



Manufactured Housing Association for Regulatory Reform

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November 9, 2022

VIA ELECTRONIC SUBMISSION

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

Re: Energy Conservation Standards for Manufactured Housing

Dear Members of the Manufactured Housing Consensus Committee:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR represents independent producers of manufactured housing from all regions of the United States.

I. BACKGROUND

On September 21, 2022, the U.S. Department of Housing and Urban Development (HUD) published notice of Manufactured Housing Consensus Committee (MHCC) meetings in October and November 2022, to ostensibly develop recommendations to “align”¹ the Federal Manufactured Housing Construction and Safety Standards (FMHCSS) administered by HUD² with the energy conservation standards for manufactured housing adopted by the U.S. Department of Energy (DOE) on May 31, 2022.³ For the following reasons, however, the final manufactured housing energy conservation final standard adopted by DOE cannot lawfully be incorporated within – or summarily “aligned” with – the HUD FMHCSS standards consistent with the law governing both those standards and the HUD manufactured housing program. As a result, the MHCC should adopt and submit to HUD resolutions which:

- (1) Reject any such incorporation (or summary “alignment”) of the DOE final standard into the HUD Part 3280 standards; and

¹ See, 87 Federal Register, No. 182 (September 21, 2022), “Notice of Federal Advisory Committee Meeting; Manufactured Housing Consensus Committee,” at p.57712, col. 2 (“Given that manufacturers have to comply with the Department of Energy’s Energy Conservation Standards for Manufactured Housing and the [FMHCSS], and HUD’s role in regulating the manufactured housing industry, HUD considers it imperative to promptly proceed with a rulemaking to align the [FMHCSS] with the Department of Energy’s Energy Conservation Standards for Manufactured Housing.”)

² See, 24 C.F.R. 3280.

³ See, 87 Federal Register, No. 104 (May 31, 2022), “Energy Conservation Program; Energy Conservation Standards for Manufactured Housing,” at p.32728, et seq.

- (2) Affirm that any such DOE standard, which cannot lawfully be and is not incorporated within the FMHCSS standards, cannot be enforced pursuant to or subject to inspection or consumer complaint procedures applicable to FMHCSS standards under 24 C.F.R. 3282.

The bases for this position are set forth in greater detail below.

II. COMMENTS

A. THE DOE FINAL ENERGY STANDARD CANNOT LAWFULLY BE INCORPORATED WITHIN THE FMHCSS

As DOE recognized in a previous rulemaking, the statutory authority for the promulgation and adoption of its May 31, 2022 final energy standards for manufactured homes, is completely separate, distinct and independent from the statutory authority for the promulgation, adoption and enforcement of FMHCSS standards by HUD.⁴ DOE thus developed, proposed and adopted the May 31, 2022 manufactured housing energy standards pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA).⁵ In relevant part, that section directs the Secretary of DOE, “not later than four years after December 19, 2007,” to establish, “by regulation, “standards for energy efficiency in manufactured housing.” Section 413, however, by its express terms, does not mandate, direct, authorize or even mention the incorporation, adoption or “alignment” of any such DOE standards into or within the FMHCSS standards.⁶ Nor does it establish an independent enforcement mechanism for DOE to investigate, ascertain, or determine compliance with those standards when they go into effect, stating only that “any manufacturer of manufactured housing that violates a provision of the” DOE energy standards, “is liable to the United States for a civil penalty in an amount not exceeding 1 percent of the manufacturer’s retail list price of the manufactured housing.”

In contrast to the DOE manufactured housing energy standard, FMHCSS standards are developed, promulgated, adopted and enforced pursuant to the National Manufactured Housing

⁴ C.f. 85 Federal Register, No. 31 (February 14, 2020), “Energy Conservation Program for Appliance Standards; Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment,” at p. 8676, col. 1 (“With respect to MHARR’s suggestion to apply the Process Rule’s provisions to the separate rulemaking on manufactured housing [energy standards] that is currently underway ... we note that the statutory authorities for manufactured housing and the appliance [energy] standards that are addressed by this final rule are in separate chapters within Title 42 of the U.S. Code and have no relationship with each other...”) (Emphasis added.)

⁵ See, 42 U.S.C. 17071.

⁶ Significantly, Congress could have statutorily directed the verbatim incorporation of the DOE standards within the FMHCSS standards – or the “alignment” of the FMHCSS standards with the DOE standards – if it had wanted to do so. For example, Congress, in the Formaldehyde Standards for Composite Wood Products Act of 2010 (P.L. 111-199), directed the Environmental Protection Agency (EPA) to develop and adopt enhanced formaldehyde emission standards for certain specified wood products. It further directed HUD “to update its regulation addressing formaldehyde emission standards” for manufactured homes “to ensure consistency with” the new EPA formaldehyde standards “not later than 180 days” after the promulgation of the EPA standards. See, 84 Federal Register, No. 56 (March 22, 2019) “Streamlining and Aligning Formaldehyde Emission Control Standards for Certain Wood Products in Manufactured Home Construction with Title VI of the Toxic Substance Control Act,” at p. 10739, col. 1. No comparable directive, however, is contained within 42 U.S.C. 17071.

Construction and Safety Standards Act of 1974 (1974 Act), as amended by the Manufactured Housing Improvement Act of 2000 (2000 reform law). Those laws prescribe: (1) the subject areas that can be addressed by FMHCSS standards; (2) the criteria and considerations that relate to and govern the promulgation and adoption of such standards; (3) the procedures that must be followed to promulgate and adopt such standards; (4) a comprehensive mechanism for inspections to determine compliance with those standards; and (5) remediation and consumer protection provisions.

As one of their highest policy priorities, the laws governing the FMHCSS standards and the HUD manufactured housing program require that FMHCSS standards be cost effective and maintain the purchase price affordability of manufactured housing. The 1974 Act, as amended, therefore, affirmatively mandates that the MHCC in recommending FMHCSS standards and HUD, in adopting FMHCSS standards:

- (1) “Facilitate the availability of affordable manufactured homes;”
- (2) “Increase homeownership for all Americans;”
- (3) “Ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the Federal standards and their enforcement;” and
- (4) “Consider the probable effect of such standard on the cost of the manufactured home to the public;”

(Emphasis added). Applicable law, accordingly, unambiguously requires that each and every FMHCSS within the HUD Code meet these criteria, among others. This includes, moreover, outside or “foreign” standards incorporated within the Part 3280 FMHCSS standards, which must independently satisfy and comply with these and all other applicable statutory criteria.

As MHARR has previously demonstrated to the MHCC and in the DOE rulemaking, however, the DOE final manufactured housing energy standards do not and cannot satisfy the cost-effectiveness and cost-benefit balancing criteria of the 1974 Act as amended.⁷ By DOE’s own admission in the rulemaking process, the final energy standard would result in a retail-level price increase of nearly \$6,000 for a double-section home in the most stringent thermal zone (and would actually be even higher, according to MHARR data). By contrast, according to DOE, the final standard would “save ... \$475 per year in multi-section homes on their utility bills.”⁸ At that rate, *even assuming DOE’s figures are accurate*, a homeowner would have to wait nearly 13 years to recoup the cost of the DOE energy standards, yet industry data indicates that the average ownership tenure of a manufactured home is significantly shorter. Moreover, and more importantly, however, the cost increase attributable to the energy standard, as calculated by DOE, *necessarily* understates its full cost in multiple respects, as MHARR has previously demonstrated. Thus, among other things, DOE’s cost estimate:

⁷ See, detailed analysis set forth in MHCC comments submitted by MHARR dated September 15, 2021 and October 1, 2021. See also, MHARR comments to DOE dated February 25, 2022, among others.

⁸ See, DOE News Release, May 18, 2022, “DOE Updates Mobile Home Efficiency Standards to Lower Household Energy Bills,” at p. 2., attached hereto as Attachment 1.

- (1) Fails to include the cost of enforcement, testing and regulatory compliance;⁹
- (2) Fails to account for the full cost effect of rampant inflation;
- (3) Fails to account for the cost impact of triennial International Energy Conservation Code (IECC) updates; and
- (4) Fails to account for the cost of regulatory uncertainty related to such updates and arbitrary DOE modifications and alterations to IECC code provisions.

Thus, based on the cost data that exists, as well as the cost data that DOE has failed to develop but will obviously and substantially increase the cost of the DOE standard and simultaneously negate any conceivable cost-benefit that such a standard could have for any consumer anywhere in the United States, the DOE standard fails to meet the statutory criteria of the 1974 Act, as amended, for FMHCSS standards and, as a matter of law, cannot be incorporated, in its present form, within the FMHCSS standards.¹⁰

Moreover, in the absence of an express statutory directive mandating either the verbatim incorporation of the DOE standard within the HUD Code, or the “alignment” of the FMHCSS standards with the DOE standard -- as was the case with EPA formaldehyde standards noted above -- any altered or modified (“aligned”) variant of the DOE final standard slated for incorporation within the FMHCSS standards, by law, would need to be published as a proposed rule, with substantiating cost-benefit calculations, and made available for public comment as with any other proposed FMHCSS standard.¹¹ Accordingly, any modification of the DOE standard recommended by the MHCC should and must be subject to further rulemaking proceedings in accordance with both the 1974 Act, as amended and the Administrative Procedure Act (APA).

Regardless of any further recommendation that it may make, however, the MHCC should go on record with a statement:

⁹ DOE has yet to propose an enforcement mechanism or system for its final manufactured housing standards, and has yet to fully account for the costs arising from such enforcement, despite asserting in another energy standards rulemaking, that “coverage determination[s], test procedure[s] and energy conservation standard rulemakings are interdependent.” See, 86 Federal Register, No. 127 (July 7, 2021), “Energy Conservation Program for Appliance Standards; Procedures, Interpretations and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment,” at p. 35672, col. 2.

¹⁰ Any such wholesale incorporation, moreover, would be clearly inconsistent with Congress’ intent in adopting EISA section 413. Obviously, with its standards and enforcement system for manufactured housing fully established, Congress, if it had wanted to, could have expressly provided for HUD enforcement of the DOE standards. It did not do that, however, or even hint at such a result. Consequently, HUD adoption and enforcement of the DOE standard, as published, would be inconsistent with EISA section 413 as written and similarly in violation of Congress’ unambiguous intent.

¹¹ In accordance with the 1974 Act, as amended, full MHCC and notice and comment procedures apply to the promulgation and adoption of all FMHCSS standards, absent an “emergency” as defined by the Act. Under 42 U.S.C. 5403(b)(5). That section provides, in relevant part, “If the Secretary determines, in writing, that such action is necessary to address an issue on which the Secretary determines that the consensus committee has not made a timely recommendation following a request by the Secretary, or in order to respond to an emergency that jeopardizes the public health or safety, the Secretary may issue an order that is not developed under the procedures set forth in subsection (a) or in this subsection.” There has been no such assertion, however, that the DOE energy conservation rule or any variant thereof addresses a matter which “jeopardizes the public health or safety,” nor could any such claim be legitimately, validly, or plausibly asserted.

- (1) Declaring that the May 31, 2022 final standard adopted by DOE is not appropriate for manufactured housing;
- (2) Declaring that the May 31, 2022 DOE final standard is inconsistent with the construction of manufactured homes; and
- (3) Declaring that the May 31, 2022 DOE final standard would not be cost-beneficial and would be destructive of the fundamental affordability of manufactured housing in violation of applicable federal law.

The MHCC offered similar comments with respect to the proposed DOE manufactured housing energy standard and should be consistent by reiterating its position with respect to the May 31, 2022 DOE final published standard.

B. UNINCORPORATED “FOREIGN” STANDARDS CANNOT BE ENFORCED BY HUD UNDER PART 3282

Further, HUD’s Procedural and Enforcement Regulations (PER) – and the regulatory enforcement apparatus established by those regulations -- by law, pertain specifically and exclusively to the enforcement of FMHCSS standards. By contrast, the PER regulations are not an open warrant that can be applied to or used to enforce any standard, for any purpose, from any agency.

Specifically, 24 C.F.R. 3282.1 provides, in relevant part:

“(b) The Secretary is also authorized by the Act to conduct inspections and investigations necessary to enforce the standards, to determine that a manufactured home fails to comply with an applicable standard or contains a defect or an imminent safety hazard, and to direct the manufacturer to furnish notification thereof, and in some cases, to remedy the defect or imminent safety hazard.

(Emphasis added). The PER regulations, in turn, define “standards” to include only FMHCSS standards adopted under authority of the 1974 Act, as amended. Thus, PER section 3282.7(hh) states:

(hh) *Standards* means the Federal manufactured home construction and safety standards promulgated under section 604 of the Act, 42 U.S.C. 5403, as part 3280 of these regulations.

Based on these provisions, HUD and HUD’s manufactured housing inspection, compliance and enforcement system cannot be used to implement the DOE May 31, 2022 final standard because the May 31, 2022 DOE final standard is not at present an FMHCSS standard and because the May 31, 2022 DOE final standard, as promulgated by DOE, cannot be adopted as an FMHCSS standard, insofar as it clearly violates that cost-benefit and other express affordability mandates of the 1974 Act, as amended. Nor can the HUD regulatory enforcement system be applied to any variant of the DOE energy standard unless and until any such variant is adopted as a final FMHCSS standard with full notice and comment rulemaking and the development and publication of full cost-benefit information and analyses.

III. CONCLUSION

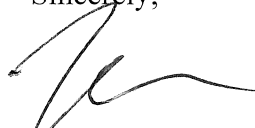
For all the foregoing reasons, MHARR urges the MHCC to:

- (1) Reject the incorporation of the DOE May 31, 2022 final manufactured housing energy standard within the FMHCSS;
- (2) Adopt a statement rejecting the May 31, 2022 final DOE manufactured housing energy standard as being inappropriate for manufactured homes and destructive of the affordability of manufactured housing; and
- (3) Assert that HUD adoption of any modified or altered DOE manufactured housing energy standard must be based on a full and valid analysis of all applicable costs and a finding of lawful cost-benefit in accordance with the 1974 Act, as amended, as well as compliance with all applicable procedural requirements of federal law.

Given the complexity of this matter, MHARR will further explain its position at the upcoming November 15-17, 2022 MHCC meeting.

Thank you in advance for your consideration of this matter.

Sincerely,



Mark Weiss
President and CEO

cc: Hon. Marcia Fudge
Hon. Jennifer Granholm
Hon. Julia Gordon
HUD Code Manufactured Housing Industry Members

Department of Energy

DOE Updates Mobile Home Efficiency Standards to Lower Household Energy Bills

MAY 18, 2022



[Energy.gov](#) » DOE Updates Mobile Home Efficiency Standards to Lower Household Energy Bills

New Initiative Will Save Owners and Renters \$10 Billion on Utility Bills, Reduce Carbon Pollution, Ensure More Access to Affordable Mobile Homes

WASHINGTON, D.C. — The U.S. Department of Energy (DOE) today adopted new energy standards for manufactured housing — commonly referred to as single-section and multi-section mobile homes — that will help consumers save hundreds of dollars on their annual utility bills and slash carbon emissions by 80 million metric tons, which is equivalent to the energy use of over 10 million homes in one year. Once implemented, the new efficiency standards, which include updates to insulation and sealing requirements, will help bring the country closer to reaching President Biden’s goal of net-zero emissions by 2050.

“DOE’s new energy efficiency rules will help save the 17 million Americans residing in mobile homes up to \$475 per year on average on their utility bills,” said **U.S. Secretary of Energy Jennifer M. Granholm**. “The rules will hold manufacturers of these U.S. homes to cost-saving efficiency standards, giving residents more

comfortable living environments and a much-needed break on their annual utility costs, while delivering cleaner air for their communities.”

The new efficiency rules will require all new manufactured homes to meet standards for size and climate-dependent energy conservation measures based on the insulation and sealing requirements in the most recent version of the International Energy Conservation Code (IECC 2021). Compliance is required for new manufactured homes produced beginning one year after the rule is published in the Federal Register, approximately late May 2023. DOE was under a court order to update these standards by May 16, 2022.

According to DOE estimates from the final rule, individuals can expect to save on average \$177 per year in single-section homes and \$475 per year in multi-section homes on their utility bills. Cumulatively, consumers will save \$551 million on utility bills each year and a total of \$10 billion over the next 30 years. In the same 30-year window, DOE projects a reduction in carbon and methane emissions equivalent to the annual emissions of 11.7 million homes.

Purchasers of both single- and multi-section manufactured homes are expected to save more on their utility bills than the additional money that is added to their monthly mortgage, with single-section purchasers recouping the additional money purchasers put down up front to secure the loan (approximately \$70) within 10 months. DOE adopted a tiered approach, with different standards for single- and multi-section manufactured homes, in order to balance the important objectives of energy efficiency, cost savings, upfront affordability, and housing supply challenges.

Additional Efficiency and Affordability Measures for Manufactured Homes

In addition to the new efficiency rules, DOE is supporting the establishment of credit-enhancement mechanisms, such as loan-loss reserves, to drive down the cost of financing for manufactured housing and increase access to affordable housing. DOE will provide technical assistance and guidance, facilitate outreach to lenders and agencies, and work with state partners to develop replicable state models that ensure access to affordable, efficient manufactured homes.

DOE, in collaboration with the National Association of State Energy Officials, is also launching the Manufactured Home Energy Efficiency and Affordability Initiative to

work with states and other partners in improving access to energy efficient manufactured homes across the United States, including tribal lands. The California Energy Commission, Colorado Energy Office, Kentucky Office of Energy Policy, Maine Governor's Energy Office, Minnesota Department of Commerce Energy Division, Montana Energy Office, New York State Energy Research and Development Authority, North Carolina Department of Environmental Quality Energy Office, South Carolina Energy Office - Office of Regulatory Staff, and West Virginia Department of Economic Development's Office of Energy have already signed on to participate.

To increase transparency, DOE has created a [consumer-focused website](#) with information on energy efficient manufactured homes and financing options, including content on incentives, grants, and loan programs available through federal agencies, states, and others. The site includes links to resources for manufactured homebuyers who own or lease their land as well as those living in manufactured home communities, including resident owned cooperatives.

This action follows the release earlier this week of the [Administration's Housing Supply Action Plan](#), which includes legislative and administrative policies to boost supply and reduce costs for a number of housing types, such as manufactured housing.

DOE adopted a tiered approach, with different standards for single and multi-section manufactured homes, in order to balance the important objectives of energy efficiency, cost savings, upfront affordability, and housing supply challenges.

DOE's Building Technologies Office implements minimum energy conservation standards for more than 60 categories of appliances and equipment. To learn more, visit the [Appliance and Equipment Standards Program homepage](#).

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