



# Manufactured Housing Association for Regulatory Reform

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## **MHARR ISSUE ANALYSIS: WHY PENDING HOUSING BILLS WILL NOT REMEDY FEDERAL “ENERGY” REGULATION TARGETING MANUFACTURED HOUSING AND ITS CONSUMERS**

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### **INTRODUCTION AND BACKGROUND**

As this review and analysis is published, the HUD Code manufactured housing industry -- and the millions of lower and moderate-income Americans who rely on its inherently affordable mainstream homes -- face a baseless, yet extreme threat, grounded in targeted governmental regulatory discrimination. That threat is the pending imposition of draconian, unnecessary and high-cost “energy” standards for manufactured homes developed by the U.S. Department of Energy (DOE) under the Energy Independence and Security Act of 2007 (EISA).<sup>1</sup> The threat posed by the extreme DOE standards, more importantly, is not just a “one-time” phenomenon. Rather, the EISA regulatory mandate -- which is separate and distinct from the authority of the U.S. Department of Housing and Urban Development (HUD) to establish Federal Manufactured Home Construction and Safety Standards (FMHCSS) under the National Manufactured Housing Construction and Safety Standards Act of 1974 (1974 Act), as amended – directs not only the initial imposition of DOE standards derived from the International Energy Conservation Code (IECC), but also requires that such standards be updated *continually by DOE*, on a three-year cycle.<sup>2</sup> After a tortuous rulemaking process, DOE issued the first set of “final” manufactured housing energy standards on May 31, 2022.<sup>3</sup>

Recognizing the extreme threat posed by high-cost DOE energy standards based on a model code developed for site-built homes, that does not consider either the unique construction or design of modern HUD Code homes or their statutorily-mandated affordability, MHARR not only opposed the DOE standards from the outset of the DOE rulemaking process,<sup>4</sup> but also supported legislation introduced by Rep. Erin Houchin (R-IN) on September 5, 2025 (i.e., H.R. 5184), that – as originally filed – would have expressly repealed both the EISA manufactured housing energy standards mandate and the May 31, 2022 “final” DOE manufactured housing energy standards.

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<sup>1</sup> See, 42 U.S.C. 17071.

<sup>2</sup> Id

<sup>3</sup> See, 87 Federal Register, No. 104, (May 31, 2022) “Energy Conservation Program: Energy Conservation Standards for Manufactured Homes,” at p. 32728, et seq.

<sup>4</sup> MHARR cast the only “no” vote against the DOE standards “Term Sheet” adopted pursuant to a corrupted DOE “negotiated rulemaking” process. See, MHARR Comments, August 8, 2016 “Energy Efficiency Standard for Manufactured Housing,” Docket No. EERE-2009-BT-BC-1904-AC11, at pp. 1-21.

It appears, however, that the Houchin Bill, as originally filed, has become a victim of poor choices and equally poor “compromises” related to the so-called “housing” bills pending during the current sessions of Congress. While those pending “housing” bills would remove the current statutory mandate requiring a “permanent chassis” for all manufactured homes – a long-overdue improvement that MHARR has supported in the past and continues to support now -- MHARR, from the outset, urged extreme caution, emphasizing that the legislative process, once engaged, would open the door for other statutory changes that might be affirmatively harmful to both the industry and its consumers. Unfortunately, though, it appears that those warnings have not been heeded by the Manufactured Housing Institute (MHI) which, alone, has been heavily involved in the largely closed-door legislative process surrounding both the pending House and Senate “housing” bills. As currently constituted, those pending “housing” bills would not address – at all – either the total failure of the Government Sponsored Enterprises to implement the statutory “duty to Serve” within the dominant manufactured housing “chattel” financing market or the discriminatory zoning exclusion of HUD-regulated manufactured homes from large areas of the country. Even worse, though, the pending “housing” bills would not definitively – or even effectively – eliminate the threat of draconian DOE energy regulation, while the original Houchin Bill, as explained in greater detail below (see, page 4), has been “negotiated” and “compromised” to produce an amended Houchin Bill (separate and apart from the pending House and Senate “housing” bills) that itself would not eliminate the threat of extreme and destructive DOE manufactured housing energy standards.

All of these matters are explained below, together with a detailed analysis of the energy standards-related provisions of the pending House and Senate “housing” bills.

## **DISCUSSION AND ANALYSIS**

As MHARR has documented previously, there is absolutely no legitimate factual basis for any IECC-based DOE manufactured housing energy standards, insofar as federally-regulated manufactured homes, under existing HUD standards, already have lower energy-related operational costs than any other type of single-family housing, regardless of the applicable building code.<sup>5</sup> Moreover, as MHARR has also established, the IECC is not a legitimate or valid basis for manufactured housing standards of any kind, as it was developed for site-built homes and does not take into account either: (1) the unique construction and design of HUD Code manufactured housing; (2) the unique statutorily-mandated affordability of federally-regulated manufactured housing; or (3) the federal statutory mandate that unique affordability to be maintained and advanced going forward.<sup>6</sup>

Despite the extreme threat to the affordability and availability of mainstream HUD Code manufactured homes posed by the unnecessary and overtly discriminatory DOE energy standards

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<sup>5</sup> See, e.g., MHARR Comments, October 25, 2021, “Energy Conservation Program: Energy Conservation Standards for Manufactured Housing (EERE-2009-BT-BC-0021/RIN 1904-Ac11) at pp. 5-7 and sources cited therein.

<sup>6</sup> Id. at pp. 14-18 and sources cited therein.

directive,<sup>7</sup> the “housing” bills currently pending before Congress fail to adequately remedy or remove the danger inherent in this impending regulatory assault. Indeed, the looming threat of discriminatory and excessive DOE/federal energy standards for manufactured housing under the EISA mandate is a theoretical dagger aimed at the heart of the manufactured housing industry and the affordable, mainstream manufactured housing market -- a needless and unnecessary exaction that would undermine an already stressed, truncated and under-performing market that is universally-acknowledged to be extraordinarily price-sensitive.

EISA section 413 directs DOE to “establish” “standards for energy efficiency in manufactured housing.”<sup>8</sup> It further provides that:

“The energy conservation standards established under this section shall be based on the most recent version of the International Energy Conservation Code (including supplements), except in cases in which the Secretary [of DOE] that the code is not cost-effective, or a more stringent standard would be more cost-effective, based on the impact of the code on the purchase price of manufactured housing and on total life-cycle construction and operating costs.”

(Emphasis added). Finally, that section requires that the standards established under its authority be “updated ... [one] year after ... any revision to the International Energy Conservation Code” indefinitely into the future with no limitation or end-date. (Emphasis added) Significantly, this grant of statutory regulatory authority to DOE is separate and distinct from the much broader authority granted to HUD under the 1974 Act, as amended by the 2000 Reform Law, to establish and enforce FMHCSS standards.

Pursuant to the authority conferred by EISA section 413, DOE adopted “final” manufactured home energy conservation standards on May 31, 2022. Mandatory compliance with those standards, which would add thousands of dollars to the retail acquisition cost of every manufactured home produced in the United States,<sup>9</sup> has been – and remains – deferred pursuant to subsequent regulatory actions by DOE.<sup>10</sup> The “final” DOE standards, however, remain pending, as a final agency action, and have not been withdrawn or repealed by DOE.<sup>11</sup> As such, they could potentially be imposed at any time, under either the current Administration or a future presidential

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<sup>7</sup> The 2000 Reform Law expressly states that one of the leading purposes of that legislation, is to “facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans.”

<sup>8</sup> See, 42 U.S.C. 17071(a)(1).

<sup>9</sup> See, MHARR October 25, 2021 Comments, supra, at pp. 7-14.

<sup>10</sup> See, 90 Federal Register, No. 168 (September 3, 2025) “Public Input on Energy Conservation Standards for Manufactured Housing” at pp. 42545-42546 for a summary of DOE regulatory actions regarding the compliance date for the DOE manufactured housing energy standards. DOE has repeatedly asserted, in litigation and otherwise, that the December 31, 2022 standards have been “implemented” as a final rule, but that “compliance” with the standards has been deferred.

<sup>11</sup> MHARR has consistently called for the withdrawal or repeal of the May 31, 2022 “final” DOE standards based, inter alia, on DOE’s failure to conduct a legitimate cost-benefit analysis of those standards. MHARR, moreover, has reiterated and re-emphasized its call for the withdrawal or repeal of the May 31, 2022 standards in comments filed in response to a September 3, 2025 DOE “Request for Information (RFI). See, e.g., MHARR comments filed on November 24, 2025, December 1, 2025 and March 25, 2026 in “Request for Information – Manufactured Housing Energy Standards – Docket No. EERE-2009-BT-BC-0021.

administration, absent further steps. Meanwhile, enforcement requirements for the “final” DOE standards were published as a proposed rule on December 26, 2023,<sup>12</sup> but have not yet been adopted by DOE as a final rule in accordance with the Administrative Procedure Act (APA). Once implemented, however, the standards themselves would result in purchase price increases of \$12,000.00 or more for an average double-section manufactured home.<sup>13</sup> This, in itself, would exclude millions of households from the manufactured housing market.<sup>14</sup> These reductions, moreover, would occur against the backdrop of a manufactured housing market that has consistently underperformed for more than twenty years, and barely reaches the 100,000 new home production threshold each year.

Accordingly, because of the May 31, 2022 DOE standards’ (1) extreme market impacts; (2) extreme purchase price impacts; and (3) lack of any reasonable basis or legitimacy given the lower energy operating costs of modern, HUD Code manufactured homes, MHARR specifically supported H.R. 5184, as originally filed by Rep. Erin Houchin (R-IN). In its original form, that bill would have expressly repealed both the May 31, 2022 DOE “final” standards and, simultaneously, their purported statutory basis, section 413 of EISA. The enactment of this bill, in its original form, would have offered total relief to the industry and its consumers on the issue of energy regulation by not only invalidating the draconian DOE May 31, 2022 standards themselves, but also by eliminating the statutory basis for those standards and for any subsequent updates based on future IECC cycles.

The Houchin Bill, however, since its filing, has been significantly amended, downgraded and diminished. While the original bill would have repealed both the DOE “final” standards and their underlying statutory authority, the Houchin Bill as amended – and as passed by the House on January 9, 2026 – would now repeal the DOE standards but leave EISA section 413 essentially intact, with certain modifications. Under those modifications, DOE could still “recommend” manufactured housing “energy conservation” standards to HUD. Those standards, like the originally-mandated EISA section 413 standards, would still be required to take “into consideration” the “life-cycle” energy “operating costs” of manufactured homes – a misleading metric that energy extremists have used previously as a ploy to demand extreme, destructive and discriminatory manufactured housing energy standards. At the same time, the amended Houchin Bill would require the consideration of ““life-cycle construction ... costs” – a meaningless term that is left undefined by the amended bill. As amended, therefore, the Houchin Bill would represent only a marginal improvement over the current status quo.

Put differently, under the amended Houchin Bill, the threat of extreme DOE manufactured housing energy standards would continue to exist. Furthermore, the amended Houchin Bill, following House passage, has apparently been sidetracked and left to languish without a parallel

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<sup>12</sup> See, 88 Federal Register, No. 246 (December 26, 2023) “Energy Conservation Standards for Manufactured Housing: Enforcement” at p. 88844, et seq.

<sup>13</sup> Standards-driven purchase price increases previously estimated by MHARR do not reflect subsequent increases in the cost of labor and materials and do not reflect the impact of subsequent inflation levels or increased consumer borrowing costs.

<sup>14</sup> See, MHARR October 25, 2021 Comments, supra. See also, MHARR Comments, “Energy Conservation Program: Energy Conservation Standards for Manufactured Housing (EERE-2009-BT-BC-0021/RIN 1904-AC11), November 22, 2021

Senate bill, outside of the current housing bills, both of which have publicly been supported by MHI. The “housing” bills, however, address the looming DOE manufactured housing “energy” standards in ways that are far weaker, far less definitive, and, far less effectual than the original Houchin Bill, leaving both the industry and consumers exposed to the threat of excessive, unnecessary and unduly costly energy standards that could still discriminatorily target the manufactured housing sector, and could still undermine the essential and critical affordability of mainstream manufactured homes.

## **SENATE BILL – The 21<sup>st</sup> Century ROAD to Housing Act**

The Senate housing bill, the so-called 21<sup>st</sup> Century ROAD to Housing Act (ROAD Act), has two provisions relating to manufactured housing “energy” standards. Under the first provision, no “energy standards for manufactured homes developed by any federal agency” shall have “legal effect unless and until adopted by [HUD].”<sup>15</sup> Under the second energy-related provision, HUD would be *required* to adopt manufactured housing energy efficiency standards within one year of enactment of the legislation and to then update those standards no less frequently than every three years.<sup>16</sup> This approach, in the Senate bill, contains multiple fatal flaws that could ultimately leave both the industry and consumers exposed to draconian energy regulation.

First, the ROAD Act, unlike the original Houchin bill, does not expressly repeal EISA section 413. Instead, it leaves that section intact, as a continuing and lingering threat of excessive and needless regulatory over-reach against manufactured housing and manufactured housing consumers by DOE or any other federal agency in the service of climate alarmism. Put differently, the ROAD Act would not, per se, protect HUD Code manufacturers from demands by DOE or any other federal agency, for compliance with non-HUD and non-HUD-approved manufactured housing energy standards. At best, this provision could provide a non-complying manufacturer with a legal defense in non-HUD agency-initiated enforcement litigation, but a successful outcome would not necessarily be guaranteed, and manufacturers would be exposed to unnecessary litigation risks and expenses.

Second, and specifically regarding the May 31, 2022 DOE “final” energy standards, whether HUD adoption of the already “final” May 31, 2022 DOE standards would be necessary for those standards to have “any legal effect,” would be a matter of statutory/legal interpretation and, therefore, an invitation for costly litigation. As a matter of black letter law, statutes -- like court decisions -- are presumed to be prospective only, unless they specifically state that they are meant to have retroactive effect.<sup>17</sup> Thus, it is entirely possible, if not likely, that under the current

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<sup>15</sup> See, ROAD Act, section 301(d)(2)(B).

<sup>16</sup> *Id.* at section 301(d)(2)(C). That section states, in relevant part: “The Secretary of Housing and Urban Development shall – (i) not later than 1 year after the date of enactment of this Act, adopt minimum energy efficiency standards for manufactured homes; and (ii) not less frequently than once every 3 years after adopting the standards under clause (i), update those standards.”

<sup>17</sup> See, e.g., Congressional Research Service, “Retroactive Legislation, A Primer for Congress” (August 15, 2019), at p. 2, “Courts interpreting ambiguous statutes apply a general presumption against retroactivity.”

formulation of the Senate bill, the May 31, 2022 “final” DOE standards could be imposed by DOE with full legal effect without HUD approval.

Third, and just as importantly, for any future DOE (or non-HUD) manufactured housing energy standard, it is pure political fantasy to believe that a HUD controlled by the same President and same political party that controls DOE (or any other non-HUD federal agency) would not accept, approve and adopt such a DOE (or other agency) standard. Put differently, it is unrealistic to expect that a HUD Secretary appointed by a President with a fixation on climate extremism/alarmism would not approve and adopt manufactured housing energy standards developed by a DOE (or other federal agency) led by an appointee of the same President with the same fixation. Accordingly, the supposed “HUD adoption” safeguard is little more than a fantasy and deception by its proponents – pabulum for the uninformed.

Why any organization representing the manufactured housing industry would agree to support such a high-risk formulation regarding the extreme and destructive May 31, 2022 DOE energy standards, as is set forth in the ROAD Act, is unfathomable and would appear to be utterly indefensible.

Even worse is the ROAD Act’s mandate for the adoption of new manufactured housing energy standards within one year of adoption, with continual updates thereafter. Even if the Trump Administration were to withdraw the May 31, 2022 DOE “final” energy standards under that scenario, a future climate extremist/alarmist administration would have a ready excuse and reason to pursue and adopt further/future draconian energy standards. The one-year/three-year provision, accordingly, is an open invitation for massive and draconian energy mandates in the future, including mandates that could discriminatorily target manufactured housing.

MHARR, again, has uncovered no conceivable legitimate reason – and none has been openly offered by MHI – for supporting such a formulation in favor of the clear and definitive approach of the original Houchin bill.

## **HOUSE BILL – Housing for the 21<sup>st</sup> Century Act**

The House bill, the so-called Housing for the 21<sup>st</sup> Century Act (H21 Act) is, arguably, even worse than the Senate bill with respect to excessive DOE manufactured housing energy regulation. Like the Senate bill, the House bill: (1) does not expressly repeal the May 31, 2022 DOE manufactured housing energy standards; (2) does not expressly repeal the December 26, 2023 proposed DOE manufactured housing energy enforcement regulations; and (3) does not expressly repeal section 413 of EISA. (Emphasis added). Once again, therefore, the House bill would arguably leave the May 31, 2022 DOE standards intact and poised to take effect. Even worse, the bill, by its terms, does not repeal the “continuing updates” mandate of EISA section 413.

Instead, the House bill would: (1) vest HUD with “primary authority” to establish “federal manufactured home construction and safety standards;” (2) require the head of any federal agency to seek approval from the HUD Secretary for any “manufactured home construction and safety standard” they seek to establish after the date of enactment of the House bill; and (3) would prohibit the establishment of any such standard after the date of enactment of the bill without such

approval.<sup>18</sup> In addition, the House bill would require the HUD Secretary to “reject” any “other agency” standards that: (1) would increase the “cost of producing” manufactured homes; (2) would conflict with existing FMHCSS standards; or (3) “for any other reason as determined by the Secretary.”<sup>19</sup> The fatal defects inherent in this tortured approach, however, exceed even those of the Senate bill, and would needlessly set the stage for punishing energy regulation in the future.

First, vesting “primary authority” in HUD to establish “Federal Manufactured Home Construction and Safety Standards” is superfluous and legally meaningless/nugatory. The term “federal manufactured home construction and safety standard” is a legal term of art, *i.e.*, a specific statutory term, with a specific statutorily defined meaning, under existing law – i.e., the 1974 Act as amended. Moreover, existing federal law already confers the authority to adopt and enforce federal manufactured home construction and safety standards on one, and only one federal agency – i.e., HUD. Put differently, insofar as already-existing law vests HUD with exclusive authority to adopt and enforce FMHCSS standards, a new provision, stating that HUD has “primary” authority to establish such standards is: (1) superfluous; and (2) even worse, could be argued to be a weakening or dilution of the exclusive regulatory authority granted HUD under the 1974 Act, as amended. (Emphasis added).

Second, this formulation would not invalidate the May 31, 2022 DOE manufactured housing energy standards, per se, insofar as those standards are *not* FMHCSS standards, having been developed and promulgated under a grant of statutory authority (*i.e.*, EISA section 413) that is separate, distinct and unrelated to the statutory authority for HUD’s FMHCSS standards – i.e., the 1974 Act, as amended.

Third, the supposed requirement that that the “head” of any non-HUD federal agency must seek approval from the HUD Secretary for any “manufactured home construction and safety standard” that such agency seeks to establish after enactment of the H21 Act, is also superfluous, in that other non-HUD federal agencies do not have statutory authority now to adopt federal “manufactured home construction and safety standards.” Again, that authority, under the 1974 Act, as amended, is conferred exclusively on HUD. It is logically and legally impossible *now* for an “other” agency manufactured housing standard to become an FMHCSS standard unless and until it is also “adopted” by HUD. Again, therefore, the H21 Act formulation is meaningless, at best.

Fourth, the provision that no such “other” agency federal manufactured housing standard can be “established” after enactment of the H21 Act without the HUD Secretary’s approval, would similarly be totally unhelpful regarding the DOE May 31, 2022 manufactured housing energy standards, insofar as those standards were adopted (by DOE) as a final rule *prior* to adoption of the H21 Act. DOE, for its part, has consistently maintained that the May 31, 2022 standards are in effect and have been implemented, with only mandatory “compliance” having been deferred. DOE could thus assert that the term “established” has no fixed/specific legal meaning and is not a defined term for purposes of the House bill. As a result, DOE could maintain that its May 31, 2022 manufactured housing energy standards were adopted as a final rule prior to the enactment of this bill, and are not, therefore, impacted by this provision.

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<sup>18</sup> See, H21 Act at section 301(j)(1-2).

<sup>19</sup> *Id.* at section 301(j)(2)(B).

Fifth, the DOE manufactured housing energy standards were not adopted by DOE as FMHCSS standards. As noted above, FMHCSS is a term of art for standards adopted under authority of the 1974 Act, as amended. The May 31, 2022 DOE standards, rather, were adopted by DOE under a separate and different statutory authority – i.e., EISA section 413. Those standards, therefore, by definition, are not FMHCSS standards and so are arguably not impacted by this H21 Act provision at all. For multiple reasons then, the House bill is fatally flawed with respect to the pending May 31, 2022 DOE manufactured housing energy standards.

## **SUMMARY AND CONCLUSION**

In summary, given the opportunity to pursue beneficial legislation for the industry, MHI is on the verge of securing a pyrrhic victory, obtaining relief from the “permanent chassis mandate that could have been obtained decades ago, if not for MHI’s own abandonment of that issue at that time. In exchange for that minor “concession,” however, MHI has seemingly surrendered virtually everything else of major importance to the industry, having achieved arguably nothing on either DTS implementation or zoning exclusion, while agreeing to a formulation on DOE energy standards that will leave the industry and its consumers fully exposed to harsh, costly, market-killing regulation. There is no excuse for such a failure.

*The Manufactured Housing Association for Regulatory Reform is a Washington, D.C.- based national trade association representing the views and interests of independent producers of federally-regulated manufactured housing.*