



Manufactured Housing Association for Regulatory Reform

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February 16, 2022

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

Hon. Jennifer Granholm
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121

Re: Energy Conservation Program: Energy Conservation Standards for
Manufactured Housing (EERE-2009-BT-BC-0021/RIN 1904-AC11)

Dear Secretary Granholm:

The Manufactured Housing Association for Regulatory Reform (MHARR) is a national trade organization representing the interests of manufactured housing producers subject to federal regulation by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000 (42 U.S.C. 5401, et seq.) and by the U.S. Department of Energy (DOE) pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA) (42 U.S.C. 17071).

On August 26, 2021, DOE, pursuant to EISA section 413, published proposed energy conservation standards for manufactured homes (86 Federal Register, No. 163, p. 47744, et seq.). Those proposed standards, subsequently, were revised slightly pursuant to a Notice of Data Availability (NODA) published by DOE on October 26, 2021 (86 Federal Register, No. 204, p. 59042, et seq.). MHARR, on behalf of its members, submitted comments objecting to the proposed energy standards rule – both as originally published and as subsequently modified – on October 25, 2021 and November 22, 2021.

In both the Supplemental Notice of Proposed Rulemaking (SNPR) concerning the proposed manufactured housing energy conservation standards published on August 26, 2021 and the October 26, 2021 NODA, DOE expressly stated and affirmed that its cost-benefit analysis for the proposed standards included consideration of alleged global benefits of reductions in greenhouse gas emissions supposedly attributable to the proposed standards, utilizing the “Social Cost of Carbon” construct and related values as mandated by Executive Order 13990, issued by President Biden on January 20, 2021 (86 Federal Register, No. 14, p. 7037, et seq.).¹ The public

¹ See, 86 Federal Register (August 26, 2021), supra at p. 47815, col. 1: “DOE used the estimates for the social cost of greenhouse gasses (‘SC-GHG’) from the most recent update of the Interagency Working Group (‘IWG’) from [the]

comment period for the August 26, 2021 SNPR and the October 26, 2021 NODA closed on November 26, 2021. A public comment period pertaining to a Draft Environmental Impact Statement concerning the proposed manufactured housing standards is currently open until February 28, 2022 (87 Federal Register, No. 10, p. 2359, et seq.).

On February 11, 2022, Judge James D. Cain, United States District Judge for the Western District of Louisiana, in *Louisiana v. Biden*, Case No. 2:21'CV-01074, ruled that the Social Cost of Carbon estimates and valuations relied upon by DOE in this rulemaking,² among others, are likely unlawful, and ordered DOE not to rely upon or utilize such estimates and valuations. Specifically, Judge Cain, in his February 11, 2022 Memorandum Ruling and attached order,³ prohibits DOE and you, as DOE Secretary,⁴ from:

- (1) Adopting, employing, treating as binding, or relying upon the work product of the Interagency Working Group (IWG);
- (2) Independently relying upon the IWG's methodology considering global effects, discount rates and time horizons;
- (3) Adopting, employing, treating as binding or relying upon any Social Cost of Greenhouse Gas estimates based on global effects or that otherwise fails to comply with applicable law;
- (4) Adopting, employing, treating as binding, or relying upon any Social Cost of Greenhouse Gas estimates based on global effects or that otherwise fails to comply with applicable law;
- (5) Adopting, employing, or treating as binding, or relying upon any estimate of Social Cost of Greenhouse Gases that does not ... comply with Circular A-4; and
- (6) Relying upon or implementing Section 5 of Executive Order 13990 in any manner.

'Technical Support Document, Social Cost of Carbon, Methane and Nitrous Oxide Interim Estimates under Executive Order 13990.' (February 2021). DOE has determined that the estimates from the February [SCC] TSD ... are based upon sound analysis and provide well founded estimates for DOE's analysis of the impacts and reductions of emissions anticipated from the proposed rule." (Emphasis added). See also, 86 Federal Register (October 26, 2021), supra at p. 59043, col. 3: "Further, DOE calculates the value of the reduced emissions of CO₂, CH₄ and N₂O (collectively, greenhouse gasses or GHGs) using a range of values per metric ton of pollutant, consistent with the interim estimates issued in February 2021 under Executive Order 13990." (Emphasis added).

² Judge Cain's Memorandum Ruling specifically cites and references the DOE manufactured housing energy conservation rulemaking as an instance of federal agency reliance upon the updated 2021 SCC values and Executive Order 13990. See, Memorandum Ruling at pp. 16-17.

³ See, February 11, 2022 Order, attached hereto.

⁴ See, attached February 11, 2022 Order, naming both "Jennifer Granholm" and the "U.S. Department of Energy" as named and enjoined defendants in the *Louisiana v. Biden* litigation.

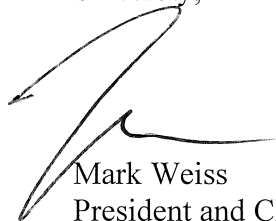
Insofar as both the August 26, 2021 SNPR and the October 26, 2021 NODA expressly and elementally rely upon greenhouse gas emission reduction values as updated by the IWG in February 2021 (including global benefit calculations and estimates) pursuant to Executive Order 13990, Judge Cain's order specifically enjoins DOE from taking any further action in this matter based on the current proposed rule and the current rulemaking record.

Further, to the extent that the Social Cost of Carbon IWG estimates are -- and, to date, have been -- an elemental aspect of the current rulemaking and a fundamental component of DOE's alleged cost-benefit analysis in this matter, and insofar as a valid and legitimate cost-benefit analysis for any such rule is mandated procedurally by the Administrative Procedure Act (APA) and substantively by EISA section 413, this entire matter, consistent with Judge Cain's ruling and applicable law, must be withdrawn from further consideration and reconsidered by DOE, ab initio, using cost benefit calculations that do not rely in any manner on the Social Cost of Carbon calculations of the IWG and are consistent with Office of Management and Budget Circular A-4.

Such a fundamental re-analysis and reconsideration is especially crucial in this rulemaking which, as is emphasized in MHARR's previous comments, would involve crippling price increases for the nation's premier source of non-subsidized affordable housing and, according to MHARR's calculations, based on National Association of Home Builders (NAHB) economics metrics, could exclude *millions* of lower and moderate-income American families from the manufactured housing market and from homeownership altogether, directly contrary to the housing, home finance and equity policies of President Biden.

In accordance with all of the foregoing, MHARR reserves its right to take further action against DOE, as necessary, to seek appropriate relief in the event that DOE attempts to proceed further in this matter on the current state of the record.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Weiss', with a long, sweeping underline that extends to the left and then curves back under the name.

Mark Weiss
President and CEO

cc: Hon. Joseph R. Biden
Hon. Merrick Garland
Hon. Marcia Fudge
Hon. Shalanda Young
HUD Code Manufactured Housing Industry Members and Consumers

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

STATE OF LOUISIANA ET AL

CASE NO. 2:21-CV-01074

VERSUS

JUDGE JAMES D. CAIN, JR.

JOSEPH R BIDEN JR ET AL

MAGISTRATE JUDGE KAY

ORDER

For the reasons set forth in the Memorandum Ruling,

IT IS ORDERED that the Motion for Preliminary Injunction (Doc. 53) is hereby **GRANTED**.

IT IS THEREFORE ORDERED that the Defendants,¹ Cecilia Rouse, Shalanda Young, Kei Koizumi, Janet Yellen, Deb Haaland, Tom Vilsack, Gina Raimondo, Xavier Becerra, Pete Buttigieg, Jennifer Granholm, Brenda Mallory, Michael S. Regan, Gina McCarthy, Brian Deese, Jack Danielson, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Transportation, U.S. Department of Agriculture, U.S. Department of Interior, National Highway Traffic Safety Administration, and the Interagency Working Group on Social Cost of Greenhouse Gases are ENJOINED and RESTRAINED from:

- (1) adopting, employing, treating as binding, or relying upon the work product of the Interagency Working Group (“IWG”);
- (2) enjoining Defendants from independently relying upon the IWG’s methodology considering global effects,

¹ With the exception of President Biden as he is not an agency under the Administrative Procedures Act.

discount rates, and time horizons; and (3) ordering Defendants to return to the guidance of Circular A-4 in conducting regulatory analysis;

- (2) Adopting, employing, treating as binding, or relying upon any Social Cost of Greenhouse Gas estimates based on global effects or that otherwise fails to comply with applicable law;
- (3) Adopting, employing, treating as binding, or relying upon any estimate of Social Cost of Greenhouse Gases that does not utilize discount rates of 3 and 7 percent or that otherwise does not comply with Circular A-4; and
- (4) Relying upon or implementing Section 5 of Executive Order 13990 in any manner.

IT IS FURTHER ORDERED that this Order shall become effective immediately and shall remain in effect, pending the final resolution of this case or until further orders of this Court, the United States Court of Appeals for the Fifth Circuit, or the United States Supreme Court.

IT IS FURTHER ORDERED that no security bond shall be required under Federal Rule of Civil Procedure 65.

THUS DONE AND SIGNED in Chambers on this 11th day of February, 2021.

A handwritten signature in black ink, appearing to read "James D. Cain, Jr.", is written over a horizontal line. The signature is stylized with large loops and flourishes.

JAMES D. CAIN, JR.
UNITED STATES DISTRICT JUDGE