

May 4, 2022

VIA FEDERAL EXPRESS

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

Re: Energy Conservation Program: Proposed Energy
Conservation Standards for Manufactured Housing

Dear Secretary Granholm:

I am writing on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade association representing the views and interests of producers of federally-regulated manufactured housing. MHARR has previously submitted extensive comments to the U.S. Department of Energy (DOE) regarding DOE-proposed energy conservation standards for manufactured housing pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA) (42 U.S.C. 17071) and related Environmental Impact Statements pursuant to the National Environmental Policy Act (NEPA).

DOE published proposed manufactured housing energy conservation standards on August 26, 2021, together with a modified proposed rule and supplementary “analysis” on October 26, 2021. Pursuant to EISA section 413, the DOE-proposed standards were contemporaneously submitted by the U.S. Department of Housing and Urban Development (HUD) to the Manufactured Housing Consensus Committee (MHCC) established by the Manufactured Housing Improvement Act of 2000 (42 U.S.C. 5403). The MHCC considered the DOE-proposed standards during a series of meetings conducted on September 23, 2021, October 8, 2021, October 20, 2021, and November 19, 2021.

Both as published for public comment and as presented to the MHCC over the entire course of its deliberations, the DOE proposed standards were based on a so-called “tiered approach” as DOE’s “primary proposal.” (Emphasis added). Under that “tiered” proposal, as described by DOE, “a subset of the energy conservation standards would be less stringent for certain manufactured homes in light of the cost-effectiveness considerations required by statute.” The retail purchase price threshold for manufactured homes subject to the less stringent “Tier 1” standards was initially set at \$55,000 (later changed to \$63,000). By contrast, DOE’s proposed rule and October 26, 2021 “Notice of Data Availability” (NODA) characterized an “untiered approach,” wherein energy conservation standards for all manufactured homes would be based

“only on the 2021 [International Energy Conservation Code],” with significantly higher purchase price impacts, as only an “alternate proposal.”

Based on DOE’s designation of the “tiered approach” as its “primary proposal,” the MHCC, on November 23, 2021, submitted comments opposing the proposed rule, stating, in part: “The MHCC believes that the proposal in its current state is flawed and should not be implemented ... due to its lack of proper/accurate cost benefit analysis, consideration for manufactured home construction methods, transportation constraints and testing/enforcement criteria.”

Now, though, that the entire public notice and comment process for the proposed rule has been completed, with no further opportunity for public input, DOE has announced, in its final Environmental Impact Statement, published on April 8, 2022, that it is switching its “primary” and “alternate” proposals as originally published – and as presented for public comment – and is designating the much-higher-cost “un-tiered” criteria as its “preferred” proposal. (See, April 8, 2022 EIS at pp. 2-10 and C-6: “DOE has identified the untiered standards as [its] preferred alternative” for “establishing energy conservation [standards] for manufactured housing.”)

Based on DOE’s consistent track record of duplicity in this rulemaking, as exhaustively documented by MHARR in August 8, 2016 comments to DOE on a prior iteration of the proposed rule, MHARR anticipated exactly such a move by DOE, warning, in comments submitted to the MHCC on September 15, 2021:

“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.’ *** 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.’ 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 ‘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.”

(Emphasis added). And now, DOE – through a one-sentence statement buried within a 400+ page document -- has fulfilled MHARR’s prediction.

This de facto “bait and switch” after the conclusion of the public comment period for the proposed rule is wholly reprehensible and yet further evidence of DOE’s ongoing bad faith and misconduct in this matter. As MHARR has documented from the outset, this entire rulemaking has been corrupted by DOE deceit and manipulation, and must be terminated in its present iteration. In its place, DOE should engage in a legitimate rulemaking, in conjunction with HUD and the MHCC, which complies with all substantive and procedural requirements of applicable law. As MHARR has advised the White House Task Force on Manufactured Housing, it stands

ready to participate in such a legitimate process, but will strenuously oppose any effort to implement the current corrupted proposed energy standard rule.

Very truly yours,

Mark Weiss
President and CEO

cc: Hon. Joseph R. Biden
Hon. Marcia Fudge
White House Manufactured Housing Task Force Members
Manufactured Housing Industry Producers, Retailers and Communities