and is in 2021 -- less than the average price of a single-section manufactured home. Single-section homes, in turn, comprise less than 45% of the total HUD Code manufactured housing market. The overwhelming majority of the HUD Code market in 2021, therefore, is comprised of homes priced in excess of \$55,000.00. As a result, the more costly and burdensome “Tier 2” standards will impact the overwhelming majority of manufactured homes and manufactured housing consumers, with the devastating market consequences detailed above. Accordingly, the “two-tiered” system proposed by DOE – ostensibly to address the devastating market consequences of harsh IECC standards, even as modified by DOE – will have no such ameliorative impact.

Second, and as noted above, at current price levels, only “27 percent of consumers who applied for a loan to buy a manufactured home succeeded in obtaining financing” according to CFPB. This means, conversely, that among households actually seeking to purchase a manufactured home, some 73% of prospective purchasers were denied financing and, presumably, were unable to purchase a HUD Code home (or any home). Insofar, then as the 94,390 HUD Code homes actually purchased in 2020 represent just 27% of the 349,592 homes that potentially could have been purchased in 2020 if all such loan applications had been approved, the 73% of potential manufactured homebuyers rejected for purchase-money financing, represent additional potential sales of 255,202 homes⁴³-- which were not manufactured and sold in 2020 because of the

⁴⁰ The Administrative Procedure Act (APA) authorizes courts to invalidate, among other things, agency rules that are “arbitrary capricious, an abuse of discretion or otherwise not in accordance with law.” 5 U.S.C. 706(2)(A).

⁴¹ See, U.S. Census Bureau, “Cost and Size Comparisons: New Manufactured Homes and New Single-Family Site-Built Homes, 2014-2020,” attached hereto as Attachment 5.

⁴² DOE, in its August 26, 2021 SNPR similarly admits that it is “aware” of the existence of these figures, but “has not reviewed [them] in detail or incorporated these new data into the analysis presented” in its SNPR. See, 86 Federal Register, supra, at p. 47758, col. 2.

⁴³ The 2021 CFPB Report shows a manufactured home purchase loan approval rate of 27%. Assuming for present purposes that all manufactured homes purchased in 2020 were financed, the 94,390 manufactured homes purchased in 2020 are 27% of 349,592. Thus, 349,592 minus 94,390 equals 255,202 homes that could have potentially been purchased if all loan applications had been approved and represents the market loss due to current pricing levels – a market loss that will be significantly exacerbated by the high-cost DOE proposed energy standards.

unavailability of financing for lower and moderate-income consumers at those existing price levels. Obviously, then, if manufactured home purchase price levels are substantially increased by punitive and discriminatory DOE energy standards, the approval rate for HUD Code home loans (with all other factors being held equal) would fall even further, thereby further depressing sales and utilization levels that continue to run far below historic norms.

Nor do any of these cost calculations even begin to consider the likely impact of future IECC code changes. Insofar as EISA section 413 mandates continuing IECC-based standards updates, and the IECC is currently updated on a three-year schedule, future updates will require further modifications of the DOE standards which, in turn, will require engineering updates and related HUD enforcement system approvals for manufacturers, all of which will entail substantial additional costs and even further destructive market disruptions – none of which has been or will be captured by DOE’s alleged regulatory cost analysis.

Again, therefore, the regulatory structure and standards envisioned by DOE would be destructive of the manufactured housing market and would destroy the fundamental affordability of manufactured housing in violation of existing federal law.

III. CONCLUSION

For all the foregoing reasons, as well as those which will be further delineated in subsequent MHARR comments, the MHCC should reject the proposed manufactured housing energy standards set forth in DOE’s August 26, 2021 SNPR as being inappropriate for manufactured housing, excessively costly in violation of applicable law, destructive of the affordable manufactured housing market, not cost-justified, and fundamentally arbitrary, and should submit comments reflecting that rejection to DOE in advance of the existing (or any extended) comment deadline.

Sincerely,

Mark Weiss
President and CEO

cc: Hon. Jennifer Granholm
Hon. Marcia Fudge
Ms. Shalanda Young (OMB)
HUD Code Industry Producers, Retailers and Communities

