

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

THE MANUFACTURED HOUSING  
INSTITUTE; and THE TEXAS  
MANUFACTURED HOUSING  
ASSOCIATION,

Plaintiffs,

v.

THE UNITED STATES DEPARTMENT OF  
ENERGY; and JENNIFER M. GRANHOLM,

Defendants.

No. 1:23-CV-00174-DAE

**JOINT ADVISORY**

Plaintiffs, the Manufactured Housing Institute and the Texas Manufactured Housing Association, and Defendants, the United States Department of Energy (DOE) and Jennifer M. Granholm, Secretary of Energy, by and through their undersigned counsel (collectively, the “Parties”), respectfully submit this advisory to update the Court in response to the Court’s Order of May 22, 2023. The parties jointly notify the Court as follows:

1. Plaintiffs initiated this lawsuit and filed a Motion to Stay Agency Action and Request for Expedited Consideration and Hearing (“stay motion”) on February 14, 2023. *See* Compl., ECF No. 1; Pls.’ Mot. to Stay Agency Action., ECF No. 5. Plaintiffs challenge DOE’s recent promulgation of energy conservation standards for manufactured housing, *Energy Conservation Program: Energy Conservation Standards for Manufactured Housing*, 87 Fed. Reg. 32,728 (May 22, 2022), and sought a stay of the energy conservation standards’ May 31, 2023

compliance date. Compl. at 1-2; Pls.’ Mot. to Stay Agency Action at 1. That motion, and Plaintiffs’ related Motion for Expedited Evidentiary Hearing on their Motion to Stay Agency Action, ECF No. 16, are fully briefed. *See* Defs.’ Mem. in Opp’n to Pls.’ Mot. to Stay Agency Action, ECF No. 32; Pls.’ Reply Mem. in Support of Mot. to Stay Agency Action, ECF No. 35; Defs.’ Opp’n to Pls.’ Mot. for Expedited Evidentiary Hr’g., ECF No. 20; Pls.’ Reply in Support of Mot. for Expedited Evidentiary Hr’g., ECF No. 22

2. On March 23, 2023, the parties advised the Court that DOE had noticed a proposal to extend the compliance date for the energy conservation standards to allow DOE additional time to establish enforcement procedures that would provide clarity to manufacturers and other stakeholders regarding how DOE will evaluate compliance, as well as DOE’s enforcement plans. *See* Joint Advisory, ECF No. 24; *see also Energy Conservation Standards for Manufactured Homes; Extension of Compliance Date*, 88 Fed. Reg. 17,745 (Mar. 24, 2023).

3. On May 30, 2023, the *Federal Register* published a new Final Rule extending the compliance date for its manufactured housing energy conservation standards to 60 days after issuance of enforcement procedures for Tier 1 homes and July 1, 2025 for Tier 2 homes. *See Energy Conservation Standards for Manufactured Housing; Extension of Compliance Date*, 88 Fed. Reg. 34,411 (May 30, 2023) (“Compliance Extension Rule”).

4. In light of the new compliance date, the Court ordered the Parties to confer and submit a joint advisory on or before June 16, 2023, addressing (1) whether the Parties object to the Court mooting Plaintiffs’ Motion to Stay and (2) further proceedings. Order, ECF No. 41 (May 22, 2023).

5. Pursuant to the Court’s Order, the Parties have conferred and are in agreement that the Compliance Extension Rule moots the pending Motion to Stay (ECF No. 5) and Motion for

Expedited Evidentiary Hearing (ECF No. 16) and that this Court may now moot those motions without prejudice to refile.

6. As to attempts to agree upon a course of action for the litigation going forward, the Parties' discussions are active and ongoing.

7. Accordingly, the Parties respectfully request that they be permitted to continue their discussions and submit an advisory regarding next steps appropriate for the litigation on or before July 7, 2023. For the Court's convenience, a proposed order is attached hereto.

Dated: June 16, 2023

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General

BRAD P. ROSENBERG  
Special Counsel

/s/ Kristina A. Wolfe  
KRISTINA A. WOLFE (VA Bar No. 71570)  
Senior Trial Counsel  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
P.O. Box 883, Ben Franklin Station  
Washington, DC 20044  
Tel: (202) 353-4519; Fax: (202) 616-8470  
Email: Kristina.Wolfe@usdoj.gov

/s/ Carlos R. Soltero  
Carlos R. Soltero  
State Bar of Texas No. 00791702  
csoltero@maynardcooper.com  
Gregory P. Sapire  
State Bar of Texas No. 00791601  
gsapire@maynardcooper.com  
MAYNARD, COOPER & GALE, P.C.  
7320 N. MoPac Expy., Ste. 309  
Austin, TX 78731  
(737) 202-4873 – Telephone  
(512) 359-5776 – Facsimile

Thomas W. Thagard (*pro hac vice*)  
tthagard@maynardcooper.com

James C. Lester (*pro hac vice*)  
jlester@maynardcooper.com  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North, Suite 1700  
Birmingham, AL 35203  
(205) 254-1000 – Telephone

Scott Simpson (*pro hac vice*)  
wsimpson@smgblawyers.com  
Daniel S. Weber (*pro hac vice* to be filed)  
dsweber@smgblawyers.com  
SIMPSON, MCMAHAN, GLICK & BURFORD,  
PLLC  
100 Concourse Parkway  
Suite 310 West Tower  
Hoover, AL 35244  
(205) 876-1600 – Telephone

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

On June 16, 2023, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kristina A. Wolfe