[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 460

[EERE-2009-BT-BC-0021]

RIN 1904-AF53

Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to establish enforcement procedures for its energy conservation standards for manufactured housing. DOE recently amended the compliance date for these standards in a final rule published May 30, 2023, to delay compliance until July 1, 2025, for Tier 2 homes, and until 60 days after issuance of final enforcement procedures for Tier 1 homes. DOE delayed the compliance date to allow DOE more time for this rulemaking to establish enforcement procedures that provide clarity for manufacturers and other stakeholders regarding DOE's expectations of manufacturers and DOE's plans for enforcing the standards.

DATES: DOE will accept comments, data, and information regarding the notice of proposed rulemaking received no later than **[INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. See section V, "Public Participation," for details.

ADDRESSES: The docket for this proposed rulemaking, which includes *Federal Register* notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov*. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket?D=EERE-2009-BT-BC-0021*. The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Discussion of Proposed Rule
III. Expected Costs to Manufacturers from the Proposed Rule
IV. Procedural and Regulatory Review
V. Public Participation
VI. Approval of the Office of the Secretary

I. Background

The Energy Independence and Security Act of 2007 ("EISA," Pub. L. 110-140) directs the U.S. Department of Energy ("DOE" or, in context, "the Department") to

establish energy conservation standards for manufactured housing.[1] (42 U.S.C. 17071) Manufactured homes are constructed according to standards administered by the U.S. Department of Housing and Urban Development ("HUD Code"). 24 CFR part 3280. *See also generally* 42 U.S.C. 5401-5426. Structures, such as site-built and modular homes, that are constructed to state, local, or regional building codes are excluded from the coverage of the HUD Code.[2]

EISA directs DOE to base its standards on the most recent version of the International Energy Conservation Code ("IECC") and any supplements to that code, except in cases where DOE finds that the IECC is not cost-effective or where a more stringent standard would be more cost-effective, based on the impact of the IECC on the purchase price of manufactured housing and on total life-cycle construction and operating costs. (*See* 42 U.S.C. 17071(b)(1))

On June 17, 2016, DOE published in the *Federal Register* a notice of proposed rulemaking ("NOPR") to propose energy conservation standards for manufactured housing, including proposals recommended by the negotiated rulemaking working group for manufactured housing. 81 FR 39756 ("June 2016 NOPR"). DOE received nearly 50 comments on the proposed rule during the comment period. In addition, DOE also received over 700 substantively similar form letters from individuals.

On August 3, 2018, DOE published a Notice of Data Availability ("NODA"), stating it was examining possible alternatives to the requirements proposed in the June

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[1] The National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, defines "manufactured home" as a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein..... 42 U.S.C. 5402(6).

[2] *See* 42 U.S.C. 5403(f). *See also* 24 CFR 3282.12.

2016 NOPR and seeking further input from the public, including on first-time costs related to the purchase of manufactured homes. 83 FR 38073 ("August 2018 NODA"). Prior to the NODA, in December of 2017, the Sierra Club filed a lawsuit against DOE in the U.S. District Court for the District of Columbia, alleging that DOE had failed to meet its statutory deadline for establishing energy conservation standards for manufactured housing. *Sierra Club* v. *Granholm,* No. 1:17-cv-02700-EGS (D.D.C. filed Dec. 18, 2017). In November 2019, the court entered a consent decree in which DOE agreed to complete the rulemaking by stipulated dates.

After evaluating the comments received in response to the June 2016 NOPR and the August 2018 NODA, DOE published a supplemental NOPR ("SNOPR") on August 26, 2021, in which DOE proposed energy conservation standards for manufactured homes based on the 2021 IECC. 86 FR 47744 ("August 2021 SNOPR"). DOE's primary proposal in the August 2021 SNOPR was a "tiered" approach based on the 2021 IECC. The "tiered" approach identifies a subset of less stringent energy conservation standards for certain manufactured homes (based on retail list price) in light of the cost-effectiveness considerations required by EISA. DOE's alternate proposal was an "untiered" approach, wherein energy conservation standards for all manufactured homes would be based on certain thermal envelope components and specifications of the 2021 IECC. Both proposals replaced the June 2016 NOPR proposal. *Id.* DOE sought comment on these proposals, as well as alternate thresholds, including a size-based threshold (*e.g.*, square footage, number of sections) and a region-based threshold, and alternative exterior wall insulation requirements (R-21) for certain HUD zones. *Id.*

On October 26, 2021, DOE published a NODA regarding updated inputs and results of the analyses presented in the August 2021 SNOPR (both "tiered" and "untiered" approaches), including a sensitivity analysis regarding an alternative sized-based tier threshold and an alternate exterior wall insulation requirement (R-21) for certain HUD zones. 86 FR 59042 ("October 2021 NODA"). In addition, DOE reopened the public comment period on the August 2021 SNOPR through November 26, 2021. DOE sought comments on the updated inputs and corresponding analyses, encouraged stakeholders to provide additional data to inform the analyses, and stated it might further revise the rulemaking analysis based on new or updated information. *Id.*

On May 31, 2022, DOE published a final rule codifying the proposed energy conservation standards for manufactured housing in a new part of the Code of Federal Regulations ("CFR") under 10 CFR part 460, subparts A, B, and C ("May 2022 Final Rule"). 87 FR 32728. Subpart A of 10 CFR part 460 presents generally the scope of the rule and provides definitions of key terms. Subpart B establishes new requirements for manufactured homes that relate to climate zones, the building thermal envelope, air sealing, and installation of insulation, based on certain provisions of the 2021 IECC. Subpart C establishes new requirements based on the 2021 IECC related to duct sealing; heating, ventilation, and air conditioning ("HVAC"); service hot water systems; mechanical ventilation fan efficacy; and heating and cooling equipment sizing.

Under the energy conservation standards, the stringency of the requirements under subpart B are based on a tiered approach depending on the number of sections of the manufactured home. Accordingly, two sets of standards are established in subpart B (*i.e.,* Tier 1 and Tier 2). Both Tier 1 and Tier 2 incorporate building thermal envelope

measures based on certain thermal envelope components subject to the 2021 IECC that DOE determined applicable and appropriate for manufactured homes. Tier 1 applies these building thermal envelope provisions to single-section manufactured homes, but only includes components at stringencies that would increase the incremental purchase price by less than $750 in order to address affordability concerns that were raised by HUD and other stakeholders during the consultation and rulemaking process. Tier 2 applies these same building thermal envelope provisions to multi-section manufactured homes but at higher stringencies specified for site-built homes in the 2021 IECC, with an alternate exterior wall insulation requirement (R-21) for climate zones 2 and 3 based on consideration of the design and factory construction techniques of manufactured homes, as presented in the August 2021 SNOPR and October 2021 NODA. Manufacturers can comply with the building thermal envelope requirements through a prescriptive pathway (*e.g.,* using materials with specified ratings) or a performance pathway based on overall thermal transmittance (*Uo*) performance. *See* 10 CFR 460.102(c). Further, the energy conservation standards for both tiers also include duct and air sealing, insulation installation, HVAC and service hot water system specifications, mechanical ventilation fan efficacy, and heating and cooling equipment sizing provisions, based on the 2021 IECC. DOE concluded that this approach is cost-effective based on the expected total life-cycle cost ("LCC") savings for the lifetime of the home associated with implementation of the energy conservation standards. *See e.g.,* 87 FR 32742.

In the May 2022 Final Rule, DOE adopted a compliance date such that the standards would apply to manufactured homes that are manufactured on or after one year following the publication date of the final rule in the *Federal Register*, which is May 31,

2023. In doing so, DOE noted its belief that many manufacturers already have experience complying with efficiency requirements similar to what DOE required in the May 2022 Final Rule based on manufacturers' previous experience with HUD *Uo* requirements and ENERGY STAR Version 2 efficiency requirements for homes produced on or after June 1, 2020. 87 FR 32759. DOE did not specify its approach for enforcement of the standards in the May 2022 Final Rule and noted that manufacturers would be able to comply with the standards as they were issued. In fact, DOE noted that many of the requirements in the standards would require minimal compliance efforts (*e.g.,* documenting the use of materials already subject to separate Federal or industry standards, such as the R-value of insulation or U-factor values for fenestration). 87 FR 32758, 32790. Nevertheless, DOE stated in the May 2022 Final Rule that it may address compliance and enforcement issues and procedures in a future agency action (*see* 87 FR 32757-32758), which is discussed further in section II of this document.

On March 24, 2023, DOE published in the *Federal Register* a NOPR proposing to amend the compliance date for the manufactured housing energy conservation standards (88 FR 17745, "March 2023 NOPR"). In that NOPR, DOE described the need to amend the compliance date for the manufactured housing standards, noting that it had not yet issued procedures for investigating and enforcing against noncompliance with the standards, and that a delay was necessary to ensure that DOE can receive and incorporate meaningful stakeholder feedback into its enforcement procedures prior to part 460's compliance date. Accordingly, DOE proposed to require compliance with the Tier 1 standards beginning 60 days after publication of its final enforcement procedures, and compliance with the Tier 2 standards beginning 180 days after publication of its final

enforcement procedures. By final rule published on May 30, 2023 (May 2023 Final Rule) DOE amended the compliance date for part 460 consistent with its proposed compliance date in the NOPR for Tier 1 (*i.e.,* 60 days after issuance of DOE's enforcement procedures for part 460). However, for Tier 2, DOE amended the compliance date to July 1, 2025. 88 FR 34411. After consideration of comments on the NOPR, DOE determined that amending the compliance date to July 1, 2025, for Tier 2 homes would (1) provide greater certainty for manufacturers versus an indeterminate date, (2) ensure DOE will have enough time to develop enforcement procedures and engage in the rulemaking process, including providing adequate time for stakeholders to submit robust feedback on DOE's proposed enforcement procedures, and (3) provide manufacturers with sufficient time to adjust their operations and practices consistent with DOE's enforcement procedures. 88 FR 34412.

II. Discussion of Proposed Rule

Pursuant to section 413 of the Energy Independence and Security Act ("EISA"), DOE is authorized to initiate enforcement actions to ensure compliance with its energy conservation standards for manufactured housing. In this section, DOE provides a section-by-section analysis of its proposed rule to establish procedures for such enforcement actions. As discussed herein, DOE proposes to amend subpart D to its regulations at 10 CFR part 460 to set forth prohibited acts, civil penalty amounts, investigation and enforcement procedures, recordkeeping requirements, and civil penalty collection procedures. In particular, DOE proposes that it will determine compliance by reviewing certain manufacturer records. DOE is not proposing specific test procedures to demonstrate compliance with DOE's standards. Nor is DOE proposing to require

manufacturers to certify that their manufactured home models comply with DOE's standards. In addition, DOE proposes to clarify that manufacturers may demonstrate compliance with the 10 CFR 460.205 requirements for sizing of heating and cooling equipment by using either the approach in the Air Conditioning Contractors of America (ACCA) Manual J and ACCA Manual S or the approach codified in HUD's regulations at 24 CFR 3280.508.

General Counsel Responsibilities

Proposed § 460.302 provides that the Office of the DOE General Counsel may assist in investigations of alleged violations of part 460, prosecute civil enforcement actions under part 460, compromise and assess civil penalties initiated under part 460, represent DOE in any formal proceedings or hearings before an Administrative Law Judge ("ALJ") in cases involving alleged violations of part 460, and refer cases to the Attorney General for the collection of civil penalties.

Prohibited Acts and Civil Penalties

Proposed § 460.304 lists prohibited acts that will be subject to civil enforcement action under part 460. These prohibited acts include the sale, importation, or distribution into commerce in the United States of a manufactured home that is not in compliance with any energy conservation standard or requirement in part 460. (42 U.S.C. 17071) They also include any failure of a manufacturer to maintain, provide to DOE, or permit DOE access to any information, records, or documents required under part 460.

DOE also proposes in § 460.304 to clarify that certain acts relating to sizing of heating and cooling equipment comply with the energy conservation standard and do not constitute a violation under § 460.304(a)(2). Specifically, in § 460.304(d), DOE proposes

to clarify that a manufacturer may use the approach codified in HUD regulations referencing the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Handbook of Fundamentals for determining manufactured home heat loss/heat gain. *See* 24 CFR 3280.508. DOE is proposing to clarify that this approach can be used in lieu of using Air Conditioning Contractors of America (ACCA) Manual J and ACCA Manual S for sizing of heating and cooling equipment as specified in the energy conservation standard at 10 CFR 460.205. DOE has tentatively determined that both approaches sufficiently align with the intent of 10 CFR 460.205 supporting appropriate sizing of heating and cooling equipment in manufactured housing and are not expected to impact the stringency of the energy conservation standards in § 460.205. Further, DOE understands that certain details of the final installation location, such as the house orientation, may not always be available when equipment sizing is occurring. Thus, DOE proposes to allow an alternate sizing approach to be used as specified by the ASHRAE Handbook of Fundamentals pursuant to the methodology adopted by HUD.

Proposed § 460.304 explains the potential civil penalties for prohibited acts under part 460. It provides that a manufacturer that commits a prohibited act may be subject to assessment of a civil penalty of up to one percent of the manufacturer's retail list price of the manufactured home per violation, in keeping with the maximum civil penalty for violations of provisions of DOE's energy conservation manufactured housing regulations set forth in accordance with section 413(c) of EISA.

Proposed § 460.304 also describes how DOE will calculate civil penalties for prohibited acts. It provides that each day a manufacturer fails to maintain, provide, or permit access to information, records, or documents will be considered a separate

violation. It also provides that each failure to comply with a standard or requirement of part 460, per unit sold, imported, or introduced into commerce in the United States, will be considered a separate violation. For example, if a manufactured home model fails to comply with three standards in part 460, the manufacturer has sold, imported, or distributed in commerce 100 units of that model,[3] and the retail list price of that model is $200,000, then the manufacturer will subject to a civil penalty of up to $600,000 ($200,000 retail list price X 1% X 3 violations X 100 units).

DOE notes that section 413 of EISA does not specifically provide for the assessment of civil penalties for a manufacturer's failure to maintain or provide to DOE information, records, or documents. However, section 413(a) requires the Secretary, by regulation, to establish standards for energy efficiency in manufactured housing. Section 413(c) provides that any manufacturer of manufactured housing that violates a provision of the regulations issued under section 413(a) is liable to the United States for a civil penalty. DOE is proposing to add these enforcement procedures pursuant to section 413(a) to carry out its obligation under EISA to ensure that manufacturers comply with DOE's energy conservation standards. Accordingly, DOE is proposing to require manufacturers to maintain and provide information, records, and documents related to compliance with DOE's energy conservation standards, and subjecting manufacturers that fail or refuse to do so to civil penalties, so that DOE can ensure that manufacturers provide DOE with the records necessary to determine whether they are complying with

[3] As discussed in the Notice of Noncompliance section, for the first five years after the compliance date for a type of home (Tier 1 or 2), DOE will consider only units the manufacturer sold, imported, or distributed in commerce from the compliance date for that type of home (Tier 1 or 2) to the date the notice of noncompliance determination is issued. Once five years has passed from the compliance date for a type of home, DOE will consider units the manufacturer sold, imported, or distributed in commerce for the five years prior to the date the notice of noncompliance is issued.

the manufactured housing energy conservation standards. DOE is also evaluating and considering its subpoena authority under EISA.

In addition, the Secretary has the authority under 42 U.S.C. 7254 to prescribe procedural and administrative rules and regulations that the Secretary "may deem necessary or appropriate to administer and manage the functions now or hereafter vested in" the Secretary. Under 42 U.S.C. 7101(b), the term "function" includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof. The Secretary has determined that the proposed recordkeeping requirements and civil penalties in this rulemaking are necessary to administer and manage the Secretary's duties and obligations under EISA.

Investigation Procedures

Proposed § 460.306 explains how DOE will conduct investigations to determine whether manufacturers are in compliance with the energy conservation standards and other requirements of part 460. DOE may initiate an investigation on its own or upon receipt of information alleging potential noncompliance. DOE will not require manufacturers to certify to the Department that their designs or manufactured homes comply with part 460. Rather, DOE may request that a manufacturer provide one or more of the records listed in this section so that DOE can determine whether the manufacturer is in compliance with the requirements of part 460. If DOE makes such a request of a manufacturer during an administrative action, investigation, or audit conducted by DOE pursuant to part 460, the manufacturer will be required to provide the requested records to DOE. As discussed previously, if a manufacturer fails or refuses to do so, the manufacturer will be subject to civil penalties.

Paragraph (a) of the proposed § 460.306 lists four types of records that DOE may request from a manufacturer to determine whether the manufacturer is in compliance with part 460. These are records that manufacturers must already maintain or provide to the Department of Housing and Urban Development ("HUD") pursuant to HUD regulations in 24 CFR part 3282.[4] Under proposed paragraph (c), DOE may request additional available records if DOE determines they are necessary as part of an administrative action, investigation, or audit. During the course of any such action, investigation, or audit, DOE also may obtain additional information and records from publicly available sources.

DOE proposes to require manufacturers to maintain the records listed in paragraph (a) in accordance with HUD requirements. DOE is also considering requiring the records it is proposing to require manufacturers to maintain in § 460.306(a) to be retained for a specific period of years. DOE requests comment on whether it should proceed with such a requirement and what period of time may be appropriate. While DOE is not proposing to require manufacturers to maintain any additional records, under paragraph (c), a manufacturer may be required to provide to DOE additional records in its possession if DOE requests such records pursuant to an administrative action, audit, or investigation conducted by DOE against the manufacturer.

Warning Letters

[4] *See* 24 CFR 3282.203, 3282.417, and 3282.608.

Proposed § 460.308 would allow DOE to dispose of a matter with a Warning Letter if DOE determines that a violation or alleged violation of part 460 does not warrant the assessment of a civil penalty. This proposed section specifies that a Warning Letter issued under this section does not constitute a formal adjudication of the matter and is not subject to the appeal procedures proposed in this proposed rulemaking.

Notice of Noncompliance Determination

Proposed § 460.310 provides that if DOE determines that a manufactured home design or model does not conform to a standard or requirement in part 460, based on DOE's investigation or admissions by a manufacturer, DOE may issue a notice of noncompliance determination to the manufacturer.[5] DOE will review records to evaluate whether one or more of the aspects of a manufactured home design or model is noncompliant. If DOE determines that one or more aspects of the design or model is noncompliant, DOE may issue to the manufacturer a notice of noncompliance determination addressing each violation depending on the facts of the specific case. A manufacturer that receives a notice of noncompliance determination from DOE would be required to provide to DOE, within the 30-day time period prescribed by DOE, information pertaining to the acquisition, ordering, storage, shipment, importation, or sale of units of the design or model of manufactured home determined to be noncompliant.

As noted previously, DOE issued a final rule (88 FR 34411) to delay compliance until July 1, 2025, for Tier 2 homes, and until 60 days after issuance of enforcement procedures for Tier 1 homes. Accordingly, for the first five years after the compliance date for a type of home (Tier 1 or 2), DOE will request such information for the time

[5] A determination issued by DOE under this proposed rule shall be distinct from any other notices issued to a manufacturer by other agencies under their respective enforcement authority.

from the compliance date for that type of home (Tier 1 or 2) to the date the notice of noncompliance determination is issued. Once five years has passed from the compliance date for a type of home, DOE will request such information for the five years prior to the date the notice of noncompliance is issued. For example, if DOE issues a notice of noncompliance determination for a Tier 2 manufactured home on August 1, 2027, DOE will request sales and other information for that model from July 1, 2025 (the compliance date for Tier 2 homes), through August 1, 2027. However, if DOE issues a notice of noncompliance determination for a Tier 2 home on August 1, 2031, DOE will request sales and other information for that model for the five years prior to August 1, 2031.

DOE will give manufacturers 30 calendar days to provide the requested information. A manufacturer that fails or refuses to provide such information will be subject to civil penalties under part 460.

Civil Enforcement Procedures

Prior to imposing a civil penalty for noncompliance with part 460, DOE proposes to provide manufacturers with written notice of the proposed penalty and options for responding to the notice. Under proposed § 460.312, a manufacturer that receives a Notice of Proposed Civil Penalty will have 30 days from receipt of the notice to exercise one of the following options: (1) request that DOE issue an Order assessing the civil penalty proposed in the notice, in which case the manufacturer waives the right to request a hearing before an ALJ; (2) request a settlement conference with the DOE attorney who issued the notice, in which case the manufacturer also may submit to DOE additional information and evidence related to the alleged violations, the amount of the proposed civil penalty, and the manufacturer's ability to pay the proposed civil penalty; or (3)

request a hearing before an ALJ. DOE is also considering providing manufacturers the option of seeking judicial review of the notice of civil penalty in a U.S. District Court in lieu of a hearing before an ALJ. DOE requests public comment on whether to include this option.

DOE proposes in § 460.316 that if: a manufacturer does not respond to the notice within 30 days of receipt; the manufacturer selects option (2) but fails to attend the settlement conference; or the manufacturer selects option (2) and DOE and the manufacturer are unable to resolve the matter informally, DOE will issue a Final Notice of Proposed Civil Penalty to the manufacturer. The manufacturer will then have 15 days from receipt of the final notice to exercise one of the following options: (1) request that DOE issue an Order assessing the civil penalty proposed in the final notice, in which case the manufacturer waives the right to request a hearing before an ALJ; or (2) request a hearing before an ALJ.

If the manufacturer fails to respond to the final notice within 15 days of receipt, the manufacturer waives the right to participate in the informal procedures set forth in this subpart and the right to request a formal hearing before an ALJ, and DOE will issue to the manufacturer an Order in which DOE finds that the manufacturer committed the violations alleged, and assesses the civil penalty proposed, in the final notice.

Proposed §460.314 would allow DOE to compromise and settle civil penalty cases brought under part 460 at any time prior to a final decision by a Federal court of competent jurisdiction. In compromising or settling a civil penalty case, DOE may consider aggravating and mitigating factors. For more information on DOE's civil

penalty policy, see *https://www.energy.gov/gc/articles/civil-penalties-energy-conservation-standards-program-violations-policy-statement.*

If DOE and the manufacturer agree to compromise the proposed civil penalty at any time prior to a final decision by a Federal court of competent jurisdiction, DOE will issue to the manufacturer an Order assessing the agreed upon civil penalty. If a manufacturer requested a hearing before an ALJ, and the ALJ's initial decision recommending a civil penalty is not appealed, DOE will issue an Order assessing the civil penalty recommended by the ALJ. DOE proposes to give manufacturers 30 days after receipt of any Order assessing a civil penalty under part 460 to pay the civil penalty.

DOE believes the procedures in proposed §§ 460.312 to 460.316 are necessary to provide for the expeditious resolution of civil penalty cases under part 460, while maintaining the opportunity for manufacturers to engage with DOE to settle cases and providing due process to manufacturers, including the opportunity for hearings before an ALJ and the opportunity to appeal ALJ decisions.

Administrative Law Judge Hearing and Appeal

Proposed § 460.320 explains that if a manufacturer responds to a Notice of Proposed Civil Penalty or Final Notice of Proposed Civil Penalty by electing a formal hearing before an Administrative Law Judge, DOE will conduct such hearings in accordance with DOE's Procedures for Administrative Adjudication of Civil Penalty Actions, which are available at: *https://www.energy.gov/gc/doe-procedures-administrative-adjudication-civil-penalty-actions.*

Proposed § 460.320 provides that after considering all matters of record in a proceeding, the ALJ will issue an initial decision. The ALJ's initial decision will include

a statement of the ALJ's findings and conclusions on all material issues of fact, law, and discretion, as well as the ALJ's reasons for such findings and conclusions. If the ALJ finds that a manufacturer committed a prohibited act and that a civil penalty is warranted, the decision will include the amount of the civil penalty. DOE notes that nothing in this subpart guarantees that a case will proceed to a formal hearing, as an ALJ may issue an initial decision after considering the pleadings and any motions for decision.

Proposed § 460.320 provides that if the ALJ's initial decision includes a finding that a manufacturer committed a prohibited act and a recommended civil penalty, and the initial decision is not appealed in accordance with DOE's Procedures for Administrative Adjudication of Civil Penalty Actions, the DOE General Counsel will issue an Order assessing the civil penalty. The DOE General Counsel will include in the Order the ALJ's findings of fact, conclusions of law and discretion, and the amount of the civil penalty.

Finally, proposed § 460.320 provides that if the ALJ's initial decision is appealed in accordance with DOE's Procedures for Administrative Adjudication of Civil Penalty Actions, then the DOE Decision Maker will issue a final agency decision in accordance with those procedures. The proposed section deviates from the procedures with respect to judicial review, however, in that it provides that any such final agency decision may be appealed to a federal court with competent jurisdiction instead of to a federal circuit court of appeals. It also provides that only a final agency decision may be appealed to a federal court of competent jurisdiction.

Collection of Civil Penalties

DOE proposes that if a manufacturer fails to pay an assessed civil penalty within 30 days of receipt of the Order assessing the civil penalty, DOE may refer the debt to the U.S. Treasury Department or the Attorney General of the United States, or his or her delegate, for collection of the civil penalty. DOE proposes that in any such action, the validity and appropriateness of the Order assessing the civil penalty will not be subject to review.

III. Expected Costs to Manufacturers from the Proposed Rule

In the May 2022 Final Rule, DOE monetized the costs and benefits expected to result from the amended standards. These costs included costs to manufacturers to produce and transport compliant manufactured homes, the increased installed costs that the consumer would see when purchasing and installing a new manufactured home, along with the incremental utility bill savings and incremental maintenance costs that a consumer would expect to experience during the lifetime operation. At the time of the May 2022 Final Rule, DOE had not determined the specific procedures it would utilize to ensure compliance with the energy conservation standards being adopted, but DOE noted its expectation that only minimal compliance efforts would be required, and that such efforts would result in minimal additional costs to manufacturers. *See* 87 FR 23758. Based on the procedures DOE is proposing in this document, DOE tentatively concludes, consistent with the expectations it stated in the May 2022 Final Rule, *see Id.*, that the costs of complying with DOE's enforcement mechanisms will be minimal. Specifically, in this rulemaking, DOE is not proposing to require manufacturers to conduct any testing of manufactured homes, require manufactured homes to be inspected prior to sale to consumers, or require manufacturers (or any third-party agency) to certify compliance with DOE's energy conservation standards. Rather, the proposed regulations in this

document outline DOE's procedures for investigating potential instances of noncompliance, assessing civil penalties in accordance with EISA, and the associated appeals procedures. To ensure DOE is able to conduct such investigations, this proposed rule requires that a manufacturer maintain and provide to DOE information and records relevant to investigating and determining compliance with the energy conservation standards. However, the documentation that manufacturers would be required to maintain by § 460.306(a) of this proposed rule is already subject to separate, existing maintenance requirements imposed by HUD. Therefore, this proposed rule would not impose any new, additional costs beyond the costs already required by separate requirements. *See* 88 FR 45237. Specifically, DOE is proposing to require manufacturers to maintain the following records in accordance with HUD requirements: the information and records submitted by a manufacturer and approved by its Design Approval Primary Inspection Agency (DAPIA) pursuant to 24 CFR 3282.203(g) and 3282.361(b)(4);[6] the approved quality assurance manual received from a DAPIA pursuant to 24 CFR 3282.361(c)(3);[7] records related to a manufacturer's determination of noncompliance, defect, serious defect, or imminent safety hazard, as well as any corrections made by the manufacturer that the manufacturer is required to maintain under 24 CFR 3282.417;[8] and

[6] 24 CFR 3282.203(g) requires manufacturers to maintain a copy of the drawings, specifications, and sketches from each approved design received from a DAPIA under 24 CFR 3282.361(b)(4) and a copy of the approved quality assurance manual received from a DAPIA under 24 CFR 3282.361(c)(3). It requires the manufacturer to keep these materials current and readily accessible for use by the Secretary of HUD or other parties acting under the HUD regulations.

[7] *Id.*

[8] 24 CFR 3282.417(e) requires a manufacturer to maintain records related to such determinations, notifications, and corrections.

records and reports related to on-site construction of manufactured homes that the manufacturer is required to maintain pursuant to 24 CFR 3282.608.[9]

In light of the previous, DOE tentatively concludes additional costs imposed by this proposed rule would be minimal. For this reason, the adoption of the enforcement procedures proposed in this document would not alter DOE's assessment in the May 2022 Final Rule of the costs resulting from the adoption of DOE's energy conservation standards.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563 and 14094

Executive Order ("E.O.") 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, "Improving Regulation and Regulatory Review," 76 FR 3821 (Jan. 21, 2011), and amended by E.O. 14094, "Modernizing Regulatory Review," 88 FR 21879 (April 11, 2023) requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net

[9] 24 CFR 3282.608(n) requires a manufacturer to maintain the approval notification from the DAPIA, the manufacturer's final on-site inspection report and certification of completion, and the Production Inspection Primary Inspection Agency's acceptance of the final site inspection report and certification. A manufacturer is required to make these records available for review by HUD in the factory of origin. In addition, 24 CFR 3282.608(q) requires a manufacturer to maintain all records for on-site completion for each home, as required by 24 CFR 3282.608, in the unit file to be maintained by the manufacturer.

benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs ("OIRA") within the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit "significant regulatory actions" to OIRA for review. This action does not constitute a significant action under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to

ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. (68 FR 7990). The Department has made its procedures and policies available on the Office of General Counsel's web site: *www.energy.gov/gc/office-general-counsel.*

The proposed rule would establish enforcement procedures for DOE's manufactured housing energy conservation standards. The proposed regulations largely outline DOE's procedures for investigating instances of noncompliance, assessing civil penalties in accordance with EISA, and associated appeals procedures. DOE expects any costs borne by manufacturers as a result of the proposed rule to be negligible. Moreover, the proposed rule would apply equally across manufacturers and does not place small entities at a significant competitive disadvantage. Accordingly, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required. Accordingly, DOE did not prepare an IRFA for this proposed rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

The proposed rule would impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq*).

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 ("NEPA") and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is a rulemaking that is amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended, and categorical exclusion A6, because it is procedural. No extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The E.O. also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (*See* 65 FR 13735.) DOE examined

this proposed rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies its preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies its retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule would meet the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)). The section of UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate" and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *www.energy.gov/gc/office-general-counsel*). This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any

impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under E.O. 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (Mar. 18, 1988), that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action.

For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed rule establishes enforcement procedures for DOE's manufactured housing energy conservation standards and therefore does not meet the second criterion. Additionally, OIRA has not designated this proposed rule as a significant energy action. Accordingly, the requirements of E.O. 13211 do not apply.

V. Public Participation

Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* webpage will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that

you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information ("CBI")). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No telefacsimiles ("faxes") will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free from any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 460

Administrative practice and procedure, Buildings and Facilities, Energy conservation, Housing standards, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on December 6, 2023, by Samuel Walsh, General Counsel for the Department of Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on December 6, 2023.

Samuel T. Walsh

Digitally signed by Samuel T. Walsh
Date: 2023.12.06 18:25:44 -05'00'

Samuel Walsh
General Counsel
Department of Energy

For the reasons stated in the preamble, DOE proposes to amend part 460 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 460—ENERGY CONSERVATION STANDARDS FOR MANUFACTURED HOMES

1. The authority citation for part 460 continues to read as follows:

Authority: 42 U.S.C. 17071; 42 U.S.C. 7101 *et. seq.*

2. Add subpart D to part 460 to read as follows:

Subpart D – Enforcement

Sec.
460.300 Purpose and scope.
460.302 Office of the General Counsel Responsibilities.
460.304 Prohibited acts and civil penalties.
460.306 Investigation of compliance.
460.308 Warning letters.
460.310 Notice of noncompliance.
460.312 Notice of proposed Civil Penalty.
460.314 Compromise and settlement.
460.316 Final Notice of Proposed Civil Penalty.
460.318 Order assessing a civil penalty.
460.320 Administrative law judge hearing and appeal.
460.322 Collection of civil penalties.

§ 460.300 Purpose and scope.

This subpart describes DOE's investigative and enforcement procedures for ensuring compliance with the energy conservation standards set forth in this part.

§ 460.302 Office of the General Counsel Responsibilities.

The Department's Office of the General Counsel may:

(a) Assist in investigations, hold settlement conferences, issue subpoenas, require the production of relevant documents and records, and take evidence and depositions;

(b) Initiate civil penalties under 42 U.S.C. 17071 and this subpart for any alleged violations of this part;

(c) Compromise and assess civil penalties under 42 U.S.C. 17071 and this subpart for any violations of this part;

(d) Represent DOE in any proceedings or hearings before an Administrative Law Judge (ALJ) in cases involving alleged violations of this part; and

(e) Refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for the collection of civil penalties.

§ 460.304 Prohibited acts and civil penalties.

(a) Each of the following acts is prohibited:

(1) Failure of a manufacturer to provide, maintain, or permit access to any information, records, or documents required to be provided to DOE under this part.

(2) Sale, importation, or distribution into commerce in the United States by a manufacturer of a manufactured home that is not in compliance with a standard or requirement under this part.

(b) A manufacturer that commits a prohibited act may be subject to assessment of a civil penalty of no more than one percent of the manufacturer's retail list price of the manufactured home per violation.

(c) For violations of § 460.302(a)(1), each day of noncompliance shall constitute a separate violation. For violations of § 460.302(a)(2), each failure to comply with a

standard or requirement of this part per unit sold, imported, or introduced into commerce in the United States shall constitute a separate violation.

(d) Notwithstanding § 460.304(a)(2) of this section, use of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Handbook of Fundamentals as codified in HUD regulations at 24 CFR 3280.508, in lieu of Air Conditioning Contractors of America (ACCA) Manual J and ACCA Manual S for the sizing of heating and cooling equipment as specified in 10 CFR 460.205, shall not be considered noncompliance.

§ 460.306 Investigation of compliance.

(a) For the purposes of this subpart, DOE may request that a manufacturer provide information and records relevant to determining compliance with any standard or requirement under this part, including one or more of the following:

(1) The information and records submitted by a manufacturer to a Design Approval Primary Inspection Agency (DAPIA) pursuant to 24 CFR 3282.203 and approved by the DAPIA pursuant to 24 CFR 3282.361, including design deviation reports;

(2) The approved quality assurance manual received from a DAPIA pursuant to 24 CFR 3282.361, including quality assurance manual deviation reports;

(3) Records related to a manufacturer's determination of noncompliance, defect, serious defect, or imminent safety hazard, as well as any corrections made by the manufacturer, that the manufacturer is required to maintain under 24 CFR 3282.417; and

(4) Records and reports related to on-site construction of manufactured homes that the manufacturer is required to maintain pursuant to 24 CFR 3282.606 and 608.

(b) A manufacturer must maintain the information and records described in paragraph (a) of this section for in accordance with HUD requirements.

(c) A manufacturer must provide to DOE the information and records described in paragraph (a) of this section, and any additional available records DOE determines necessary to determine a manufacturer's compliance with any standard or requirement under this part, during an administrative action, investigation, or audit conducted by DOE against the manufacturer pursuant to this subpart.

§ 460.308 Warning letters.

(a) If DOE determines that a violation or an alleged violation of this part does not require the assessment of a civil penalty, DOE may dispose of the case by issuing a Warning Letter.

(b) A Warning Letter shall recite the relevant facts and information about the incident or condition and indicate that it may have been a violation of this part.

(c) A Warning Letter issued under this section does not constitute a formal adjudication of the matter and is not subject to appeal under this subpart.

§ 460.310 Notice of noncompliance.

(a) If DOE determines that a manufactured home design or model is noncompliant with a standard or requirement under this part, DOE may issue a notice of noncompliance determination to the manufacturer.

(b) A manufacturer that receives a notice of noncompliance determination from DOE must provide to DOE, within 30 days of the manufacturer's receipt of the notice of noncompliance determination, information pertaining to the acquisition, ordering, storage, shipment, importation, or sale of units of the design or model of manufactured home determined to be noncompliant.

§ 460.312 Notice of proposed Civil Penalty.

(a) *Issuance.* The DOE General Counsel, or delegee, may initiate a civil penalty action under this part by serving a Notice of Proposed Civil Penalty on the manufacturer charged with a prohibited act.

(b) *Contents.* The Notice of Proposed Civil Penalty shall:

(1) Include a statement of the material facts constituting the alleged violation;

(2) Include the statute, regulation, standard, and/or requirement allegedly violated;

(3) Include the amount of the proposed civil penalty; and

(4) Inform the manufacturer of its options in responding to the Notice of Proposed Civil Penalty.

(c) *Response.* Not later than 30 days after receipt of the Notice of Proposed Civil Penalty, the manufacturer must submit to DOE:

(1) A written request that DOE issue an Order assessing the civil penalty proposed in the Notice of Proposed Civil Penalty without further notice, in which case the manufacturer waives the right to request a formal hearing before an ALJ,

and payment of the civil penalty is due within 30 days of the manufacturer's receipt of the Order;

(2) A written request for a settlement conference, at a date agreed upon by DOE and the manufacturer, to attempt to settle the matter informally, in which case the manufacturer also may submit to DOE written information and other evidence demonstrating that the manufactured home model is in compliance with the applicable standards and requirements under this part, that the proposed civil penalty is not warranted by the circumstances, or that the manufacturer is financially unable to pay the proposed civil penalty; or

(3) A written request for a formal hearing before an ALJ in accordance with DOE's Procedures for Administrative Adjudication of Civil Penalty Actions, available at: *https://www.energy.gov/gc/doe-procedures-administrative-adjudication-civil-penalty-actions*.

§ 460.314 Compromise and settlement.

(a) DOE may compromise, modify, or remit, with or without conditions, any civil penalty (with leave of court if necessary).

(b) In exercising its authority under paragraph (a) of this section, DOE may consider the nature and seriousness of the violation, the efforts of the manufacturer to remedy the violation in a timely manner, and other factors as justice may require.

(c) DOE's authority to compromise, modify, or remit a civil penalty may be exercised at any time prior to a final decision by a Federal court of competent jurisdiction.

(d) Notwithstanding paragraph (a) of this section, DOE or the manufacturer may propose to settle a civil penalty case. If a settlement is agreed to by the parties, the manufacturer is notified, and the case is closed in accordance with the terms of the settlement.

§ 460.316 Final Notice of Proposed Civil Penalty.

(a) *Issuance.* DOE may issue a Final Notice of Proposed Civil Penalty to a manufacturer charged with committing a prohibited act in the following circumstances:

(1) The manufacturer fails to respond to a Notice of Proposed Civil Penalty in accordance with § 460.307(c) within 30 days of receipt of the notice;

(2) The manufacturer requested a settlement conference under § 460.307(c)(2) but failed to attend the conference or provide the DOE attorney a written request to reschedule the conference; or

(3) DOE and the manufacturer have participated in a settlement conference but have not agreed to settle the action, and DOE has not agreed to withdraw the Notice of Proposed Civil Penalty.

(b) *Contents.* The Final Notice of Proposed Civil Penalty shall contain a statement of the material facts constituting the alleged violation; the statute, regulation, standard, and/or requirement allegedly violated; the amount of the proposed civil penalty; and the manufacturer's options in responding to the Final Notice of Proposed Civil Penalty. The Final Notice of Proposed Civil Penalty may reflect a modified

allegation or proposed civil penalty as a result of new information submitted to DOE after the issuance of the Notice of Proposed Civil Penalty.

(c) *Response.* Not later than 15 days after receipt of the Final Notice of Proposed Civil Penalty, the manufacturer must submit to DOE:

(1) A written request that DOE issue an Order assessing the civil penalty proposed in the Final Notice of Proposed Civil Penalty without further notice, in which case the manufacturer waives the right to request a formal hearing before an ALJ, and payment of the civil penalty is due within 30 days of the manufacturer's receipt of the Order; or

(2) A written request for a formal hearing before an ALJ in accordance with DOE's Procedures for Administrative Adjudication of Civil Penalty Actions, available at: *https://www.energy.gov/gc/doe-procedures-administrative-adjudication-civil-penalty-actions.*

(d) *Failure to respond.* If a manufacturer fails to respond to a Final Notice of Proposed Civil Penalty in accordance with this section within 15 days of the final notice, the manufacturer waives the right to participate in the informal procedures set forth in this subpart and the right to request a formal hearing before an ALJ, and DOE shall issue to the manufacturer an Order finding the violations alleged, and assessing the civil penalty proposed, in the Final Notice of Proposed Civil Penalty.

§ 460.318 Order assessing a civil penalty.

(a) *Issuance pursuant to a settlement.* DOE shall issue an Order assessing a civil penalty if DOE and the manufacturer have agreed to a civil penalty amount in compromise of a civil penalty case, in which case the manufacturer waives the right

to request a formal hearing before an ALJ, and payment of the civil penalty is due within 30 days of the manufacturer's receipt of the Order, unless DOE and the manufacturer agree to extend the payment deadline.

(b) *Issuance pursuant to a manufacturer's request.* DOE shall issue an Order assessing a civil penalty upon receipt of a written request from a manufacturer that DOE issue an Order assessing the civil penalty proposed in the Notice of Proposed Civil Penalty or Final Notice of Proposed Civil Penalty without further notice, in which case the manufacturer waives the right to request a formal hearing before an ALJ, and payment of the civil penalty is due within 30 days of the manufacturer's receipt of the Order.

(c) *Issuance pursuant to a manufacturer's failure to respond to a Final Notice of Proposed Civil Penalty.* DOE shall issue an Order assessing a civil penalty if a manufacturer fails to respond to a Final Notice of Proposed Civil Penalty within 15 days of receipt of the final notice, in which case the manufacturer waives the right to request a formal hearing before an ALJ, and payment of the civil penalty is due within 30 days of manufacturer's receipt of the Order. In the Order, DOE shall find the violations alleged, and assess the civil penalty proposed, in the Final Notice of Proposed Civil Penalty.

(d) *Issuance pursuant to an ALJ initial decision.* Unless the ALJ's initial decision is appealed in accordance with DOE's Procedures for Administrative Adjudication of Civil Penalty Actions, DOE shall issue an Order assessing a civil penalty if an ALJ finds that a manufacturer committed a prohibited act and civil penalty is warranted,

in which case payment of the civil penalty is due within 30 days of the manufacturer's receipt of the Order.

§ 460.320 Administrative law judge hearing and appeal.

(a) When elected pursuant to § 460.312(c)(3) or § 460.316(c)(3), DOE shall refer a civil penalty action brought under this part to an ALJ in accordance with DOE's Procedures for Administrative Adjudication of Civil Penalty Actions.

(b) After considering all matters of record in the proceeding, the ALJ will issue an initial decision. The initial decision will include a statement of the findings and conclusions, and the reasons therefore, on all material issues of fact, law, and discretion. If the ALJ finds that a manufacturer committed a prohibited act and that a civil penalty is warranted, the initial decision will include a civil penalty.

(c) If the initial decision includes a finding that a manufacturer committed a prohibited act and a recommended civil penalty, and the initial decision is not appealed in accordance with DOE's Procedures for Administrative Adjudication of Civil Penalty Actions, the DOE General Counsel, or delegee, shall issue an Order assessing a civil penalty. The Order shall include the findings of fact, conclusions of law, the amount of the civil penalty, and the reasons therefore.

(d) If the initial decision is appealed in accordance with DOE's Procedures for Administrative Adjudication of Civil Penalty Actions, then the DOE Decision Maker will issue a final agency decision in accordance with those procedures. If the DOE Decision Maker upholds an ALJ initial decision that a manufacturer committed a prohibited act and that a civil penalty is warranted, the final agency decision and order shall assess a civil penalty. The manufacturer shall have 60 days

from the date the final agency decision and order is issued to either pay the civil penalty or appeal the final agency decision and order.

(e) Exhaustion of administrative remedies. Only a final agency decision, as decided by the DOE Decision Maker, may be appealed to a Federal court of competent jurisdiction.

§ 460.322 Collection of civil penalties.

If any manufacturer fails to pay an assessment of a civil penalty in accordance with § 460.310, DOE may refer the debt for collection or may refer the case to the Attorney General of the United States, or his or her delegate, for collection of the civil penalty. In any such action, the validity and appropriateness of the Order assessing the civil penalty shall not be subject to review.