1.888.602.4663 | MHCC@HUD.GOV | MHCC@HOMEINNOVATION.COM

MEETING MINUTES MANUFACTURED HOUSING CONSENSUS COMMITTEE

February 15-16, 2024

MEETING MINUTES
MANUFACTURED HOUSING CONSENSUS COMMITTEE (MHCC)

February 15-16, 2024

Day 1: Thursday, February 15, 2024

Call to Order

The Manufactured Housing Consensus Committee (MHCC) meeting was held via teleconference on Thursday (February 15, 2024) and Friday (February 16, 2024). Kevin Kauffman, Administering Organization (AO) Home Innovation Research Labs, called the roll and announced that a quorum was present. The MHCC members briefly introduced themselves as roll was called. See Appendix A for a list of meeting participants.

Introduction and Opening Remarks

Teresa Payne, Administrator of the Office of Manufactured Housing Programs, and Designated Federal Officer (DFO) thanked everyone for their time and made some administrative announcements. She thanked the members of the public who submitted comments prior to the teleconference. She expressed that it is critical for the MHCC to submit comments on the Proposed Rule and shared that she is looking forward to the coming discussion. Ms. Payne reminded everyone that HUD has submitted a Federal Register Notice soliciting new applications for the MHCC and acknowledged HUD is working hard to increase diversity in all federal committees. She then introduced the new chair, Aaron Howard, and vice chair, Tara Brunetti, congratulating them and providing some history on their backgrounds and contributions to the MHCC. She informed the committee that the three members who were eligible for reappointment are back to serve a second term and welcomed the new members to the committee. Then, she thanked the former chair and vice chair, Mitchel Baker and David Tompos respectively, and the members whose term ended at the end of 2023 for their service on the MHCC. Finally, she provided some information on how the comments drafted by the MHCC at these meetings will be submitted by HUD directly to DOE, rather than submitted to regulations.gov by the AO as was the procedure the last time the MHCC drafted comments in response to a proposed rule.

Aaron Howard, the chairperson of the MHCC, expressed his excitement and interest in the discussions that will occur over the next two days. He thanked Teresa and indicated that he is happy to see the collective experience of the people on the committee and knows that the MHCC will have to work together to gather the MHCC's comments on the DOE Proposed Rule.

Approval of the Minutes

MHCC Motion: Approve the combined draft minutes from October and November 2022 MHCC meetings.

Maker: Joseph Sullivan **Second: Robert Parks**

The motion carried unanimously.

Public Comment Period

See Appendix B for written public comments received prior to each meeting.

Mark Weiss, Manufactured Housing Association for Regulatory Reform (MHARR), welcomed the new members and introduced himself. Mr. Weiss provided some background on the MHARR and how they represent independent producers of HUD code housing and shared that he personally has been involved in this industry for over 40 years. He reminded the MHCC members that he submitted comments on behalf of MHARR prior to the meeting and was hopeful that the members had a chance to review the comments prior to the meeting. In his opinion, the presumption in the DOE proposed rule that there will be little to no cost to the manufacturers is incorrect and he believes that the proposed rule would lead to significant costs to the manufacturer and eventually the end user. He feels that these proposed regulations in combination with the standards published in 2022 will exclude lots of potential home buyers and will do little to nothing to positively impact the quality of the homes. He encouraged the MHCC members to reject the proposed rule and request that DOE start over and really tailor any regulations to the manufactured housing industry. He finished his comments by thanking the committee for their time.

Lesli Gooch, Manufactured Housing Institute (MHI), began her comments by thanking everyone for their time and dedication to the MHCC. She stated that MHI wanted to make it clear that they believe manufacturers currently produce energy efficient and quality homes and any new regulations need to be usable by the manufacturers. MHI rejects the notion that the DOE should be setting these standards as they do not have the proper background information on the manufactured housing industry. She believes that even though this is called a compliance and enforcement rule, there are no compliance paths or instructions of how to comply in this rule. Rather the proposed rule consists only of a review of compliance documentation, similar to an audit, to ensure that previously constructed homes are meeting the new energy standards and assesses steep fines if any deviations are identified. She reminded the MHCC members that the partnership with HUD and the manufactured housing industry started over 50 years ago and the MHCC should not let DOE alter that relationship by mandating additional standards or demands for compliance. She believes that the reason that compliance is not detailed in the proposed rule is due to the cost of compliance which was not properly determined in the rule. If the costs were included, the rule would not satisfy the affordability requirements of manufactured housing. The proposed rule would require updating many documents including but not limited to design manuals and home designs for each manufacturer, which would undoubtedly be a cost to the manufacturers.

Daniel Weber is an attorney currently representing MHI and several manufacturers, retailers, and suppliers. He indicated that he did not want to mirror what had already been said but wanted to address a couple points. He indicated that there has been a troubled history with DOE, manufactured housing energy standards, and enforcement. There was the original 2016 proposed rule which was withdrawn and then DOE was sued. This lawsuit appeared to force DOE to come up with something at the last minute. He believes that they left lots out of that last-minute rule which left the industry discussing the cost of these proposed energy requirements. It was their position that the DOE did not properly weigh the MHCC comments and reminded the MHCC that there have been lawsuits filed regarding this final rule, specifically citing a lawsuit in Texas. The Final Rule says there is zero cost, this he does not believe is accurate. DOE then came out with a proposed rule for testing and compliance, which does not provide enforcement and compliance, rather just a requirement for paperwork for manufacturers. He believes that HUD is the body who should be determining the enforcement and compliance for these manufacturers and does not believe that the proposed rule is workable in its current state. He requested that the MHCC ask the DOE to withdraw their enforcement rule.

Review, Discussion, and Drafting MHCC Comments on Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement Proposed Rule

The working document showing all the MHCC comments on the DOE Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement Proposed Rule as recorded at the end of the February 15 and 16, 2024 MHCC teleconferences can be found in Appendix C.

Michael Moglia thanked everyone for their comments so far and requested that everyone try to look at this through the eyes of the manufacturers. They already have to comply with the Manufactured Home Construction and Safety Standards (MHCSS) and this proposed rule would allow another governmental agency to come in and set a different set of compliance rules, one from HUD and another from DOE. The rule does not contain any correction mechanisms, instead just fines associated with noncompliance.

Manuel Santana believes that the enforcement rule, does not contain any pathways for compliance. He believes it completely ignores the infrastructure for approval, inspection, and follow-up which currently exists and has been functioning for 50 years and essentially replaces it with nothing. He does not believe that the proposed rule is currently workable and thinks that each manufacturer is going to have to guess what exactly DOE is looking for, and if wrong, pay a steep noncompliance fee. He feels that the only thing that the proposed rule is clear on is where to send payments once a manufacturer has received a notice of noncompliance.

Michael Moglia believes that once HUD has implemented the proposed changes, a result of the October and November 2022 MHCC meetings, into the MHCSS the current mechanisms for oversight and compliance could be used to ensure that the requirements listed in the energy regulations are met.

Bobby Parks thinks that the MHCC really needs to highlight the things that are truly wrong with the proposed rule which show a lack of understanding of the manufactured housing space. One example of this is how DOE proposed determining compliance by reviewing records when there are no standardized testing requirements. He questioned how can one determine compliance to a specific requirement when there are not standardized testing requirements?

The MHCC then began reviewing the proposed rule line by line and drafting comments to be submitted to HUD. The discussion centered around the ambiguity and lack of specific requirements in the proposed rule. The MHCC felt that the rule would add confusion and undue burdens on the manufactured housing industry. See Appendix C for the MHCC comments on the proposed rule.

BREAK

Public Comment Period

See Appendix B for written public comments received prior to each meeting.

Mark Weiss, MHARR, had some issues with a drafted comment regarding testing and compliance and requested edits.

Lesli Gooch, MHI, does not believe that any of the DOE rules regarding manufactured housing were developed with proper consultation with HUD and the MHCC. The MHCC has submitted comments

multiple times, and she believes that DOE has not properly considered or responded to those comments. She believes that the changes drafted in the October and November MHCC meetings are the best path moving forward.

Daniel Weber, wanted to expand on something that Ms. Gooch mentioned, reiterating that manufactured housing standards shall be "established after consultation with HUD and the MHCC". He believes that HUD has been doing their due diligence to confer with the MHCC at every opportunity, while DOE appears to have mostly ignored the MHCC's comments requesting that the costs associated with their manufactured housing energy rules be considered.

Review, Discussion, and Drafting MHCC Comments on Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement Proposed Rule

The working document showing all the MHCC comments on the DOE Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement Proposed Rule as recorded at the end of the February 15 and 16 2024 MHCC teleconferences can be found in Appendix C.

The MHCC discussion was centered on how the compliance rule as written could potentially function and how penalties could/would be assessed.

Wrap Up – DFO & AO

Teresa Payne thanked everyone for their time and reminded everyone of the teleconference hours for tomorrow, 11:00-2:00 pm eastern time.

Adjourn

The motion to adjourn the meeting was carried.

Day 2: Friday, February 16, 2024

Call to Order

The Manufactured Housing Consensus Committee (MHCC) meeting reconvened Friday, February 16, 2024, via teleconference. Kevin Kauffman, Administering Organization (AO) Home Innovation Research Labs, called the roll and announced that a quorum was present. See Appendix A for a list of meeting participants.

Introduction and Opening Remarks

Teresa Payne, Administrator of the Office of Manufactured Housing Programs, and Designated Federal Officer (DFO) welcomed the participants, thanked them for their time, and indicated she was looking forward to the results at the end of the teleconference.

Public Comments Period

See Appendix B for written public comments received prior to each meeting.

Mark Weiss, MHARR, wanted to reiterate what he said yesterday. He thinks the MHCC needs to remove the bulleted item regarding testing and believes it to be an open invitation to DOE to impose significant and costly testing requirements. He doesn't think it's an appropriate comment and believes it should be removed. He then provided some alternative language the committee could consider including in their comments.

Lesli Gooch, MHI, thanked everyone for their time and attention. She believes that it's very important to make it clear that there is no compliance without testing, and there is already a testing regime within the current HUD code. She referenced that the MHCC previously proposed adjustments the MHCSS to include the DOE energy rule, and she thinks that the MHCC needs to request that the DOE withdraw its rule and leave the enforcement to HUD, and its 50 years of guiding this process and industry. She believes the MHCC should make it clear that DOE did not include compliance and the entire rule should just be withdrawn. She does not believe that the costs of compliance were properly estimated in the rule and that is why the compliance component is missing. She believes if compliance costs were properly included, the rule would not meet the affordability requirements of manufactured housing. She was thrilled with the direction that the MHCC is headed with their comments and thinks it's nice to see the MHCC exercise their authority over the manufactured housing standards. She believes that the MHCC has made their position on who should control manufactured housing standards and believes that DOE has ignored that position. She stressed that the MHCC must get this right and can't get lost in a bureaucratic mess. She reaffirmed her belief that HUD should be the enforcement arm for manufactured housing and requested that the MHCC strengthen their negative comments.

Spencer Templeton informed the MHCC that she was representing MHI and wanted to reiterate some of Ms. Gooch's comments. She sees dire consequences in implementing this rule as written. She thinks that the MHCC needs to be strong in their condemnation of this proposed rule. The first point she emphasized was regarding how manufacturers are going to show compliance. She believes that DOE tried to draft a compliance rule without adding any additional cost and failed. She does not believe that the current documents requested in the proposed rule will show compliance with the DOE energy rule. Manufacturers

are then going to have to change their quality insurance manuals, DAPIA designs, etc. She feels that the enforcement rule puts undue burden on the manufacturers. She sees the civil penalty as the other main problem. The civil penalty, DOE says it's 1% of the "manufacturer's retail list price", which is not a generally used term in our industry or a defined term in the rule. The rule also is not clear on when this fine would start. So, theoretically if 100 days go by, the manufacturer would be out the entire cost of that home. This penalty would get compounded with each additional unit that occurs a penalty. She encouraged the MHCC to send a strong message to DOE. She finished by thanking the committee for their time and hard work.

Review, Discussion, and Drafting MHCC Comments on Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement Proposed Rule

The working document showing all the MHCC comments on the DOE Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement Proposed Rule as recorded at the end of the February 15 and 16 2024 MHCC teleconferences can be found in Appendix C.

The committee thoroughly discussed the various comments that were drafted the previous day, modifying, clarifying, and refining the language. The MHCC also added new comments on the DOE proposed rule.

BREAK

After the break there were no public comments and the MHCC continued their work on drafting comments on the proposed rule.

MHCC Motion: MHCC requests that Home Innovation Research Labs submit the comments on the DOE Proposed Rule as drafted in the February 2024 MHCC teleconference to HUD.

Maker: Michael Moglia **Second: Robert Parks**
The motion carried with no negative votes and 1 abstention.

Wrap Up – DFO & AO

Teresa Payne gave the closing comments and thanked everyone for their hard work, especially the new Chair and Vice-Chair.

Chairperson Aaron Howard and Vice-Chairperson Tara Burnetti both thanked the committee members, HUD, and Home Innovation staff for their efforts during the call and reinforced that participation in these meetings is vital for the industry.

Mr. Kauffman, AO, thanked everyone for their participation and reminded the committee members that the comment submittal procedure would differ from the last time the MHCC drafted comments on a proposed rule. He revisited and detailed the new procedure for approving and finalizing the minutes of the meeting, as the process has changed to ensure compliance with applicable regulations.

Adjourn

The motion to adjourn the meeting was carried.

Certification

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

Aaron Howard
Manufactured Housing Consensus Committee Chair
Certified via email on March 25, 2024

1.888.602.4663 | MHCC@HUD.GOV | MHCC@HOMEINNOVATION.COM

Appendix A:
MHCC Attendees and Guests

February 15-16, 2024
MHCC Meetings

February 2024 MHCC Meeting

	MHCC Attendees, February 15-16, 2024		
	Name	**Attendance, Day 1**	**Attendance, Day 2**
General Interest / Public Official	Tara Brunetti	Y	Y
	Keisha Hoggard	Y	Y
	Aaron Howard	Y	Y
	Michael Moglia	Y	Y
	Robert Parks	Y	Y
Producer	Phillip Copeland	Y	Y
	Jayar Daily	Y	Y
	Derek Dodson	Y	Y
	Peter James	Y	Y
	Leo Poggione		Y
	Manuel Santana	Y	Y
User	Amy Batiste	Y	Y
	Rita DiIenno	Y	Y
	Stacey Epperson	Y	Y
	Nicole Hebbe		
	Joseph Sullivan	Y	Y

HUD Staff

Geraldine (Uju) Aguolu
Barry Ahuruonye
Wisam Alhajjaj
Dennaire Anderson
Jessica DeStefano
Alan Field
Dan Hardcastle
Leo Huott
James Martin
Jason McJury
Ernie Mui
Teresa Payne
Glorianna Peng
Demetress Ross
Barton Shapiro
Jun Shi
Angelo Wallace

AO Staff, Home Innovation Research Labs

Kevin Kauffman

Guests

Nawroz Aziz
Timothy Ballo
Cindy Bocz
Dan Dittman
Lesli Gooch
Barry Gupton
Andrew Justus
Anne Ladewig
Elliot McCrary
Bill Moeller
Kelly Newcomer
Joseph Sadler
Amy Schmidt
Matthew Schneider
William Sherman
Parker Smith
Roger Sorensen
Spenser Templeton
David Tompos
James Turner
Madeline Tweden
Daniel Weber
Mark Weiss

Appendix B:
Written Public Comments

Public Comments Received for February 15-16, 2024	
1	Lesli Gooch
2	Mark Weiss

February 12, 2024

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, DC 20410
mhcc@homeinnovation.com

RE: Notice of Federal Advisory Committee Meetings: Manufactured Housing Consensus Committee (FR-6447-N-01)

Dear Secretary Fudge,

The Manufactured Housing Institute (MHI) is pleased to provide feedback to the Manufactured Housing Consensus Committee (MHCC) regarding the Notice of Federal Advisory Committee Meetings; Manufactured Housing Consensus Committee providing notice of the MHCC's meetings scheduled for February 15-16, 2024, to review and consider the Department of Energy (DOE) Notice of Proposed Rulemaking: Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement (the Enforcement Rule NOPR).

MHI is the only national trade association that represents every segment of the factory-built housing industry. Our members include builders, suppliers, retail sellers, lenders, installers, community owners, community managers, and others who serve our industry, as well as 50 affiliated state organizations. In 2022, our industry produced over 112,000 homes, accounting for approximately 12 percent of new single-family home starts. These homes are produced by 35 U.S. Corporations in 144 plants located across the country. MHI's members are responsible for close to 85 percent of the manufactured homes produced each year.

The MHCC should recommend that HUD not adopt either the DOE's Energy Efficiency Standards for Manufactured Housing (the Energy Rule) or the Enforcement Rule NOPR and instead undertake HUD's standard rulemaking process, including consultation with the MHCC, to implement energy efficiency standards tailored to the manufactured housing industry to be enforced pursuant to HUD's longstanding processes under the Manufactured Housing Construction Safety Standards (MHCSS). Specifically, the MHCC should request that HUD adopt into the MHCSS the superior energy standards recommended by the MHCC in the fall of 2022, with the enforcement of these standards through the longstanding HUD regime at 24 C.F.R. § 3282. The MHCC should also request that DOE withdraw the Enforcement Rule NOPR, as it would harm consumers and undermine HUD's 50-year exclusive jurisdiction and enforcement over manufactured housing construction and safety standards, including energy efficiency, through the MHCSS.

As set forth herein, the Enforcement Rule NOPR was promulgated as a litigation tactic rather than a meaningful and workable enforcement scheme. Despite DOE's suggestion to the contrary, the Enforcement Rule NOPR will increase costs of manufactured housing while simultaneously failing to provide any workable

standards from which compliance with the Energy Rule can be measured. The Enforcement Rule NOPR undermines HUD's enforcement program and preemption over manufactured housing. Moreover, the Enforcement Rule NOPR exposes manufacturers to excessive civil penalties that cannot be calculated with any reasonable certainty. To ensure workable and uniform standards and enforcement for energy efficiency in manufactured housing, the MHCC should recommend that HUD not adopt either the Energy Rule or the Enforcement Rule NOPR and instead undertake HUD's standard rulemaking process, including consultation with the MHCC, to implement energy efficiency standards tailored for the manufactured housing industry to be enforced pursuant to HUD's longstanding processes under the MHCSS.

The result of the Energy Rule that will be made effective through the Enforcement Rule NOPR will be severe. Specifically, it will significantly increase the cost of a new manufactured home and will result in an estimated 50,000 fewer manufactured homeowners over the next decade. Relatedly, it will disqualify many borrowers from being able to obtain a loan under standard mortgage loan debt to income (DTI) requirements. In the end, the cost increase for manufactured homes will greatly exceed any actual energy savings under the Energy Rule.

1. Like the Energy Rule, the Enforcement Rule NOPR Was Promulgated for Litigation Strategy.

In 2007, Congress required DOE to establish standards for energy efficiency in manufactured housing "not later than 4 years after December 19, 2007." 42 U.S.C. § 17071(a). Over ten years later, when DOE had not yet established energy efficiency standards for manufactured housing, the Sierra Club sued DOE in the United States District Court for the District of Columbia in Civil Action No. 1:-17-cv-02700. Ultimately, DOE and the Sierra Club entered into a consent decree requiring DOE to establish energy efficiency standards by May 16, 2022.

On May 16, 2022, DOE issued its notice of final rulemaking for the Energy Rule. In its haste to comply with this litigation deadline, DOE failed to abide by its statutory mandate to consult with HUD in the rulemaking process. In its first proposed rule in 2016, DOE acknowledged that "[t]est procedures are necessary to provide for accurate, comprehensive information about energy characteristics of manufactured homes and provide for the subsequent enforcement of the standards." 81 FR 78734. However, after the 2016 proposed rule was withdrawn and replaced in 2021, DOE stated that it "has not included test procedures or compliance and enforcement provisions in this SNOPR" and "does not intend to address test procedures or compliance and enforcement provisions in this rulemaking." 86 FR 44756.

HUD convened the MHCC to meet on October 18-19, 2022 and November 15-16, 2022 to "propose recommended changes to the [MHCSS] that align with the [Energy Rule]." 87 FR 57712. Among other issues with the Energy Rule, the MHCC stated:

- HUD, by statute, is the body responsible for the development and enforcement of manufactured housing standards.
- The MHCC has reviewed the DOE [Energy Rule] and has determined DOE circumvented the standards development process prescribed in EISA which requires cost justification and consultation with HUD.
- **The MHCC previously recommended that DOE include the substantial cost of testing, enforcement, and regulatory compliance in its costing analysis. The final rule did not consider these costs. . .**

See MHCC Working Document Submitted to HUD attached hereto as Exhibit 1.

Given these fundamental flaws, the MHCC was not able to fully align the MHCSS and the Energy Rule, so it did not recommend wholesale adoption of the Energy Rule into the MHCSS. Rather, the MHCC

recommended modifications to the MHCSS "based largely on the [Energy Rule]" but that "increase energy efficiency while maintaining affordability and consumer options." Exhibit 1. The MHCC opined that "[t]he recommended changes implemented into the MHCSS allow for testing, enforcement, and regulatory compliance within HUD's existing framework which helps minimize costs to manufacturers and ultimately consumers. However, there may still be a gap in enforcement between HUD's final standards and DOE's final rule, which may need to be resolved." Exhibit 1.

The Energy Rule was initially set to become effective on May 31, 2023. On February 14, 2023, MHI filed a lawsuit against DOE in the United States District Court for the Western District of Texas, Civil Action No. 1:23-cv-00174 (the Litigation). *See* Litigation Complaint attached hereto as Exhibit 2. In the Litigation, MHI asserted that DOE's failure to consider the costs associated with testing, compliance, and enforcement of the Energy Rule rendered its life-cycle cost calculation incomplete and inaccurate. Weeks later, on March 23, 2023, DOE published a Notice of Proposed Rulemaking to delay implementation of the Energy Rule until 60 days after creation of final enforcement standards for Tier 1 homes and until July 1, 2025 for Tier 2 homes. 88 FR 17745.

On December 26, 2023, DOE issued the Enforcement Rule NOPR. Hamstrung by its previous refusal to include the cost of testing, compliance, and enforcement in the Energy Rule, and contrary to the statements from its 2016 proposed rule which stressed the necessity of testing procedures, the Enforcement Rule NOPR stated it "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." 88 FR 88848. Rather, the Enforcement Rule NOPR purports to require manufacturers to maintain records required under the MHCSS and submit the same to DOE as evidence of compliance with the Energy Rule. The Enforcement Rule NOPR states that because "the documentation required to maintain by [] this proposed rule is already subject to separate, existing maintenance requirements imposed by HUD . . . this proposed rule would not impose any new, additional costs beyond those already required by separate requirements." 88 FR 88848.

Because the Energy Rule failed to include any costs associated with testing, compliance, or enforcement in its life-cycle cost calculation, DOE had no choice but to create an enforcement program that it says would not impose additional costs. The Enforcement Rule NOPR's reliance on HUD's regulations and paperwork to ensure compliance with its Energy Rule is unusual at best. Moreover, the Enforcement Rule NOPR appoints the DOE's Office of General Counsel as responsible for overseeing enforcement of energy efficiency standards in manufactured housing. 88 FR 88846. And, as set forth below, the Enforcement Rule NOPR will result in substantial costs, unworkable standards that undermine HUD's enforcement program for manufactured housing, and exposure to vague and excessive civil penalties. All of these irregularities stem from DOE's hurried rulemaking process aimed primarily at avoiding litigation rather than creating a meaningful and workable enforcement program for energy efficiency standards in manufactured housing.

2. <u>The Enforcement Rule Will Cause Substantial Cost Increases</u>.

The Enforcement Rule NOPR states that because "the documentation required to maintain by [] this proposed rule is already subject to separate, existing maintenance requirements imposed by HUD . . . this proposed rule would not impose any new, additional costs beyond those already required by separate requirements." 88 FR 88848-49. This is false. Currently, the MHCSS and the Energy Rule are not aligned. Even if the MHCSS and Energy Rule were brought into alignment, they would not remain aligned. DOE is required to update the Energy Rule within one year of the promulgation of the latest version of the International Energy Conservation Code (IECC), which occurs every three years. HUD does not have any similar mandate to update the MHCSS with regularity. HUD's rulemaking tempo is a product of its consultation with the MHCC. As such, even if steps were taken to align the MHCSS and Energy Rule during the present IECC cycle, the two standards would be updated at different times resulting in prolonged periods of misalignment.

The Enforcement Rule NOPR requires manufacturers to provide to DOE their Design Approval Primary Inspection Agency (DAPIA) records required under 24 C.F.R. § 3282.203(g) and 24 C.F.R. § 3282.361(b)(4), approved quality assurance manual required under 24 C.F.R. § 3282.361(c)(3), records related to Sub-Part I determinations required under 24 C.F.R. § 3282.417, and records of on-site construction required under 24 C.F.R. § 3282.608. However, none of these records are designed to demonstrate compliance with the Energy Rule, which materially differs from the MHCSS. HUD cannot require manufacturers to build homes to the Energy Rule, so these records do not necessarily reflect compliance with the Energy Rule. The Enforcement Rule NOPR does not (and cannot) require manufacturers to change forms required under the MHCSS to reflect the Energy Rule.

Because HUD records do not reflect designs, inspections, and testing unique to the Energy Rule, manufacturers would have to change their quality assurance manuals, DAPIA designs, and Sub-Part I programs to conform to the Energy Rule. Most manufacturers keep 50 to 100 different home models in production at any given time, so these documents will have to be modified for each model. Thereafter, DAPIAs, IPIAs, HUD, State Administrative Agencies (SAAs), and the Institute for Building Technology and Safety (IBTS) would have to approve the changes and factory personnel must be retrained to the new designs, manuals, and programs. However, HUD cannot require DAPIAs, IPIAs, SAAs, or IBTS to undergo training on the Energy Rule or fund any training on the Energy Rule. Likewise, DOE cannot interfere with current contracts between manufacturers and DAPIAs and IPIAs required under MHCSS. 24 C.F.R. § 3282.202.

Simply stated, for the Enforcement Rule NOPR to have any meaning whatsoever, substantial expense must be incurred to change longstanding design and quality assurance documents tailored to the MHCSS for every manufactured home model in production. These costs must be borne by manufacturers and passed on to consumers. Without incurring these costs, the Enforcement Rule NOPR leaves manufacturers unequipped to demonstrate compliance with the Energy Rule.

3. <u>The Enforcement Rule NOPR Provides No Workable Standards and Undermines HUD's Enforcement Scheme and Preemption</u>.

The Enforcement Rule NOPR provides no guidance as to how DOE will interpret and apply documents required to be maintained under the MHCSS to determine compliance with the Energy Rule. It provides no standards, measurements, testing procedures, interpretive materials, or safe harbors. The Enforcement Rule NOPR has no provisions for testing and compliance, but rather is only an enforcement program through potential civil penalties. As set forth above, in their current form, MHCSS documents will not demonstrate compliance with the Energy Rule. Therefore, manufacturers will have to guess as to how DOE will determine compliance with the Energy Rule based on submission of MHCSS documents. This guesswork will continue all the way through the administrative law process set forth in the Enforcement Rule NOPR for civil penalties.

In contrast to the Enforcement Rule NOPR, 24 C.F.R. § 3282 sets forth robust testing, compliance, and enforcement provisions that result in every home bearing a HUD label certifying its compliance with the MHCSS. 24 C.F.R. § 3282 has multiple layers of inspections and quality assurance through HUD, IPIAs, SAAs, and IBTS. The HUD label provides manufacturers persuasive evidence of compliance with the MHCSS both in regulatory and civil litigation settings. Here again, the HUD label will not serve as a certification of compliance with the Energy Rule. The Enforcement Rule NOPR has no corresponding label or certification and it provides no objective methods by which to determine or challenge compliance. The Enforcement Rule NOPR's lack of testing and compliance standards opens the door for subjective determinations of non-compliance with the Energy Rule. Where the Energy Rule and MHCSS overlap, this lack of certification undermines HUD's enforcement and preemption. This, in turn, exposes manufacturers to administrative and civil liability based on a subjective determination of non-compliance.

In sum, the Energy Rule NOPR's dearth of standards and certification undermines HUD's enforcement and preemption program and exposes manufacturers to unnecessary liability.

4. DOE Relies on a 1% Civil Penalty That is Arbitrary and Capricious.

The Enforcement Rule NOPR relies heavily on EISA's civil penalty "in an amount not exceeding 1 percent of the manufacturer's retail list price of the manufactured housing." 42 U.S.C. § 17071(c). However, most manufacturers do not utilize a "manufacturer's retail list price," which is not a term of art in the manufactured housing industry. EISA appears to have taken this terminology from a Monroney Label for cars. But the retail price of manufactured homes are dependent on a number of factors such as transportation distance, site improvements, time in inventory, and financing. Therefore, manufacturers will not be able to anticipate what amount of civil penalty may be imposed for a purported violation of the Energy Rule. And as set forth above, manufacturers will have no safe harbors or objective criteria for complying with the Energy Rule or challenging a determination of non-compliance.

5. Summary.

If the Enforcement Rule NOPR becomes final, a manufacturer's avenue toward complying with the Energy Rule would be to (1) undergo substantial expense to modify their DAPIA designs, quality assurance documents, and Sub-Part I programs; (2) blindly hope that the DOE Office of General Counsel interprets and applies the Energy Rule the same way as the manufacturer; and (3) wait to appeal a civil penalty of up to 1% of a non-existent manufacturer's retail list price. All a manufacturer will have to protect itself are documents demonstrating compliance with the MHCSS that is not currently aligned with the Energy Rule and will be updated at different times. This is an unworkable situation that will cause massive amounts of expense and uncertainty that will increase the cost of manufactured homes for consumers.

To ensure workable and uniform standards and enforcement for energy efficiency in manufactured housing, the MHCC should recommend that the Enforcement Rule NOPR be withdrawn. It should also recommend that HUD not adopt either the Energy Rule or the Enforcement Rule NOPR and instead undertake HUD's standard rulemaking process, including consultation with the MHCC, to implement energy efficiency standards tailored for the manufactured housing industry to be enforced pursuant to HUD's longstanding processes under the MHCSS. Specifically, the MHCC should request that HUD adopt into the MHCSS the superior energy standards recommended by the MHCC in the fall of 2022, with the enforcement of these standards through the longstanding HUD regime at 24 C.F.R. § 3282.

Sincerely,

Lesli Gooch, Ph.D.
Chief Executive Officer

1.888.602.4663 | MHCC@HOMEINNOVATION.COM

MHCC Working Document from October 18-20, 2022 and November 15-17, 2022 MHCC Meetings

Showing changes made to HUD Code based on Department of Energy's (DOE) Energy Conservation Program: Energy Conservation Standards for Manufactured Housing

Changes shown in red indicate MHCC recommended changes to the HUD Code.

Text/changes shown in purple indicate MHCC approved changes made to text originating in Department of Energy's (DOE) Energy Conservation Program: Energy Conservation Standards for Manufactured Housing. Notes are included with each purple change indicating the reason for the modification.

MHCC General Comments:

- The MHCC agrees that the energy efficiency requirements need to be updated but believes the updates should be done incrementally. The recommended changes shown in this document accomplish this incremental approach.
- HUD, by statute, is the body responsible for the development and enforcement of manufactured housing standards.
- The MHCC has reviewed the DOE Final Rule and has determined DOE circumvented the standards development process prescribed in EISA which requires cost justification and consultation with HUD.
- DOE provided an energy conservation standard which was based on site-built construction and applied it to a performance-based national code. If adopted as written, the final rule would adversely impact the entire Manufactured Housing program and cost increases associated with compliance would reduce prospective purchasers (especially minorities and low-income consumers) from durable, safe, high quality and affordable housing.
- The MHCC reviewed the DOE Final Rule and is recommending modifications to the MHCSS based largely on the final rule. The recommended changes increase energy efficiency while maintaining affordability and consumer options.

- The MHCC previously recommended that DOE include the substantial cost of testing, enforcement, and regulatory compliance in its costing analysis. The final rule did not consider these costs. The recommended changes implemented into the MHCSS allow for testing, enforcement, and regulatory compliance within HUD's existing framework which helps minimize costs to manufacturers and ultimately consumers. However, there still may be a gap in enforcement between HUD's final standards and DOE's final rule, which may need to be resolved.
- The MHCC has a statutory obligation to consider the cost impacts of all recommended changes to the MHCSS and preserve affordability to increase American home ownership and this obligation is reflected in the recommended changes.
- The MHCC expects, in accordance with normal practice, the recommendations contained in this document will be subject, as required in 42 USC 5403, to publication as a proposed rule and full notice and comment rulemaking in accordance with the 1974 Act as amended.
- See Appendix A for information and data supporting recommended changes.
- The MHCC's recommendations (1) seek to align the HUD code with the DOE Energy Rule which is based on certain IECC sections, and (2) does not include certain sections as they were either not pertinent to manufactured housing or appropriate for these recommendations. The MHCC acknowledges that the International Energy Conservation Code (IECC) is a copyright protected document, published and owned by the International Code Council (ICC), and that reproduction or copying of the IECC requires written permission or license from the ICC. Copies of the IECC are available for purchase at *www.iccsafe.org*. They may also be viewed for free on ICC's public access website at: *https://codes.iccsafe.org/public/collections/I-Codes*.
  **ICC has requested that this or a similar statement be included in the preamble of the Proposed Rule.*

General Changes:

- 3280: Replace term "U_o Value Zone" with "Climate Zone"

Subpart A - General

§ 3280.1 Scope.

This standard covers all equipment and installations in the design, construction, transportation, fire safety, plumbing, heat-producing, cooling, and electrical systems of manufactured homes which are designed to be used as dwelling units. This standard seeks to the maximum extent possible to establish performance requirements.
In certain instances, however, the use of specific requirements is necessary.

§ 3280.2 Definitions.

Equipment includes materials, appliances, devices, fixtures, fittings or accessories both in the construction of, and in the fire safety, plumbing, heat-producing, cooling, and electrical systems of manufactured homes.

Subpart B - Planning Considerations

§ 3280.103 Light and ventilation.

(e) Mechanical ventilation fan efficacy

1. Whole-house mechanical ventilation system fans must meet the minimum efficacy requirements set forth in the following table except as provided in paragraph (2) of this section.

2. Mechanical ventilation fans that are integral to heating, ventilating, and air conditioning equipment, including furnace fans are not subject to the efficiency requirements in paragraph (1) of this section.

MECHANICAL VENTILATION SYSTEM FAN EFFICACY

Fan type description	Airflow rate minimum (cfm)	Minimum efficacy (cfm/watt)
Heat recovery ventilator or energy recovery Ventilator.	Any	1.2
In-line supply or exhaust fans.	Any	3.8
Other exhaust fan.	<90	2.8
Other exhaust fan.	³90	3.5

SUBPART F – THERMAL PROTECTION

§ 3280.501 Scope.

This subpart sets forth the requirements for energy conservation, condensation control, air infiltration, thermal insulation and certification for heating and cooling.

§ 3280.502 Definitions.

~~(1) *Pressure envelope* means that primary air barrier surrounding the living space which serves to limit air leakage. In construction using ventilated cavities, the pressure envelope is the interior skin.~~

Note: Replace all instances of Pressure envelope with Air Barrier

~~(2) *Thermal envelope* area means the sum of the surface areas of outside walls, ceiling and floor, including all openings. The wall area is measured by multiplying outside wall lengths by the inside wall height from floor to ceiling. The floor and ceiling areas are considered as horizontal surfaces using exterior width and length.~~

Access (to) means that which enables a device, appliance or equipment to be reached by ready access or by a means that first requires the removal or movement of a panel or similar obstruction.

Air barrier means one or more materials joined together in a continuous manner to restrict or prevent the passage of air through the building thermal envelope and its assemblies.

Automatic means self-acting or operating by its own mechanism when actuated by some impersonal influence.

Building thermal envelope means exterior walls, exterior floors, exterior ceiling, or roofs, and any other building element assemblies that enclose conditioned space or provide a boundary between conditioned space and unconditioned space.

Ceiling means an assembly that supports and forms the overhead interior surface of a building or room that covers its upper limit and is horizontal or tilted at an angle less than 60 degrees (1.05 rad) from horizontal.

Climate zone means a geographical region identified in § 3280.506.

Conditioned space means an area, room, or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned space, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping, or other sources of heating or cooling.

Door means an operable barrier used to block or allow access to an entrance of a manufactured home.

Dropped ceiling means a secondary nonstructural ceiling, hung below the exterior ceiling.

Dropped soffit means a secondary nonstructural ceiling that is hung below the exterior ceiling and that covers only a portion of the ceiling.

Duct means a tube or conduit, except an air passage within a self-contained system, utilized for conveying air to or from heating, cooling, or ventilating equipment.

Duct system means a continuous passageway for the transmission of air that, in addition to ducts, includes duct fittings, dampers, plenums, fans, and accessory air-handling equipment and appliances.

Eave means the edge of the roof that overhangs the face of an exterior wall and normally projects beyond the side of the manufactured home.

Exterior ceiling means a ceiling that separates conditioned space from unconditioned space.

Exterior floor means a floor that separates conditioned space from unconditioned space.

Exterior wall means a wall, including a skylight well, that separates conditioned space from unconditioned space.

Fenestration means vertical fenestration and skylights.

Floor means a horizontal assembly that supports and forms the lower interior surface of a building or room upon which occupants can walk.

Glazed or glazing means an infill material, including glass, plastic, or other transparent or translucent material used in fenestration.

Note: *MHCC only included a portion of the definition in 16 cfr 460.2 because that definition was specific to House insulation.*

Insulation means any material mainly used to slow heat flow. It may be mineral or organic, fibrous, cellular, or reflective. It may be in rigid, semirigid, flexible, or loose-fill form.

Manual means capable of being operated by personal intervention.

Opaque door means a door that is not less than 50 percent opaque in surface area.

R-value (thermal resistance) means the inverse of the time rate of heat flow through a body from one of its bounding surfaces to the other surface for a unit temperature difference between the two surfaces, under steady state conditions, per unit area ($h \times ft^2 \times °F/Btu$).

Rough opening means an opening in the exterior wall or roof, sized for installation of fenestration.

Skylight means glass or other transparent or translucent glazing material, including framing materials, installed at an angle less than 60 degrees (1.05 rad) from horizontal, including unit skylights, tubular daylighting devices, and glazing materials in solariums, sunrooms, roofs and sloped walls.

Skylight well means the exterior walls underneath a skylight that extend from the interior finished surface of the exterior ceiling to the exterior surface of the location to which the skylight is attached.

Solar heat gain coefficient (SHGC) means the ratio of the solar heat gain entering a space through a fenestration assembly to the incident solar radiation. Solar heat gain includes directly transmitted solar heat and absorbed solar radiation that is then reradiated, conducted, or convected into the space.

Thermostat means an automatic control device used to maintain temperature at a fixed or adjustable set point.

U-factor (thermal transmittance) means the coefficient of heat transmission (air to air) through a building component or assembly, equal to the time rate of heat flow per unit area and unit temperature difference between the warm side and cold side air films (Btu/h × ft^2 × °F).

U_O (overall thermal transmittance) means the coefficient of heat transmission (air to air) through the building thermal envelope, equal to the time rate of heat flow per unit area and unit temperature difference between the warm side and cold side air films (Btu/ h × ft^2 × °F).

Ventilation means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

Vertical fenestration means windows (fixed or moveable), opaque doors, glazed doors, glazed block and combination opaque and glazed doors composed of glass or other transparent or translucent glazing materials and installed at a slope of greater than or equal to 60 degrees (1.05 rad) from horizontal.

Wall means an assembly that is vertical or tilted at an angle equal to greater than 60 degrees (1.05 rad) from horizontal that encloses or divides an area of a building or room.

Whole-house mechanical ventilation system means an exhaust system, supply system, or combination thereof that is designed to mechanically exchange indoor air with outdoor air when operating continuously or through a programmed intermittent schedule to satisfy the whole house ventilation rates.

Window means glass or other transparent or translucent glazing material, including framing materials, installed at an angle greater than 60 degrees (1.05 rad) from horizontal.

Note: *MHCC did not include definition for "Zone" from DOE Rule.*
MHCC Reason: *Zone is a commonly used term in the industry, and only appears in this context once in the standard. The definition provided is typically used for HVAC zones. The term zone is used in many different places in the standard, typically referring to climate zone.*
~~*Zone means a space or group of spaces within a manufactured home with heating or cooling requirements that are sufficiently similar so that desired conditions can be maintained using a single controlling device.*~~

§ 3280.503 Materials.

(a) Installation of Insulation - Insulating materials must be installed according to the insulation manufacturer's installation instructions and the requirements set forth in table below

INSTALLATION OF INSULATION

Component	Installation requirements
General	Air-permeable insulation must not be used as a material to establish the air barrier.
Access hatches, panels, and doors	Access hatches, panels, and doors between conditioned space and unconditioned space, such as attics and crawlspaces, must be insulated to a level equivalent to the insulation of the surrounding surface, must provide access to all equipment that prevents damaging or compressing the insulation, and must provide a wood framed or equivalent baffle or retainer when loose fill insulation is installed within an exterior ceiling assembly to retain the insulation both on the access hatch, panel, or door and within the building thermal envelope.
Baffles	For air-permeable insulations in vented attics, a baffle must be installed adjacent to soffit and eave vents, when needed in order to maintain 1 inch minimum air space between insulation and roof decking. Baffles, when used in conjunction with eave venting, must be constructed using a solid material, maintain an opening equal or greater than the size of the vents, and extend over the top of the attic insulation
Ceiling or attic	The insulation in any dropped ceiling or dropped soffit must be aligned with the air barrier.

Narrow cavities	Batts to be installed in narrow cavities must be cut to fit or narrow cavities must be filled with insulation that upon installation readily conforms to the available cavity space.
Rim joists	Rim joists must be insulated such that the insulation maintains permanent contact with the exterior rim board.
Shower or tub adjacent to exterior wall	Exterior walls adjacent to showers and tubs must be insulated.
Walls	Air permeable exterior building thermal envelope insulation for framed exterior walls must completely fill the cavity, including within stud bays caused by blocking lay flats or headers.

§ 3280.505 Air infiltration.

(a) Envelope air infiltration. The opaque envelope shall be designed and constructed to limit air infiltration to the living area of the home. Any design, material, method or combination thereof which accomplishes this goal may be used. The goal of the infiltration control criteria is to reduce heat loss/heat gain due to infiltration as much as possible without impinging on health and comfort and within the limits of reasonable economics.

~~(1) Envelope penetrations. Plumbing, mechanical and electrical penetrations of the pressure envelope not exempted by this part, and installations of window and door frames shall be constructed or treated to limit air infiltration. Penetrations of the pressure envelope made by electrical equipment, other than distribution panel boards and cable and conduit penetrations, are exempt from this requirement. Cable penetrations through outlet boxes are considered exempt.~~
~~(2) Joints between major envelope elements. Joints not designed to limit air infiltration between wall-towall, wall-to-ceiling and wall-to-floor connections shall be caulked or otherwise sealed. When walls are constructed to form a pressure envelope on the outside of the wall cavity, they are deemed to meet this requirement.~~

(1) Manufactured homes must be sealed against air leakage at all joints, seams, and penetrations associated with the building thermal envelope in accordance with the component manufacturer's installation instructions and the requirements set forth in the table below Sealing methods between dissimilar materials must allow for differential expansion, contraction, and mechanical vibration, and must establish a continuous air barrier upon installation of all opaque components of the building thermal envelope. All gaps and penetrations in the exterior ceiling, exterior floor, and exterior walls, including ducts, flue shafts, plumbing, piping, electrical wiring, utility penetrations, bathroom and kitchen exhaust fans, recessed lighting fixtures adjacent to unconditioned space, and light tubes adjacent to unconditioned space, must be sealed with caulk, foam, gasket or other suitable material.

AIR BARRIER INSTALLATION CRITERIA	
Component	Air barrier criteria
Ceiling or attic	The air barrier in any dropped ceiling or dropped soffit must be aligned with the insulation and any gaps in the air barrier must be sealed with caulk, foam, gasket, or other suitable material. Access hatches, panels, and doors, drop-down stairs, or knee wall doors to unconditioned attic spaces must be weather- stripped or equipped with a gasket to produce a continuous air barrier.
Note: *MHCC changed the title of "Duct system register boots" from the DOE rule.* ***MHCC Reason:*** *Change terminology to be consistent with terms used in the MH industry. Not changing the intent of the practice.*	
Supply and return ducts	Supply and return ducts that penetrate the building thermal envelope or the air barrier must be sealed to the subfloor, wall covering or ceiling penetrated by the duct, air barrier, or the interior finish materials with caulk, foam, gasket, or other suitable material.
Electrical box or phone box on exterior walls	The air barrier must be installed behind electrical and communication boxes or the air barrier must be sealed around the box penetration with caulk, foam, gasket, or other suitable material.
Floors	The air barrier must be installed at any exposed edge of insulation. The bottom board may serve as the air barrier.
Mating line surfaces	Mating line surfaces must be equipped with a continuous and durable gasket.
Recessed lighting	Recessed light fixtures installed in the building thermal envelope must be sealed to the drywall with caulk, foam, gasket, or other suitable material.
Rim joists	The air barrier must enclose the rim joist to subfloor interface. ***Note:*** *The MHCC replaced "The air barrier must enclose the rim joists. The junctions of the rim board and the subfloor must be air sealed." From the DOE Rule with the language above.*

	MHCC reason: *Proposed language provides more clarity.*
Shower or tub adjacent to exterior wall	The air barrier must separate showers and tubs from exterior walls when interior wall surface is used as an air barrier ***Note:*** *MHCC added additional language to clarify placement, location, and proper use of air barrier.*
Walls	The junction of the top plate and the exterior ceiling, and the junction of the bottom plate and the exterior floor, along exterior walls must be sealed with caulk, foam, gasket, or other suitable material.
Windows, skylights, and exterior doors	The rough openings around windows, exterior doors and skylights must be sealed with caulk or foam, or other suitable material. ***Note:*** *MHCC added ", or other suitable material to provide more flexibility in methods used to seal rough openings.*

§ 3280.506 ~~Heat loss/heat gain~~ Building Thermal Envelope and Climate Zones.

(a) Compliance options. The building thermal envelope must meet either the performance requirements of this section or the prescriptive requirements of section 3280.507. The climate zone shall be determined from the map in figure 1 and table XX.

Note: Rename title of Figure 1 U/o Value Zone Map to Climate Zone Map and remove U values from map. Add table "US states and territories per climate zone" below climate zone map.

U.S. STATES AND TERRITORIES PER CLIMATE ZONE

Zone 1	Zone 2	Zone 3
Alabama	Arkansas	Alaska
American Samoa	Arizona	Colorado
Florida	California	Connecticut
Georgia	Kansas	Delaware
Guam	Kentucky	District of Columbia
Hawaii	Missouri	Idaho
Louisiana	New Mexico	Illinois
Mississippi	North Carolina	Indiana
South Carolina	Oklahoma	Iowa
Texas	Tennessee	Maine

The Commonwealth of Puerto Rico U.S. Virgin Islands		Maryland Massachusetts Michigan Minnesota Montana Nebraska Nevada New Hampshire New Jersey New York North Dakota Ohio Oregon Pennsylvania Rhode Island South Dakota Utah Vermont Virginia Washington West Virginia Wisconsin Wyoming

(b) The manufactured home heat loss/heat gain shall be determined by methods outlined in §§ 3280.508 and 3280.509. The ~~Uo (Coefficient of heat transmission) value~~ climate zone for which the manufactured home is acceptable and the lowest outdoor temperature to which the installed heating equipment will maintain a temperature of 70 F shall be certified as specified in § 3280.510. ~~The Uo value zone shall be determined from the map in figure 1.~~

(c) The overall coefficient of heat transmission (Uo) of the manufactured home for the respective zones and an indoor design temperature of 70 F, including internal and external ducts, and excluding infiltration, ventilation, and condensation control, shall not exceed the Btu/(hr.) (sq. ft.) (F) of the manufactured home envelope are as tabulated in the table to this paragraph (b):

TIER 1 BUILDING THERMAL ENVELOPE PERFORMANCE REQUIREMENTS	
Climate zone	Single Section Uo
1	0.110
2	0.091
3	0.074

TIER 2 BUILDING THERMAL ENVELOPE PERFORMANCE REQUIREMENTS	
Climate zone	Single Section Uo
1	~~0.082~~ 0.090
2	~~0.066~~ 0.076
3	~~0.055~~ 0.061

MHCC Reason: *Consistent with Table 2 Tier 2 Building Thermal Envelope Prescriptive Requirements.*

(2) Area-weighted average vertical fenestration U-factor must not exceed 0.48 in Climate Zone 2 or 0.40 in Climate Zone 3.

(3) Area-weighted average skylight U-factor must not exceed 0.75 in Climate Zone 2 and Climate Zone 3. Windows, skylights and doors containing more than 50 percent glazing by area must satisfy the SHGC requirements established in Section XX on the basis of an area- weighted average.

~~Table 1 to Paragraph (b)~~

~~Uo value zone~~	~~Maximum coefficient of heat transmission~~
~~1~~	~~0.116 Btu/(hr.) (sq. ft.) (F).~~
~~2~~	~~0.096 Btu/(hr.) (sq. ft.) (F).~~
~~3~~	~~0.079 Btu/(hr.) (sq. ft.) (F).~~

~~d) Manufactured homes designed for Uo Value Zone 3 shall be factory equipped with storm windows or insulating glass.~~

§ 3280.507 ~~Comfort heat gain.~~ Prescriptive Compliance Path

~~Information necessary to calculate the home cooling load shall be provided as specified in this part.~~

~~*Transmission heat gains.* Homes complying with this section shall meet the minimum heat loss transmission coefficients specified in § 3280.506(a).~~

(a) The building thermal envelope must meet the applicable minimum R-value (nominal value of insulation), and the glazing maximum U-factor and SHGC, requirements set forth in table 1 and table 2 or component U-values set forth in table 3 and table 4

TABLE 1 TIER 1 (single section) BUILDING THERMAL ENVELOPE PRESCRIPTIVE REQUIREMENTS

Climate zone	Exterior wall insulation R-value	Exterior ceiling insulation R-value	Exterior floor insulation R-value	Window U-factor	Skylight U-factor	Door U-Factor	Glazed fenestration SHGC
1	13	22	19	~~1.08~~0.55	0.75	0.40	0.6
2	13	22	22	0.5	0.55	0.40	0.7
3	19	22	22	0.35	0.55	0.40	Not Applicable

Note: *Technical Correction: Exterior Floor Insulation R value and Glazed fenestration SHGC for climate zones 1 and 2.*

TABLE 2 TIER 2 (multi-section) BUILDING THERMAL ENVELOPE PRESCRIPTIVE REQUIREMENTS

Climate zone	Exterior wall insulation R-value	Exterior ceiling insulation R-value	Exterior floor insulation R-value	Window U-factor	Skylight U-factor	Door U-Factor	Glazed fenestration SHGC
1	13	30	13	~~0.32~~0.50	0.75	0.40	~~0.33~~0.60
2	~~21~~13	30	19	~~0.30~~0.35	0.55	0.40	~~0.25~~0.33
3	~~21~~15	38	~~30~~25	~~0.30~~0.32	0.55	0.40	Not Applicable

MHCC Reason: *Reduction in insulation requirements in walls leads to being able to continue building homes with 2x4 walls in all Climate Zones. Maintains more consumer options and amenities such as: cathedral ceilings, natural lighting, and material availability. Maintains transportation height for most industry designs. Additional transportation height leads to extra costs for additional transportation vehicles. These values are much more consistent with our statutory requirements to maintain affordability while improving energy efficiency. The values shown in the table would lead to an average increase in energy efficiency of 22%. The DOE values did not provide any payback to the consumer based on additional construction costs.*

MHCC Reason: *Additional language added for clarification of how to apply R-value requirements.*

1) *For the purpose of compliance with the exterior ceiling insulation R-value requirement of ~~paragraph of~~ this section, the R-value corresponds to the unrestricted insulation depth and the truss heel height must be a minimum of 5.5 inches at the outside face of each exterior wall.*

2) A combination of R-~~21~~ 19 batt insulation and R-~~14~~ 11 blanket insulation may be used for the purpose of compliance with the floor insulation R-value requirement of table 2 Climate Zone 3. Climate zones 1 and 2 may use blanket insulation with a minimum R 5 increase above tabulated values. Compression of the insulation in the cantilevered portion of the floor is acceptable.

Note: *MHCC added additional language to allow use of blanket insulation in all climate zones. Consistent with Table 2 Tier 2 Building Thermal Envelope Prescriptive Requirements.*

3) An individual skylight that has an SHGC that is less than or equal to 0.30 is not subject to the glazed fenestration SHGC requirements established in this section.

4) U-factor alternatives to R-value requirements. Compliance with the applicable requirements of this section may be determined using the applicable maximum U-factor values set forth in table 3 and table 4 which reflect the thermal transmittance of the component, excluding fenestration, and not just the insulation of that component, as an alternative to the minimum nominal R-value requirements set forth in table 1 and table 2 respectively.

TABLE 3 *U*-FACTOR ALTERNATIVES TO TIER 1 *R*-VALUE REQUIREMENTS

Climate Zone	Exterior ceiling U-factor	Exterior wall U-factor	Exterior floor U-factor
1	0.061	0.094	0.056
2	0.061	0.094	0.049
3	0.061	0.068	0.049

Note*: MHCC corrected climate zone locations (1 And 2) for Exterior floor U factor.*

TABLE 4 *U*-FACTOR ALTERNATIVES TO TIER 2 R-VALUE REQUIREMENTS

Climate Zone	Exterior ceiling U-factor	Exterior wall U-factor	Exterior floor U-factor
1	0.043	0.094	0.078
2	0.043	~~0.063~~ 0.094	0.056
3	0.037	~~0.063~~ 0.076	~~0.032~~ 0.036

MHCC Reason: *Consistent with Table 2 Tier 2 Building Thermal Envelope Prescriptive Requirements.*

Subpart G - Plumbing Systems

§ 3280.602 Definitions.

Distribution Manifold means a manufactured device that serves as a central control hub for a water distribution system.
Note: Additional definition based on requirements in 460.203d

Heated water circulation system means a water distribution system in which one or more pumps are operated in the ~~service~~ hot water supply ~~system~~ piping to circulate heated water from the water heating equipment to fixtures and back to the water heating equipment.

~~Service~~ hot water supply means supply of hot water for purposes other than comfort heating.
Note: *MHCC wishes to keep current terminology to avoid confusion.*

§ 3280.609 Water distribution systems.

§ 3280.609(a)(2) Hot water supply. Each manufactured home equipped with a kitchen sink, and bathtub and/or shower shall be provided with a hot water supply system including a listed water heater.

~~(a) Service hot water systems installed by the manufacturer must be installed according to the service hot water manufacturer's installation instructions. Where service hot water systems are installed by the manufacturer, the manufacturer must ensure that any maintenance instructions received from the service hot water system manufacturer are provided with the manufactured home. The service hot water requirements are adapted from R403 of the 2021 IECC.~~
Note: *3280.709(a) requires that all appliances are installed by product manufacturers' listing and installation instructions. This would be a redundant requirement.*

~~(b) Any automatic and manual controls, temperature sensors, pumps associated with service hot water systems must provide access.~~
Note: *3280.709(a) and 3280.713 require that all appliances are installed by product manufacturers' listing and installation instructions and requires access. This would be a redundant requirement.*

(i) When installed, a heated water circulation systems must—
Note: *Clarifying that heated water circulation systems are not mandatory.*

(1) Be provided with a circulation pump;
(2) Ensure that the system return pipe is a dedicated return pipe or a cold water supply pipe;
(3) Not include any gravity or thermosyphon circulation systems;
(4) Ensure that controls for circulating heated water circulation pumps start the pump based on the identification of a demand for hot water within the occupancy; and
(5) Ensure that the controls automatically turn off the pump when the water in the circulation loop is at the desired temperature and when there is no demand for hot water.

(ii) All hot water pipes—
(1) Outside conditioned space must be insulated to a minimum R-value of R-3; and
(2) From a ~~service~~ hot water supply to a distribution manifold must be insulated to a minimum R-value of R-3.
Note: *Uniform terminology.*

Subpart H - Heating, Cooling and Fuel Burning Systems

§ 3280.702 Definitions.

~~Air duct means conduits or passageways for conveying air to or from heating, cooling, air conditioning or ventilation equipment, but not including the plenum.~~

Duct means a tube or conduit, except an air passage within a self-contained system, utilized for conveying air to or from heating, cooling, or ventilating equipment.

Duct system means a continuous passageway for the transmission of air that, in addition to ducts, includes duct fittings, dampers, plenums, fans, and accessory air-handling equipment and appliances.

§ 3280.704 ~~[Reserved]~~ Thermostats and Controls

(a) At least one thermostat must be provided for each separate heating and cooling system installed by the manufacturer and shall be placed a minimum of 3 feet from the vertical edge of the appliance compartment door. Thermostats shall not be located on an exterior wall or on a wall separating the appliance compartment from a habitable room.
Note: *Additional language was moved from 3280.707(e).*

(b) Any programmable thermostat installed by the manufacturer that controls the heating or cooling system must—
(1) Be capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day and different days of the week;
(2) Include the capability to set back or temporarily operate the system to maintain zone temperatures down to 55F (13C) or up to 85F (29C)

(c) ~~(3) Initially be programmed with a heating temperature set point no higher than 70F (21C) and a cooling temperature set point no lower than 78F (26C)~~.
Homeowner manual must include recommendation that homeowners set or program thermostat with a heating temperature set point no higher than 70F (21C) and a cooling temperature set point no lower than 78F (26C).
Note: *MHCC is modifying language of (3) because a programable thermostat is optional, so one preprogrammed from the factory is unnecessary and the MHCC believes adding the language to the homeowner's manual is a more effective method to influence homeowner behavior. Typically, power is not continuously connected to unit once its constructed and preprogrammed settings may be lost without power.*

~~(c) Heat pumps with supplementary electric-resistance heat must be provided with controls that, except during defrost, prevent supplemental heat operation when the heat pump~~

~~compressor can meet the heating load.~~

Note: *3280.709(a) requires that all appliances are installed by product manufacturers' listing and installation instructions. This would include controls.*

§ 3280.707 Heat producing appliances.

5) ~~Each space heating, cooling or combination heating and cooling system shall be provided with at least one readily adjustable automatic control for regulation of living space temperature. The control shall be placed a minimum of 3 feet from the vertical edge of the appliance compartment door. It shall not be located on an exterior wall or on a wall separating the appliance compartment from a habitable room.~~

§ 3280.714 Appliances, Cooling.

§3280.714(a)(1) (i) Electric motor-driven unitary air-cooled air conditioners and heat pumps in the cooling mode with rated capacity less than 65,000 BTU/hour (19,045 watts), when rated at ARI standard rating conditions in ARI Standard 210/240-89, Unitary Air-Conditioning and Air-Source Heat Pump Equipment, must have seasonal energy efficiency ratio (SEER2) values not less than as specified in 10 C.F.R. Part 430, Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards.

Note: *Term updated from SEER to SEER2 to reflect EPA Final Rule 87 FR 18290 (10 CFR Part 430 Appendix M(1) Uniform Test Method for Testing for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps).*

§ 3280.715 Circulating air systems.

(a) *Supply system.*

(4)

(a) Factory installed supply ducts located partially or completely outside the building thermal envelope, with or without air handlers installed in the factory, shall demonstrate air leakage to the outside or total air leakage of less than or equal to 4 cfm per 100 ft2 of conditioned floor area when tested at a difference pressure of 0.1 inch w.g., (25pa).

(b) Factory installed supply ducts located completely inside the building thermal envelope, with or without air handlers installed in the factory, shall demonstrate air leakage to the outside or total air leakage of less than or equal to 8 cfm per 100 ft2 of conditioned floor area when tested at a difference pressure of 0.1 inch w.g., (25pa).

(c) Manufacturers must perform an IPIA witnessed duct leakage test at least once per month.

Note: *Original language from DOE rule* was modified to fit with previously approved language.

"Each manufactured home equipped with a duct system, which may include air handlers and filter boxes, must be sealed to limit total air leakage to less than or equal to four (4) cubic feet per minute per 100 square feet of conditioned floor area at a pressure differential of 0.1 inch w.g. (25 Pascals) across the system. Building framing cavities must not be used as ducts or plenums when

directly connected to mechanical systems. The duct total air leakage requirements are adapted from section R403 of the 2021 IECC."

MHCC Reason: *The suggested DOE testing method is not practical for a factory-built home. This recommendation considered previously approved MHCC language for this section. The 8 cfm testing point in section (b) was added as this is an option for ducts entirely within the thermal envelope in IECC, which DOE failed to include. The MHCC believes that a minimum of 1 IPIA witnessed test a month would be sufficient due to the controlled environment of the manufacturing process in a factory compared to a site-built home. The MHCC has no reason to disagree with the DOE estimated cost of testing per 5.3.7 of the TSD.*

§ 3280.716 Equipment Sizing.

Note: *MHCC does not recommend adopting the language shown in 10 C.F.R. § 460.205.*

MHCC Reason:

1) *Manufactured housing is transportable and typically not built for a site-specific location. The ACCA Manual J and ACCA Manual S calculations are intended for site specific code and cannot be applied to a national performance-based code. The manufacturer cannot properly complete the ACCA Manual J and ACCA Manual S calculations without the specific geographical location and design criteria. The calculations should be completed by the local AC company who selects and installs the cooling system based on the location and information on the homes' heating and cooling certificate.*
2) *The current language in the MHCSS has an adequate process, based on reference standards similar to Manual J, to calculate building loads and sizing of equipment.*

~~10 C.F.R. § 460.205~~

~~Sizing of heating and cooling equipment installed by the manufacturer must be determined in accordance with ACCA Manual S incorporated by reference; see § 460.3) based on building loads calculated in accordance with ACCA Manual J (incorporated by reference; see § 460.3). The equipment sizing criteria are adapted from section R403 of the 2021 IECC.~~

1.888.602.4663 | MHCC@HOMEINNOVATION.COM

Appendix A:
MHI Written Public Comments
November 11, 2022

November 11, 2022

The Honorable Marcia Fudge
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, DC 20410

RE: Notice of Federal Advisory Committee Meetings: Manufactured Housing Consensus Committee (FR-6348-N-01)

Dear Secretary Fudge,

As promised in its previous correspondence, the Manufactured Housing Institute (MHI) committed to providing supporting documentation to its proposal to the Manufactured Housing Consensus Committee (MHCC). As a supplement to its November 9th, 2022 Comment Letter, MHI is pleased to submit the following presentations to the MHCC for consideration ahead of the MHCC's meeting scheduled for November 15-17, 2022. The three presentations, attached as exhibits to this supplemental correspondence, further demonstrate the benefits of adopting MHI's proposal versus a wholesale adoption the DOE's Energy Rule. Such materials also provide supporting analysis behind MHI's proposal. Below, you will find a brief summary of the contents of each presentation:

1. **Economic Impact Analysis chart based on the Energy Rule and updated data regarding MHI's proposed thermal requirements (Attached hereto as Exhibit A):** The first presentation is the Economic Impact Analysis which is based upon the Energy Rule and supporting data regarding MHI's proposed thermal requirements. This analysis demonstrates the advantages and the cost savings that will benefit the consumer under MHI's proposal as compared to the greater economic impact on the consumer under the Energy Rule. The Economic Impact Analysis, which compares the current HUD standard with the proposals of MHI and DOE, establishes the following:

- DOE's Technical Support Document provided incremental cost increases for step-ups in energy efficiency measures using the HUD Code as a baseline. For example, the incremental cost increase of going from R11 to R13 to R21 insulation in the walls. Using the DOE's own data, this analysis calculates the incremental cost increase for the Energy Rule and MHI's proposal.

- Using validated energy simulation software, this analysis calculates the marginal energy savings achieved from the Energy Rule and MHI's proposal – that is– how much a consumer will save in energy costs on a monthly basis.

- This analysis further demonstrates that for all three Zones with Tier 2 homes, **MHI's proposal results in better 10-year outcomes for all consumers than the Energy Rule.** On average, consumers will experience a net cost that is less under MHI's proposal than under the Energy Rule.

2. **Analysis of DOE's Energy Conservation Standards for Manufactured Housing (Attached hereto as Exhibit B):** The second presentation demonstrates the DOE's failure to consider key cost inputs which will negatively impact both consumers and suppliers. As provided in greater detail in the attached presentation, this analysis demonstrates the DOE's failure to sufficiently consider the following factors in

formulating its conclusions and the cumulative effect of such factors:

- ***Inflation and Cost Increases***: DOE failed to consider the impact of considerable cost increases and supply chain constraints because of the pandemic and related economic disruptions.

    - DOE's cost/benefit or life-cycle cost ("LCC") model took cost estimates from 2014 and applied a nominal cost increase of **2.3% annually** from 2014-2023. However, beginning with the Covid-19 pandemic, actual costs for construction materials have grown substantially, and the actual cost increase for construction materials from 2014-2021 is **6.5% annually**. Manufactured housing construction costs may be even higher.

    - DOE assumed a 5% interest rate for land-home deals and a 9% interest rate for home-only deals. The current 30-year fixed mortgage rate is now approximately 7%.

    - Fixing only these two inputs to reflect actual cost inflation and actual interest rates for land/home loans, **based on DOE's own LCC model for Tier 2 homes, approximately 95% of shipments will have a negative 10-year LCC**. In geographic terms, of the 19 "representative" cities chosen by the DOE, 16 of those representative cities will have a negative 10-year LCC for Tier 2 homes. This data accounts for the increased energy savings that result from inflation as well.

    - Assuming Tier 2 homes represent 55% of the industry producing approximately 120,000 homes annually, this means that approximately **63,000 homes would have a negative 10-year LCC based on the Energy Rule.**

- ***Negative Impact***: DOE failed to consider negative impacts on low-income and minority homebuyers.

    - The Energy Rule will disparately impact minority communities even without accounting for actual cost increases. Black or African American manufactured home purchasers are approximately 22.5% more likely to finance their purchase with a home-only loan as compared with a land-home loan. Likewise, Hispanic manufactured home purchases are 11% more likely to finance their purchase with a home-only loan.

    - At a 9.5% home-only interest rate, 37% of Tier 2 shipments will have a negative 10-year LCC based on DOE's own model. Using a 11% home-only interest rate, 86% of Tier 2 shipments will have a negative 10-year LLC based on DOE's own model.

    - The Biden Administration has prioritized housing affordability and racial equity: *"The Federal Government has a critical role to play in overcoming and redressing… [its role in declining to invest in communities of color and in failing to provide equitable access,] and in protecting against other forms of discrimination by applying and enforcing Federal civil rights and fair housing laws. It can help ensure that fair and equal access to housing opportunity exists for all throughout the United States."*

- ***Additional Costs.*** DOE failed to consider potential costs of testing and compliance, transportation, and supply chain constraints.

- The Energy Rule failed to account for significant compliance costs. Without limitation, in rural areas, it is estimated that in-field duct testing could cost over $1,000 per home. Many Tier 2, Zone 2 & Zone 3 homes will need 2x6 walls rather than 2x4 which will increase lumber and transportation costs (due to weight). Exclusive of lumber costs, an additional axle may be needed for weight which is another $200 to $250 per floor, $400 to $500 per multisection homes. Transportation costs such as fuel have increased dramatically over the past year. And the industry is experiencing significant supply chain difficulties, especially for fiberglass insulation—a commodity for which supply must increase to comply with the DOE's Final Rule.

- Before supply chains normalize, the cost for fiberglass insulation will increase drastically and home starts may be limited if there is not enough fiberglass insulation or if plants must use alternatives such as blown insulation. Many in the industry do not believe that there will be enough fiberglass insulation to meet the demand. As such, manufacturers will be forced to pivot to spray foam insulation, which is more costly and labor-intensive. Additionally, the process for the installation of spray foam insulation requires a cooling off period, which will increase the amount of time of the home on the line, decreasing the thru-put, and will inevitably cause fewer home to be built. All of this will inevitably increase the overall cost of the homes to the consumer, none of which has been calculated by DOE.

- **These unaccounted-for costs will easily subsume the DOE's projected 10-year LCC savings for all manufactured homes.** For Tier 1 homes, DOE projected a national average of $720 10-year LCC savings and for Tier 2 homes, DOE projected a national average of $743 10-year LCC savings. If, for example, in-field duct testing is required which costs approximately $1,000 per home, then all 10-year LCC savings are eliminated.

- *Affordability and Credit Access.* DOE underestimated potential impacts on credit access and lost sales.

  - These additional costs will make home ownership unaffordable for thousands of Americans. To estimate the impact on affordability, the DOE relied upon a 2007 economic study. This study predated the Great Recession, predated the Covid-19 pandemic and the following inflation period, predated the current rise in interest rates, and predated the recent increases in retail prices for manufactured homes which may make potential customers even more price sensitive.

  - **DOE's Final Rule conceded with its sensitivity analysis that over 5,000 families annually will not be able to afford a manufactured home,** and this number is almost certainly understated for the reasons described above. Based on industry information, it is likely that the realistic impact of the implementation of the Energy Rule could actually affect twice as many families.

3. **Architectural and Design Analysis of how the Energy Rule will generally impact the design of manufactured homes as opposed to the design elements of manufactured homes based on current standards (Attached hereto as Exhibit C):** DOE's standards will negatively impact the aesthetic appearance and the design of manufactured homes. As demonstrated in the attached presentation, significant architectural modifications will be required for manufacturers to stay in compliance with the Energy Rule which will result in less aesthetically pleasing homes. Most notably, multisection homes will face substantial architectural

modifications. To meet the DOE standards, the industry will have to consider a variety of tradeoffs, including, a reduction of windows and/or significant changes in home architecture to accommodate additional insulation. Consequently, such modifications will be either be more difficult to implement and less appealing, or even prohibitive.

- To meet the U-value performance requirements for Tier 2, Zone 3 homes, assuming the home has additional insulation added without altering the framing, the windows had to be eliminated completely. As a result of the reduced windows, the requirements for egress, light and ventilation are no longer met. **Therefore, it would not be possible to manufacture this home to be in compliance with code regulations and the Energy Rule.**

    - Additionally, even if this home could be constructed in a manner to comply with code regulations and the Energy Rule, there are not enough windows in the market today to meet the demand if a lower U-value is required.

- If a manufacturer were to construct a home that met the required Tier 2, Zone 3 U-value with an insulation package that met the value under the prescriptive section of the code, which would require substantial framing changes, it would still be very difficult to construct this home using materials currently available on the market. Specifically:

    - Most manufacturers do not currently use the floor insulation technique that would be required to construct this home to meet DOE requirements.

    - There is not enough supply of R-21 insulation in the market to meet the amount necessary to comply with DOE requirements to keep up with the current demand.

    - It will be problematic to get the required insulation (R-38) in the roof cavity due to the required thickness and available attic space.

    - **To have almost the same amount of windows in the home as is allowed under current regulations, manufacturers would have to install windows that have a U-value equal to 0.30, which are not currently available on the market.**

- To construct a multi-section home in Zone 3, the shipping height will be increased due to the 5.5" heal height and the increased floor joist depth. **Because of the required insulation thickness under the Energy Rule, optional vaulted ceilings will no longer be available to the consumers.**

MHI supports energy conservation efforts, and our manufacturer members are committed to continue leading the way in energy efficient manufacturing. The analysis and presentations provided herein further demonstrate this commitment while providing a clear and conscientious basis for MHI's proposed changes to the Energy Rule. MHI remains committed to working with the MHCC, HUD and DOE to realistically improve energy efficiency that not only encourages innovation and conservation but also eliminates regulatory barriers that impede consumer access to safe, affordable manufactured housing.

Sincerely,

Lesli Gooch, Ph.D.
Chief Executive Officer

Enclosures

Exhibit A

Economic Impact Analysis

Table 1. Net Benefit (Cost)of DOE Proposal for Multi-section Homes based on DOE Costs and SBRA Energy Savings Estimates

Multi-section Home													
HUD Standards Climate Zone	Locations (heating equipment type)	Efficiency level	Level of efficiency (Uo-value)	Base average home cost (DOE TSD p. 6-2)	Marginal increase in home cost (DOE TSD)	Percent increase in cost	Marginal increase in down payment	Marginal increase in mortgage	Marginal increase in monthly mort. pay.	Marginal energy savings ($/mth)	Net Mthly. Savings (Cost)	Principal repayment	Net benefit (cost)
1	Miami (Electric)	HUD standard	0.116	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.090	$108,500	$3,077	2.8%	$308	$2,770	$25	$10	($15)	$1,967	**($4,045)**
		DOE proposal	0.082	$108,500	$4,018	3.7%	$402	$3,616	$33	$19	($14)	$2,568	**($4,644)**
	Houston (Natural gas)	HUD standard	0.116	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.090	$108,500	$3,077	2.8%	$308	$2,770	$25	$12	($13)	$1,967	**($3,845)**
		DOE proposal	0.082	$108,500	$4,018	3.7%	$402	$3,616	$33	$18	($14)	$2,568	**($4,664)**
	Atlanta (Electric)	HUD standard	0.116	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.090	$108,500	$3,077	2.8%	$308	$2,770	$25	$34	$9	$1,967	**($1,135)**
		DOE proposal	0.082	$108,500	$4,018	3.7%	$402	$3,616	$33	$39	$7	$2,568	**($2,184)**
	Charleston (Electric)	HUD standard	0.116	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.090	$108,500	$3,077	2.8%	$308	$2,770	$25	$26	$1	$1,967	**($2,115)**
		DOE proposal	0.082	$108,500	$4,018	3.7%	$402	$3,616	$33	$31	($1)	$2,568	**($3,114)**
	Jackson (Electric)	HUD standard	0.116	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.090	$108,500	$3,077	2.8%	$308	$2,770	$25	$31	$6	$1,967	**($1,505)**
		DOE proposal	0.082	$108,500	$4,018	3.7%	$402	$3,616	$33	$38	$5	$2,568	**($2,344)**
	Birmingham (Electric)	HUD standard	0.116	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.090	$108,500	$3,077	2.8%	$308	$2,770	$25	$32	$7	$1,967	**($1,395)**

		DOE proposal	0.082	$108,500	$4,018	3.7%	$402	$3,616	$33	$37	$5	$1,967	**($1,783)**
2	Phoenix (Natural gas)	HUD standard	0.096	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.076	$108,500	$2,404	2.2%	$240	$2,163	$19	$15	($4)	$1,537	**($2,303)**
		DOE proposal	0.066	$108,500	$4,317	4.0%	$432	$3,885	$35	$22	($13)	$2,759	**($4,796)**
	Memphis (Electric)	HUD standard	0.096	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.076	$108,500	$2,404	2.2%	$240	$2,163	$19	$23	$3	$1,537	**($1,413)**
		DOE proposal	0.066	$108,500	$4,317	4.0%	$432	$3,885	$35	$32	($3)	$2,759	**($3,536)**
	El Paso (Natural Gas)	HUD standard	0.096	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.076	$108,500	$2,404	2.2%	$240	$2,163	$19	$10	($9)	$1,537	**($2,903)**
		DOE proposal	0.066	$108,500	$4,317	4.0%	$432	$3,885	$35	$14	($21)	$2,759	**($5,656)**
	San Francisco (Natural Gas)	HUD standard	0.096	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.076	$108,500	$2,404	2.2%	$240	$2,163	$19	$4	($15)	$1,537	**($3,583)**
		DOE proposal	0.066	$108,500	$4,317	4.0%	$432	$3,885	$35	$7	($28)	$2,759	**($6,606)**
	Albuquerque (Electric)	HUD standard	0.096	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.076	$108,500	$2,404	2.2%	$240	$2,163	$19	$21	$2	$1,537	**($1,593)**
		DOE proposal	0.066	$108,500	$4,317	4.0%	$432	$3,885	$35	$31	($4)	$2,759	**($3,656)**
	Baltimore (Natural Gas)	HUD standard	0.079	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.061	$108,500	$2,557	2.4%	$256	$2,302	$21	$13	($7)	$1,635	**($2,765)**
		DOE proposal	0.055	$108,500	$3,997	3.7%	$400	$3,598	$32	$16	($16)	$2,555	**($4,899)**
	Salem (Electric)	HUD standard	0.079	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.061	$108,500	$2,557	2.4%	$256	$2,302	$21	$51	$30	$1,635	**$1,765**

3		DOE proposal	0.055	$108,500	$3,997	3.7%	$400	$3,598	$32	$59	$27	$2,555	**$231**
	Chicago (Natural Gas)	HUD standard	0.079	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.061	$108,500	$2,557	2.4%	$256	$2,302	$21	$19	($2)	$1,635	**($2,105)**
		DOE proposal	0.055	$108,500	$3,997	3.7%	$400	$3,598	$32	$22	($10)	$2,555	**($4,149)**
	Boise (Electric)	HUD standard	0.079	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.061	$108,500	$2,557	2.4%	$256	$2,302	$21	$38	$17	$1,635	**$135**
		DOE proposal	0.055	$108,500	$3,997	3.7%	$400	$3,598	$32	$44	$12	$2,555	**($1,549)**
	Burlington (Natural gas)	HUD standard	0.079	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.061	$108,500	$2,557	2.4%	$256	$2,302	$21	$21	$1	$1,635	**($1,815)**
		DOE proposal	0.055	$108,500	$3,997	3.7%	$400	$3,598	$32	$25	($7)	$2,555	**($3,849)**
	Helena (Electric)	HUD standard	0.079	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.061	$108,500	$2,557	2.4%	$256	$2,302	$21	$53	$32	$1,635	**$1,945**
		DOE proposal	0.055	$108,500	$3,997	3.7%	$400	$3,598	$32	$62	$29	$2,555	**$551**
	Duluth (Natural Gas)	HUD standard	0.079	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.061	$108,500	$2,557	2.4%	$256	$2,302	$21	$29	$9	$1,635	**($865)**
		DOE proposal	0.055	$108,500	$3,997	3.7%	$400	$3,598	$32	$34	$1	$2,555	**($2,789)**
	Fairbanks (Natural Gas)	HUD standard	0.079	$108,500	$0	0.0%	$0	$0	$0	$0	$0	$0	**$0**
		MHI proposal	0.061	$108,500	$2,557	2.4%	$256	$2,302	$21	$39	$19	$1,635	**$335**
		DOE proposal	0.055	$108,500	$3,997	3.7%	$400	$3,598	$32	$46	$14	$2,555	**($1,279)**

Assumptions	
Down payment	10%
Principal	90%
Mort. interest rate	9%
Loan term (yrs)	20
Occupancy term (yrs)	10
Principal recapture rate	0%

Average Benefit (Cost)		MHI	DOE
Zone	**1**	**($2,340.08)**	**($3,122.03)**
	2	**($2,358.84)**	**($4,849.82)**
	3	**($421.72)**	**($2,216.82)**

Ref.: TECHNICAL SUPPORT DOCUMENT: SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING PROPOSING ENERGY CONSERVATION STANDARDS FOR MANUFACTURED HOUSING
Estimates of energy savings provided by Ekotrope software.

Exhibit B

Analysis of DOE's Energy Conservation Standards

ANALYSIS GROUP

Analysis of DOE's Energy Conservation Standards for Manufactured Housing

Identification of Potential Issues and Sensitivity Analyses

November 11, 2022

Executive Summary

- Assignment
  - DOE relied upon a cost-benefit analysis for consumers of manufactured homes
  - Analysis Group assessed this cost-benefit analysis with particular focus on **important inputs that have changed** since DOE's original analysis
- Summary of Preliminary Conclusions
  1. Adjusting DOE's assumptions for recent inflation and interest rate increases invalidates DOE's conclusion that its proposed rule is cost-effective for consumers
  2. DOE's rule will have particularly negative impacts on minority and low-income homebuyers, who tend to face higher borrowing costs
  3. DOE has underestimated the number of households that will no longer be able to afford a manufactured home as a result of the rule
  4. DOE has failed to consider additional costs of compliance, such as duct testing and transportation costs, which could further negate any anticipated savings for consumers

ANALYSIS GROUP

Qualifications

Pavel Darling, Vice President (*MBA, MIT Sloan School of Management; B.A. in Economics, Middlebury College)*

Mr. Darling is an expert on energy matters, and often consults to utilities, state and regional organizations, and global companies in his work. He focuses on projects related to cost/benefit analyses of new construction and resource retirements; environmental effects of emissions and pollution controls; economic impacts of energy projects, mergers and policies; and natural gas, biomass, and other market studies. Mr. Darling also has extensive experience working on various climate change projects, including assessments of decarbonization policy proposals and quantification of greenhouse gas emissions impacts.

He has also submitted and supported expert testimony across different venues, including state utility commissions, siting boards, the Federal Energy Regulatory Commission and the Environmental Protection Agency. Mr. Darling's prior experience working at a utility involved preparing annual filings and working with stakeholders to assess bill impacts of proposed energy efficiency changes. He has also coauthored a number of published reports and journal articles.

About Analysis Group

Analysis Group is one of the largest international economics consulting firms, with more than 1,000 professionals across 14 offices in North America, Europe, and Asia. Since 1981, we have provided expertise in economics, finance, health care analytics, and strategy to top law firms, Fortune Global 500 companies, and government agencies worldwide. Our internal experts, together with our network of affiliated experts from academia, industry, and government, offer our clients exceptional breadth and depth of expertise.

Analysis Group's Energy & Environment practice is distinguished by our deep expertise in economics, finance, regulatory issues, and public policy, as well as significant experience in environmental economics and energy infrastructure development. We have worked on energy issues for a wide variety of clients, including energy producers, energy customers, regulatory commissions and government agencies, system operators, foundations, and nongovernmental institutions.

ANALYSIS GROUP

Background on DOE's Energy Efficiency Standards for Manufactured Housing

- Key Dates:
  - Aug. 26, 2021 — DOE issued Supplemental Notice of Proposed Rulemaking (SNOPR)
  - May 31, 2022 — Final rule and cost-benefit analyses released, relying on data from 2021 and earlier
  - May 31, 2023 — Expected compliance date

- By statute, DOE must consider cost effectiveness (42 U.S.C 17071(b)(1))
  - "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 finds 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."

ANALYSIS GROUP

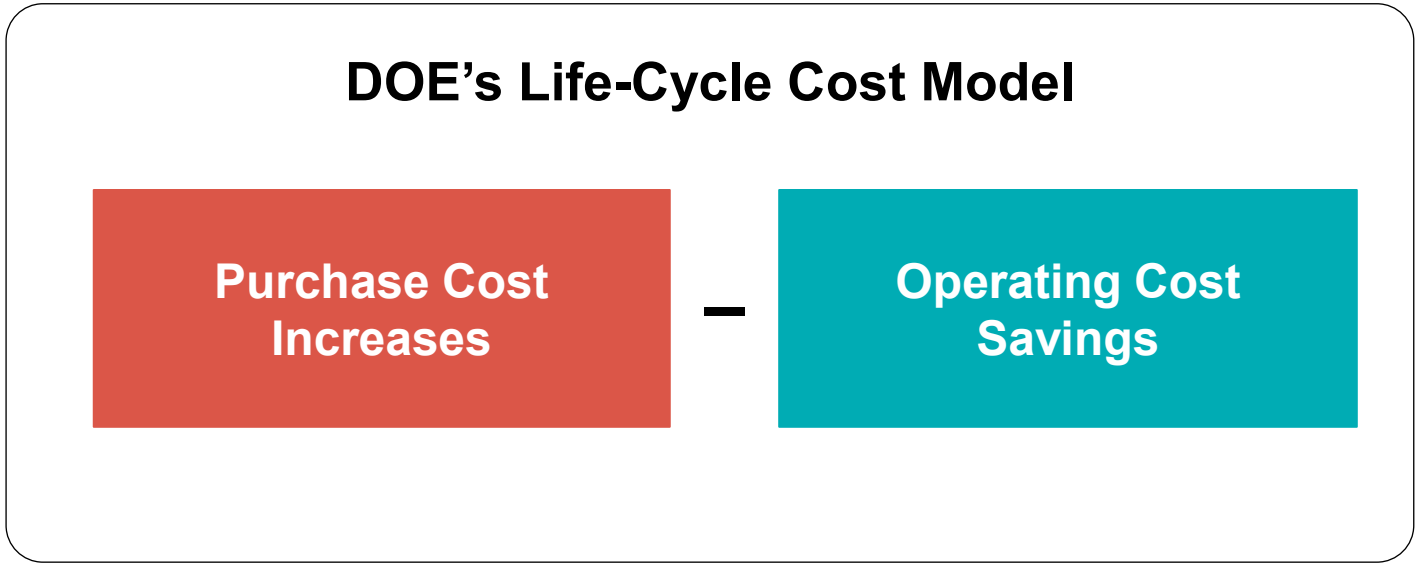
Summary of Preliminary Conclusions

DOE's conclusions on cost effectiveness disregard or do not sufficiently consider variation in key cost inputs over time and across groups for buyers and suppliers

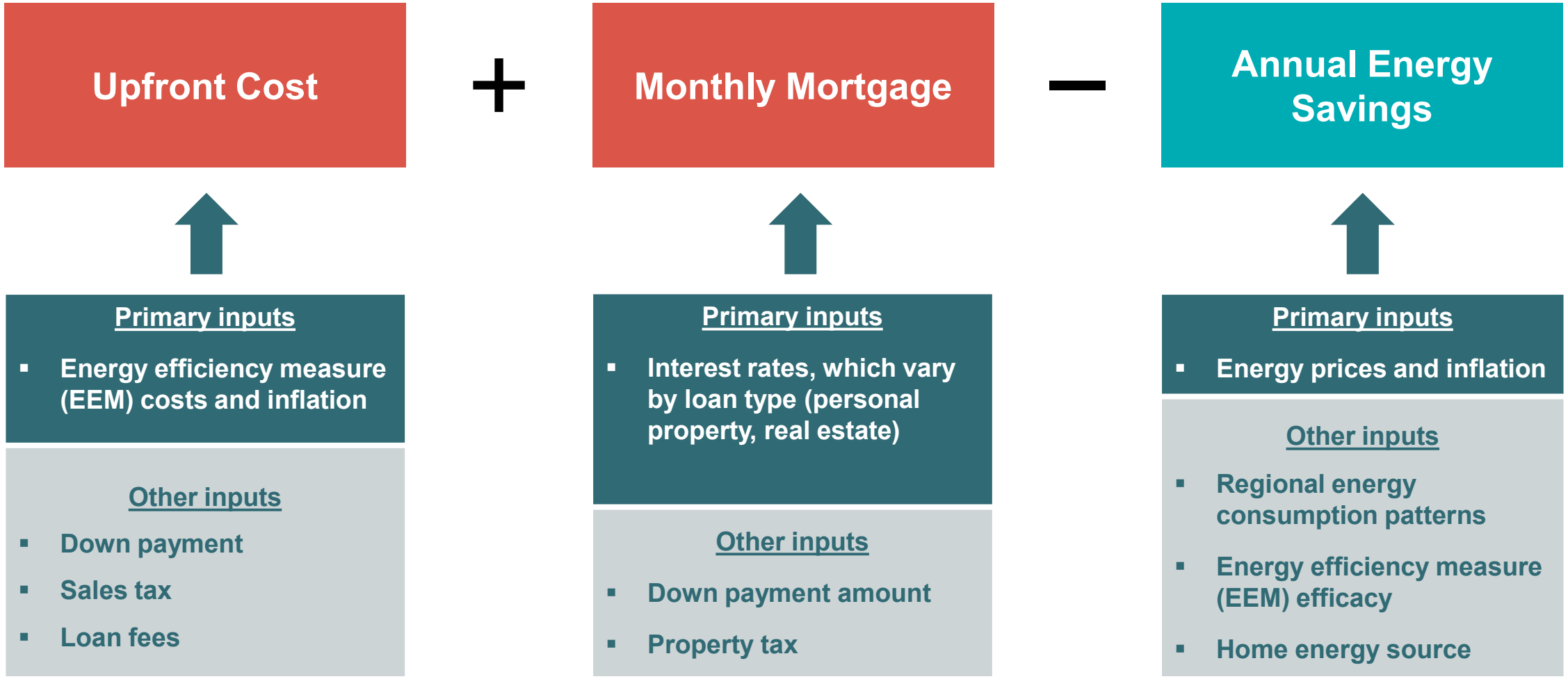
1	**Inflation and Cost Increases**	DOE has failed to consider the impacts of considerable cost increases and supply chain constraints. Taking these into account, DOE's conclusion is invalid and the rule has a net cost to consumers rather than a benefit.
2	**Negative and Inequitable Impacts**	DOE has failed to consider negative impacts on low-income and minority homebuyers.
3	**Affordability and Credit Access**	DOE has underestimated potential impacts on credit access and lost sales.
4	**Additional Costs**	DOE has failed to consider potential costs of testing and compliance, transportation, and supply chain constraints.

Background: DOE's Life-Cycle Cost (LCC) Model

- DOE estimated the **total customer cost** over the life of the manufactured home via the Life-Cycle Cost model, including:
  - **Purchase costs** (e.g., the price of additional energy efficiency measures), and
  - **Operating costs** (e.g., energy bill savings)
- Future costs and savings are discounted to their value in the present year
- Analysis occurs over both 10- and 30-year periods
- DOE also calculates a payback period, equal to the increase in upfront cost divided by the energy savings in first year



Our Focus: Evaluating DOE's Cost-Benefit Analysis by Updating Key Inputs



ANALYSIS GROUP

Summary of Preliminary Conclusions

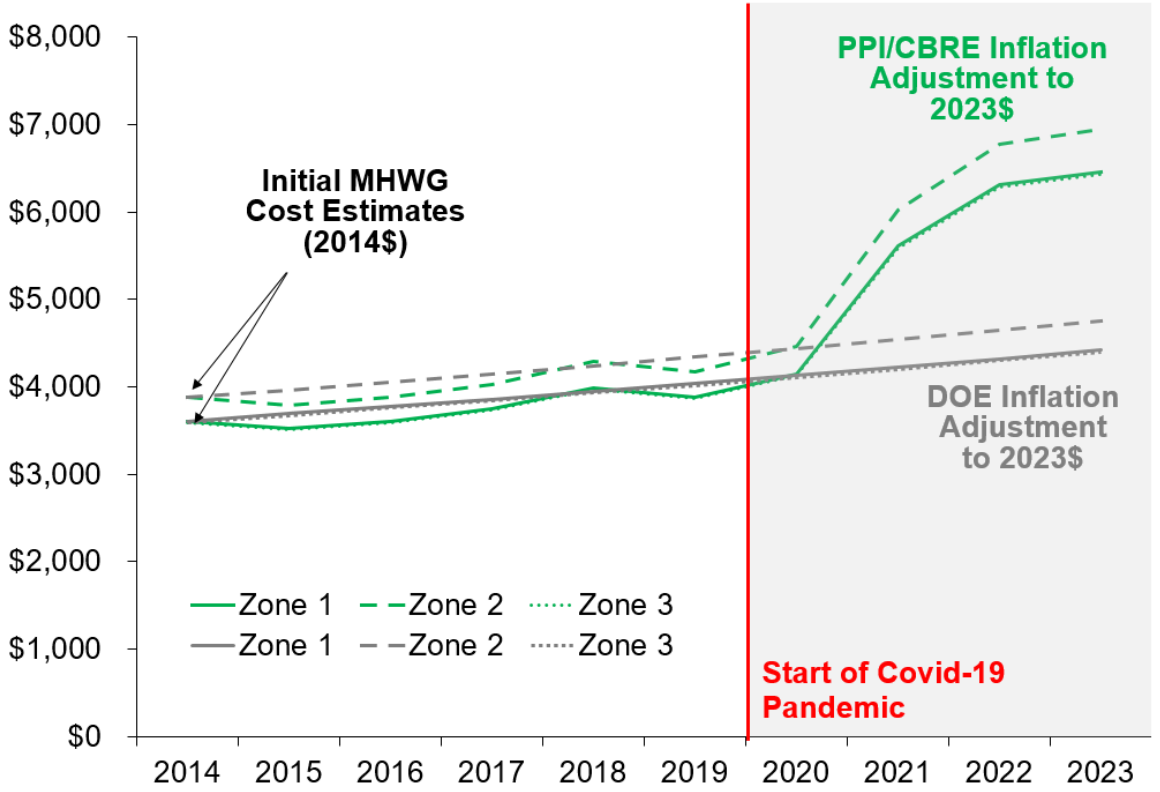
DOE's conclusions on cost effectiveness disregard or do not sufficiently consider variation in key cost inputs over time and across groups for buyers and suppliers

1	**Inflation and Cost Increases**	DOE has failed to consider the impacts of considerable cost increases and supply chain constraints. Taking these into account, DOE's conclusion is invalid and the rule has a net cost to consumers rather than a benefit.
2	**Negative and Inequitable Impacts**	DOE has failed to consider negative impacts on low-income and minority homebuyers.
3	**Affordability and Credit Access**	DOE has underestimated potential impacts on credit access and lost sales.
4	**Additional Costs**	DOE has failed to consider potential costs of testing and compliance, transportation, and supply chain constraints.

DOE Has Inadequately Adjusted EEM Cost Estimates for Inflation

- DOE calculated the costs of energy efficiency measures using cost estimates provided by the Manufactured Housing Working Group in **2014**
- To adjust for inflation, DOE assumes an annual nominal cost increase of **2.3 percent** between 2014-2023 (See gray lines)
- However, costs have increased substantially since the start of the Covid-19 pandemic. According to the BLS Producer Price Index for construction costs, materials costs have grown at an average annual rate of **6.5 percent** between 2014-2021, driven mostly by cost increases of **35.1 percent** from 2020-2021 (See green lines)
- Industry interviews suggest even higher recent increases beyond PPI, with costs at a new floor and unlikely to regress

Estimated Costs of Energy Efficiency Measures, by Inflation Adjustment Approach and Climate Zone



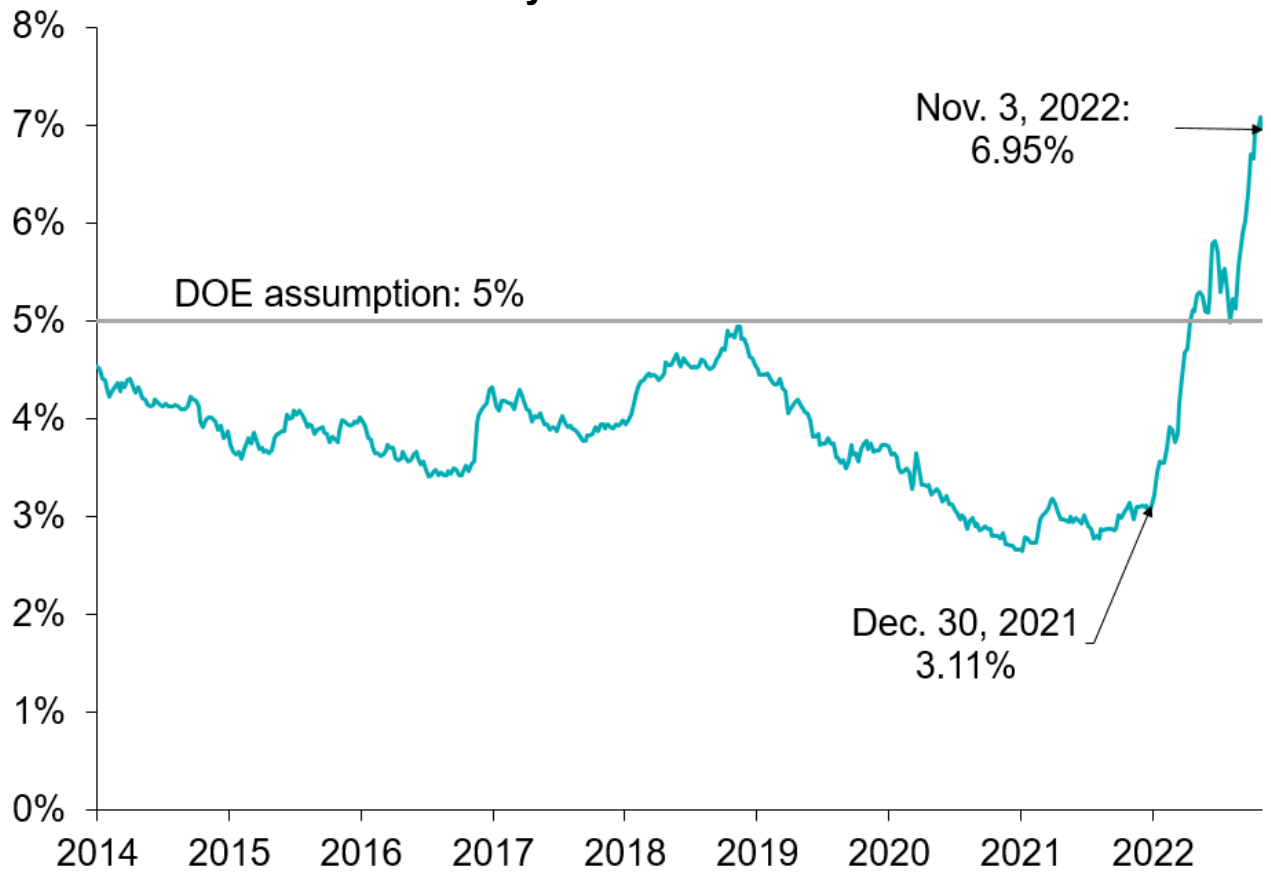
Note: Inflation estimates for PPI/CBRE series for 2022 and 2023 are from the "decreased demand" scenario of the CBRE's Construction Costs Index Forecast.

Sources: U.S. Bureau of Labor Statistics, Producer Price Index by Commodity: Special Indexes: Construction Materials [WPUSI012011], retrieved from FRED on October 30, 2022, Federal Reserve Bank of St. Louis, available at https://fred.stlouisfed.org/series/WPUSI012011; CBRE Research, "2022 U.S. Construction Cost Trends," July 2022, available at https://www.cbre.com/insights/books/2022-us-construction-cost-trends; U.S. Department of Energy, Manufactured Housing Life-Cycle Cost Analysis (LCC) Spreadsheet, May 18, 2022, available at https://www.regulations.gov/document/EERE-2009-BT-BC-0021-1996.

Mortgage Interest Rates Have Increased Above DOE's Assumptions

- DOE assumed interest rates of **5 percent** for mortgage loans and **9 percent** for personal property loans
- These assumptions were arguably conservative at the time, but mortgage rates have increased from approximately 3 to **7 percent**
- Industry interviews have suggested that personal property loan interest rates may be as high as **11.5 percent** for some borrowers
  - Moreover, DOE's own review of available evidence suggests that personal property loan interest rates are typically between 0.5 percentage points and 5 percentage points higher than real estate loan interest rates

30-Year Fixed Rate Mortgage Average in the United States
January 2014 – November 2022



Sources: Freddie Mac, 30-Year Fixed Rate Mortgage Average in the United States [MORTGAGE30US], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/MORTGAGE30US, November 3, 2022; U.S. Department of Energy, "2022-05 Technical Support Document: Final Rule Energy Conservation Standards for Manufactured Housing, May 18, 2022, available at https://www.regulations.gov/document/EERE-2009-BT-BC-0021-1999, p. 8-4.

Energy Costs Have Increased As Well, Increasing Anticipated Savings

- Over the past year, energy costs have increased due to geopolitical and pandemic related disruptions
- The U.S. Energy Information Administration has increased its forecasted energy prices for 2023 and beyond based on its *Annual Energy Outlook* (AEO)
- The DOE LCC analysis relies on energy price forecasts from 2021

U.S. Energy Information Administration's Forecasted Energy Prices, by Forecast Year

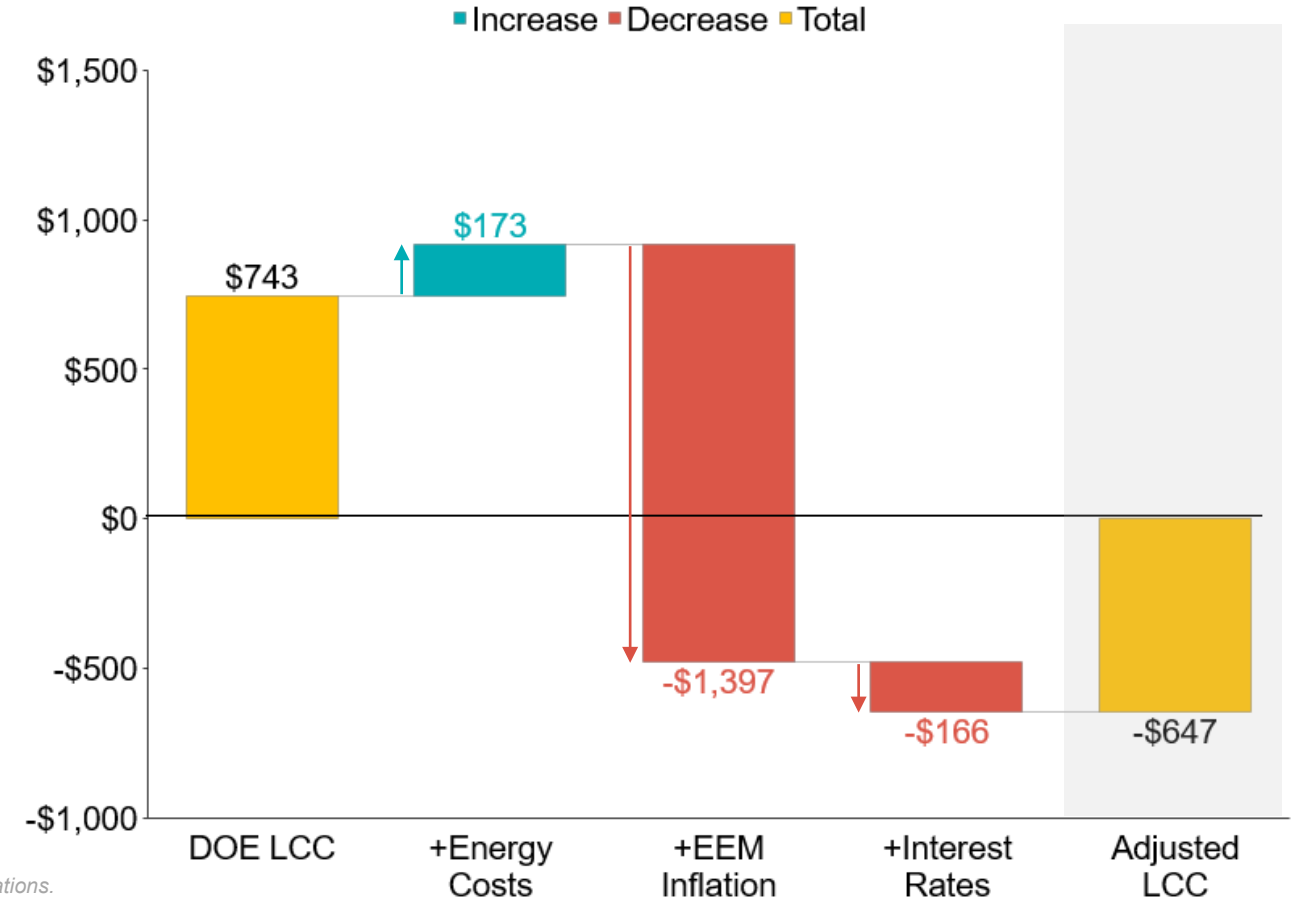
	Nominal Energy Prices			
	AEO 2021 Assumptions	AEO 2022 Assumptions	Units	% Change
Natural Gas	$10.14	$11.70	$/Mbtu	+7.1%
Propane	$17.30	$21.49	$/Mbtu	+10.8%
Elec Heat	$0.13	$0.14	$/kWh	+1.9%
Elec Cool	$0.13	$0.14	$/kWh	+1.5%
Elec Other	$0.13	$0.14	$/kWh	+1.9%
Oil	$17.75	$21.71	$/Mbtu	+10.0%

Sources: *Annual Energy Outlook 2022, Table: Table 3. Energy Prices by Sector and Source, retrieved from U.S. Energy Information ; Short-Term Energy Outlook Data Browser, 2. Energy Prices, retrieved from U.S. Energy Information Administration on November 03, 2022, available at https://www.eia.gov/outlooks/steo/data/browser/#/?v=8.*

On Net, Changes in the Recent Economic Environment Have Reversed Expected Cost Savings from the DOE Rule

- While increased energy cost forecasts have increased expected savings from the rule, the large increase in construction material costs since 2022 far outweighs these gains
- Additionally, adjusting for higher interest rates adds to expected increased costs
  - Real estate loan interest rates have been adjusted from 5 percent to **7 percent**
  - Personal property loan interest rates have conservatively been left at DOE's assumption of **9 percent**

Tier 2 LCC Adjustments - 10-Year Analysis Period

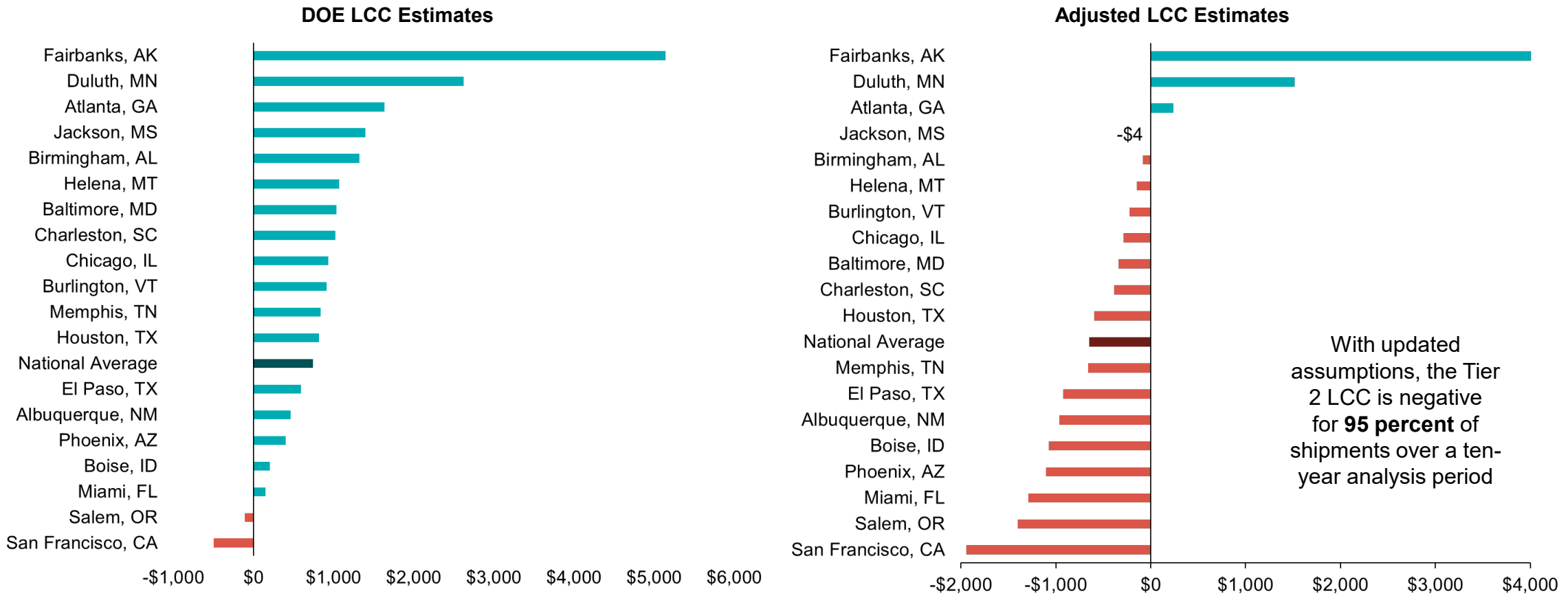


Sources: *U.S. Bureau of Labor Statistics, CBRE Research, Department of Energy, Freddie Mac, AG Calculations.*

ANALYSIS GROUP

With Updated Costs, 10-Year Tier 2 LCC Negative For Most of the Country

Tier 2 LCC Adjustments, by City (10-Year Analysis Period)



Sources: *U.S. Bureau of Labor Statistics, CBRE Research, Department of Energy, Freddie Mac, AG Calculations.*

ANALYSIS GROUP

Summary of Preliminary Conclusions

DOE's conclusions on cost effectiveness disregard or do not sufficiently consider variation in key cost inputs over time and across groups for buyers and suppliers

1	**Inflation and Cost Increases**	DOE has failed to consider the impacts of considerable cost increases and supply chain constraints. Taking these into account, DOE's conclusion is invalid and the rule has a net cost to consumers rather than a benefit.
2	**Negative and Inequitable Impacts**	DOE has failed to consider negative impacts on low-income and minority homebuyers.
3	**Affordability and Credit Access**	DOE has underestimated potential impacts on credit access and lost sales.
4	**Additional Costs**	DOE has failed to consider potential costs of testing and compliance, transportation, and supply chain constraints.

DOE's Average Buyer Analysis Masks Negative Outcomes for a Number of Subgroups

- DOE LCC calculation is an average of the LCCs for many types of buyers
- LCC estimates vary along many dimensions, including:
  - Loan type (personal property, real estate, cash)
  - Credit score
  - Home heating fuel type (e.g., natural gas, electric resistance, heat pump)
  - Climate zone/geography
- Ultimately, low-income and minority buyers are more likely to be negatively impacted by the rule
  - The Biden Administration has prioritized housing affordability and racial equity:

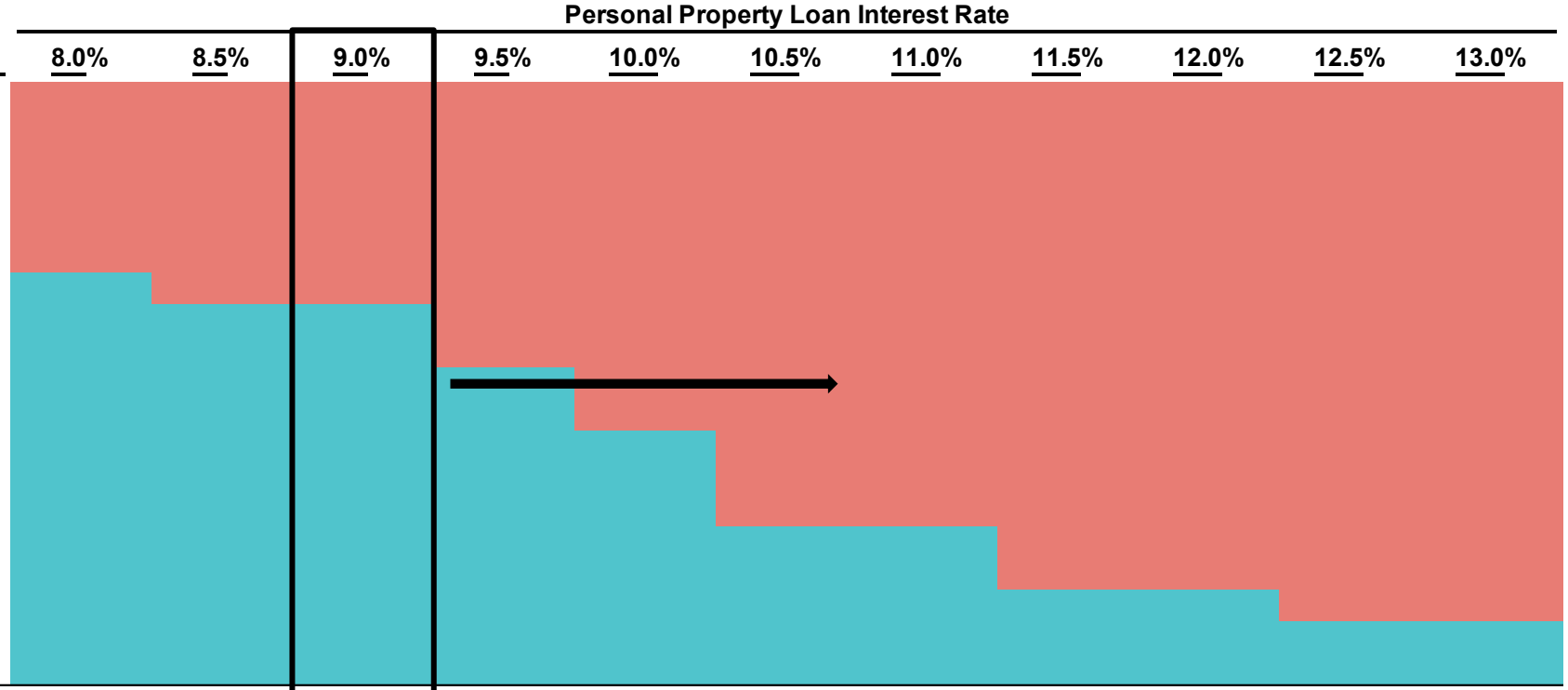
    "The Federal Government has a critical role to play in overcoming and redressing… [its role in declining to invest in communities of color and in failing to provide equitable access,] and in protecting against other forms of discrimination by applying and enforcing Federal civil rights and fair housing laws. It can help ensure that fair and equal access to housing opportunity exists for all throughout the United States."

Source: "Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies," *The White House*, January 26, 2021, available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-redressing-our-nations-and-the-federal-governments-history-of-discriminatory-housing-practices-and-policies/.

ANALYSIS GROUP

Under DOE's Original Assumptions, 10-Year LCC for Tier 2 Personal Property Loans is Negative

With Higher Interest Rates, LCC Becomes Negative for More Parts of the Country



City	Personal Property Loan Interest Rate										
	8.0%	8.5%	9.0%	9.5%	10.0%	10.5%	11.0%	11.5%	12.0%	12.5%	13.0%
San Francisco, CA											
Salem, OR											
Miami, FL											
Boise, ID											
Phoenix, AZ											
Albuquerque, NM											
El Paso, TX											
Memphis, TN											
Houston, TX											
Burlington, VT											
Chicago, IL											
Charleston, SC											
Baltimore, MD											
Helena, MT											
Birmingham, AL											
Jackson, MS											
Atlanta, GA											
Duluth, MN											
Fairbanks, AK											
Number of Cities with Negative LCC	6	7	7	9	11	14	14	16	16	17	17
Share of Shipments to Cities with Negative LCC	27%	37%	37%	60%	71%	86%	86%	95%	95%	98%	98%
Tier 2 LCC National Average	$ 211	$ 97	-$ 19	-$ 136	-$ 254	-$ 372	-$ 492	-$ 613	-$ 733	-$ 855	-$ 977

Note: Red indicates negative LCCs and blue indicates positive LCCs. Darker colors correspond with higher absolute values. ***Source:*** DOE LCC Model.

Minority Buyers Are Relatively More Likely to Rely on Higher-Cost Personal Property Loans to Finance Purchases

- Many borrowers such as those with low credit scores or residents of Manufactured Housing communities face interest rates as high as 11.5 percent
- Minority buyers finance MH purchases with personal property loans at especially high rates compared to non-minority buyers

Share of Manufactured Home Purchases Financed by Personal Property Loans (vs. Real Estate Only), by Demographic Cohort

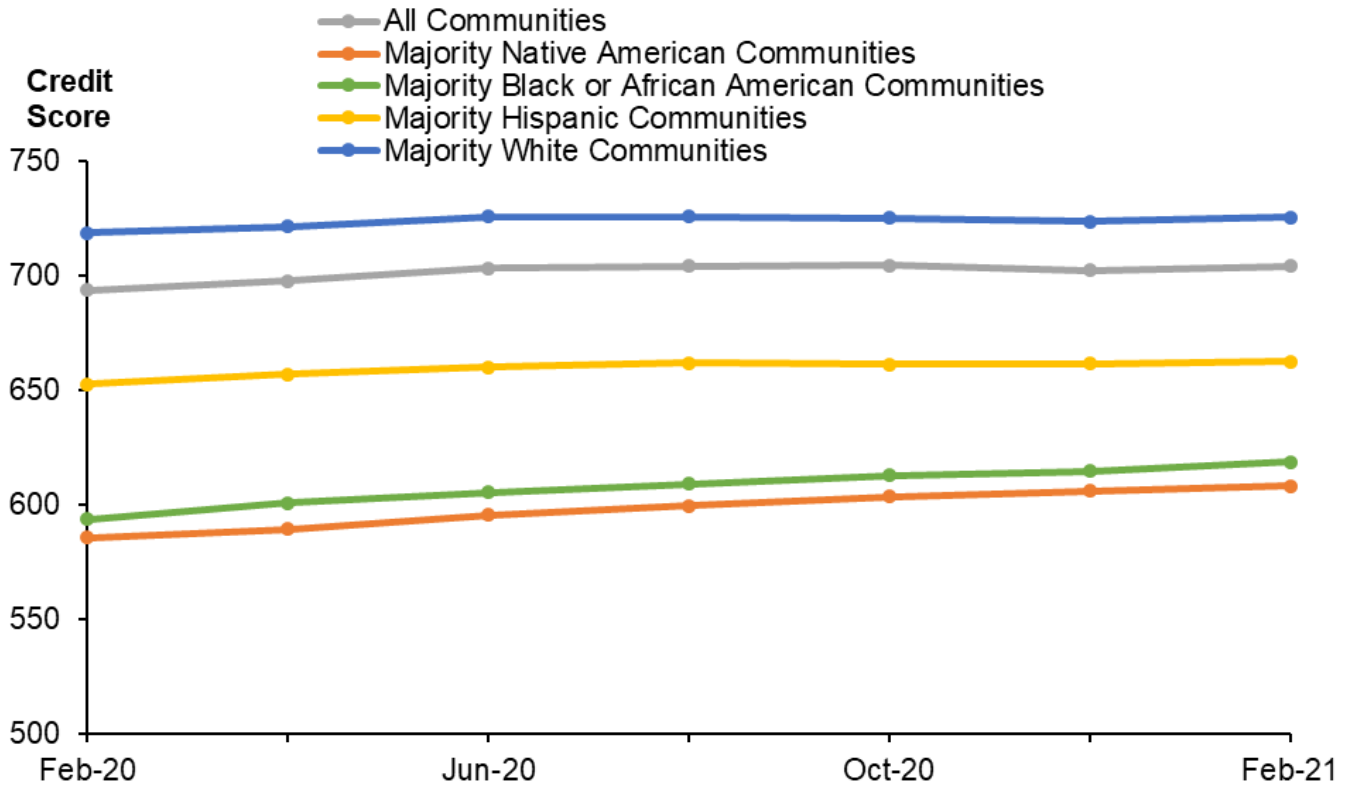
	Share of Personal Property Loans (vs Real Estate only)	Compared to All Households	Total Loans in Cohort (Personal Property and Real Estate)
All Households	42.8%	-	130,570
Low-Income Households	45.4%	*+2.6%*	65,583
Very Low-Income Households	45.1%	*+2.3%*	19,786
Hispanic	53.8%	*+11.0%*	16,224
Low-Income Hispanic Households	55.1%	*+12.3%*	8,406
Black or African American	65.1%	*+22.3%*	8,998
Low-Income Black or African American Households	66.7%	*+24.0%*	5,841
American Indian or Alaskan Native	54.7%	*+11.9%*	1,551
Low-Income American Indian or Alaskan Native Households	56.2%	*+13.4%*	840
Asian	48.6%	*+5.9%*	1,220

Sources: *2021 Home Mortgage Disclosure Act, United States Census Bureau.*

Low-Income and Minority Households Face Higher Borrowing Costs than the Median Household

- Residents of majority-minority communities tend to have lower credit scores than compared to white communities and the national average
- Low-income and minority buyers tend to face higher interest rates

Credit Scores of Residents in Majority-Minority Communities



Sources: *Urban Institute Credit Bureau Data; 2021 Home Mortgage Disclosure Act.*

The Negative Impact of DOE's Proposed Rule Can Be Illustrated With a Few Representative Borrowers

Quoted Rates from 21st Mortgage's Payment Estimator Help to Approximate Current Loan Terms

- The following slides illustrate several groups of representative borrowers, which differ according to the following characteristics:
  - City [E.g., Memphis, TN (Climate Zone 2)]
  - Credit Score [E.g., 650-680]
  - Home Cost [E.g., $100,000]
  - Down Payment [E.g., 10%]
  - Loan Type [E.g., Home-only (Private Land)]
- 21st Mortgage's "Payment Estimator" tool estimates interest rates and loan terms, given these characteristics, which we then use to calculate LCC values
  - 21st Mortgage is the largest manufactured-home lender in the country, so rates give a general sense of terms facing a current prospective manufactured homebuyer
- Credit score and energy consumption patterns by geography are key drivers of differences in anticipated savings for prospective multi-section home buyers

Geographic Energy Consumption Patterns Drive Considerable Differences Across Cities for Prospective Tier 2 Borrowers

Buyers with Good Credit Would Have Significantly Negative LCC in Most Cities

Profile	Memphis	Miami	El Paso	Houston	Phoenix	Baltimore
City	**Memphis (Climate Zone 2)**	**Miami (Climate Zone 1)**	**El Paso (Climate Zone 2)**	**Houston (Climate Zone 1)**	**Phoenix (Climate Zone 2)**	**Baltimore (Climate Zone 3)**
Credit score	650-680	650-680	650-680	650-680	650-680	650-680
Home cost	$110,000	$110,000	$110,000	$110,000	$110,000	$110,000
Down payment	10%	10%	10%	10%	10%	10%
Loan type	Home only (Private Land)	Home only (Private Land)	Home only (Private Land)	Home only (Private Land)	Home only (Private Land)	Home only (Private Land)
Quoted rates (21st Mortgage)						
Interest rate	9.35%	9.35%	9.35%	9.35%	9.35%	8.60%
Term	25 years	25 years	25 years	25 years	25 years	25 years
10-year LCC						
Given DOE Assumuptions	-$ 66	-$ 612	-$ 280	-$ 29	-$ 448	$ 366
Updated EEM Costs, Energy Prices	-$1,586	-$2,077	-$1,821	-$1,462	-$1,985	-$ 988
30-year LCC*						
Given DOE Assumuptions	$1,712	$ 605	$1,323	$1,638	$1,052	$2,452
Updated EEM Costs, Energy Prices	-$ 143	-$1,206	-$ 565	-$ 119	-$ 837	$ 773

Notes: Asterisk (*) indicates that estimates are from DOE's original model, i.e., without a correction for an error where loan payments after Year 15 are not included in the LCC calculation for personal property loans. Quoted rates are for a single applicant. From HMDA, roughly 58% of applications are from single applicants. ***Source:*** *21st Mortgage Corporation, Payment Estimator, accessed November 7, 2022, available at https://www.21stmortgage.com/web/payment-estimator.nsf/q1.html; U.S. Department of Energy, Manufactured Housing Life-Cycle Cost Analysis (LCC) Spreadsheet, May 18, 2022, available at https://www.regulations.gov/document/EERE-2009-BT-BC-0021-1996.*

ANALYSIS GROUP

Excellent-Credit-Score Borrowers are the Only Credit Score Group with Positive Tier 2 10-Year LCCs (e.g., Memphis)

Based on Industry Interviews, Only 1/3 of MH Buyers Have Credit Scores Over 675

Profile	Poor Credit	Average Credit	Good Credit	Good Credit	Excellent Credit	Excellent Credit
City	Memphis	Memphis	Memphis	Memphis	Memphis	Memphis
Credit score	**Under 600**	**600-650**	**650-680**	**680-700**	**700-750**	**750+**
Home cost	$110,000	$110,000	$110,000	$110,000	$110,000	$110,000
Down payment	10%	10%	10%	10%	10%	10%
Loan type	Home only (Private Land)	Home only (Private Land)	Home only (Private Land)	Home only (Private Land)	Home only (Private Land)	Home only (Private Land)
Quoted rates (21st Mortgage)						
Interest rate	11.45%	10.10%	9.35%	9.35%	8.35%	8.35%
Term	25 years	25 years	25 years	25 years	25 years	25 years
10-year LCC						
Given DOE Assumptions	-$ 578	-$ 259	-$ 66	-$ 66	$ 209	$ 209
Updated EEM Costs, Energy Prices	-$2,202	-$1,818	-$1,586	-$1,586	-$1,252	-$1,252
30-year LCC*						
Given DOE Assumptions	$ 630	$1,288	$1,712	$1,712	$2,355	$2,355
Updated EEM Costs, Energy Prices	-$1,255	-$ 578	-$ 143	-$ 143	$ 516	$ 516

Notes: Asterisk (*) indicates that estimates are from DOE's original model, i.e., without a correction for an error where loan payments after Year 15 are not included in the LCC calculation for personal property loans. Quoted rates are for a single applicant. From HMDA, roughly 58% of applications are from single applicants. ***Source:*** *21st Mortgage Corporation, Payment Estimator, accessed November 7, 2022, available at https://www.21stmortgage.com/web/payment-estimator.nsf/q1.html; U.S. Department of Energy, Manufactured Housing Life-Cycle Cost Analysis (LCC) Spreadsheet, May 18, 2022, available at https://www.regulations.gov/document/EERE-2009-BT-BC-0021-1996.*

ANALYSIS GROUP

Summary of Preliminary Conclusions

DOE's conclusions on cost effectiveness disregard or do not sufficiently consider variation in key cost inputs over time and across groups for buyers and suppliers

1	**Inflation and Cost Increases**	DOE has failed to consider the impacts of considerable cost increases and supply chain constraints. Taking these into account, DOE's conclusion is invalid and the rule has a net cost to consumers rather than a benefit.
2	**Negative and Inequitable Impacts**	DOE has failed to consider negative impacts on low-income and minority homebuyers.
3	**Affordability and Credit Access**	DOE has underestimated potential impacts on credit access and lost sales.
4	**Additional Costs**	DOE has failed to consider potential costs of testing and compliance, transportation, and supply chain constraints.

Increased Costs Will Likely Impact Ability to Qualify for Financing

- Debt-to-income ratio is one of the top reasons why potential buyers of manufactured homes are denied loans
  - In 2021, **42 percent** of denied loans for MH purchases listed the applicant's debt-to-income ratio as a reason for denial
- The cost of owning a new manufactured home has increased by over 40 percent since 2020, according to an industry source
  - Additionally, the cost of construction materials has increased by at least 35 percent since 2020, increasing the cost of compliance
  - Together, these two factors are likely to increase the debt-to-income ratio for potential applicants for manufactured home loans, increasing the likelihood of loan denial
- Minority buyers tend to have lower incomes, and therefore the impacts of the rule have the potential to fall disproportionately on historically marginalized communities
  - Low-income buyers are likely to be disproportionately impacted for similar reasons

Sources: *2021 Home Mortgage Disclosure Act, Industry Interviews.*

DOE's Reliance on Elasticity of Demand Estimates Understates Likely Impact on Affordability & Housing Access

- DOE has likely underestimated the affordability impact by assuming **relatively low price-sensitivity**
  - For example, AG's updated EEM cost estimates suggest that the cost of Tier 2 homes will increase by **6.1 percent**
    - Under DOE's assumption, a 6.1 percent increase in price leads to **2.9 percent fewer sales annually**
    - However, according to 2021 estimates of price sensitivity by the National Association of Home builders, the same 6.1 percent increase in price would lead to **6.4 percent fewer sales annually**
    - DOE's own sensitivity analysis, based on a study HUD has cited in prior rulemakings, suggests that this 6.1 percent price increase would lead to **14.6 percent fewer sales annually**
- Additionally, DOE has likely underestimated impacts on affordability due to:
  - DOE has arguably **underestimated compliance costs** and the expected increases in MH prices due to the rule
  - The **recent increase in retail prices** of MHs may have made ownership unaffordable for many consumers already
    - Consumers may be increasingly sensitive to price increases at higher baseline prices
- DOE's assumption understates the decreased demand by *thousands* of potential manufactured home buyers per year, all of whom would have to choose from worse alternatives

Sources: *DOE Technical Support Document, pp. 8-3, 10-7 – 10-9; NAHB (2021); EERE-2009-BT-BC-0021-1997_content, Sheet "Price Elasticity," Cells E3:E4; AG Calculations.*

ANALYSIS GROUP

Summary of Preliminary Conclusions

DOE's conclusions on cost effectiveness disregard or do not sufficiently consider variation in key cost inputs over time and across groups for buyers and suppliers

1	**Inflation and Cost Increases**	DOE has failed to consider the impacts of considerable cost increases and supply chain constraints. Taking these into account, DOE's conclusion is invalid and the rule has a net cost to consumers rather than a benefit.
2	**Negative and Inequitable Impacts**	DOE has failed to consider negative impacts on low-income and minority homebuyers.
3	**Affordability and Credit Access**	DOE has underestimated potential impacts on credit access and lost sales.
4	**Additional Costs**	DOE has failed to consider potential costs of testing and compliance, transportation, and supply chain constraints.

DOE Has Not Accounted for Costs of Testing and Compliance, Which Could Entirely Offset Anticipated Life-Cycle Cost Savings

- DOE has not specified requirements for duct system testing and air leakage testing, which are required by the IECC
- The costs of these possible testing requirements were also not included in DOE's LCC analyses
- Industry interviews have suggested that the costs of compliance may range up to and possibly **over $1,000/house** for in-field testing of homes in more remote locations
- A $1,000 testing cost could nearly wipe out anticipated savings across all tiers and analysis periods

DOE and Adjusted LCC Values, by Tier and Analysis Period

	10-Year LCC		30-Year LCC*	
	Tier 1	Tier 2	Tier 1	Tier 2
DOE LCC	$720	$743	$1,594	$3,573
Adjusted LCC	$549	-$647	$1,395	$1,361
Adjusted LCC, with $1,000 Testing Cost	-$194	-$1,330	$426	$338

Note: Asterisk (*) indicates that the 30-year LCC estimates rely on DOE's original model, which erroneously excludes mortgage payments after the 15th year of personal property loans and therefore overestimates anticipated savings.

Transportation Costs May Further Reduce or Negate Anticipated Savings

- Interviews with industry experts, as well as public comments submitted to DOE, have suggested that DOE has underestimated additional transportation costs due to additional height and weight required to comply with the rule
  - Additional insulation and framing requirements may increase the weight of manufactured homes, requiring an additional axle, which may cost **at least $400 to $500/multi-section house**
  - The rule may require homes in CZ2 and CZ3 to use 2' x 6' studs instead of standard 2' x 4' studs, which increases package height. Height increases may require re-routing deliveries around areas with height restrictions, such as in the Northeast
- Additionally, transportation costs have increased in general during the pandemic, e.g., as fuel and labor costs have increased
- Incremental transportation costs were not included in DOE's LCC estimates

Pandemic-Related Supply Chain Shortages May Persist into 2023

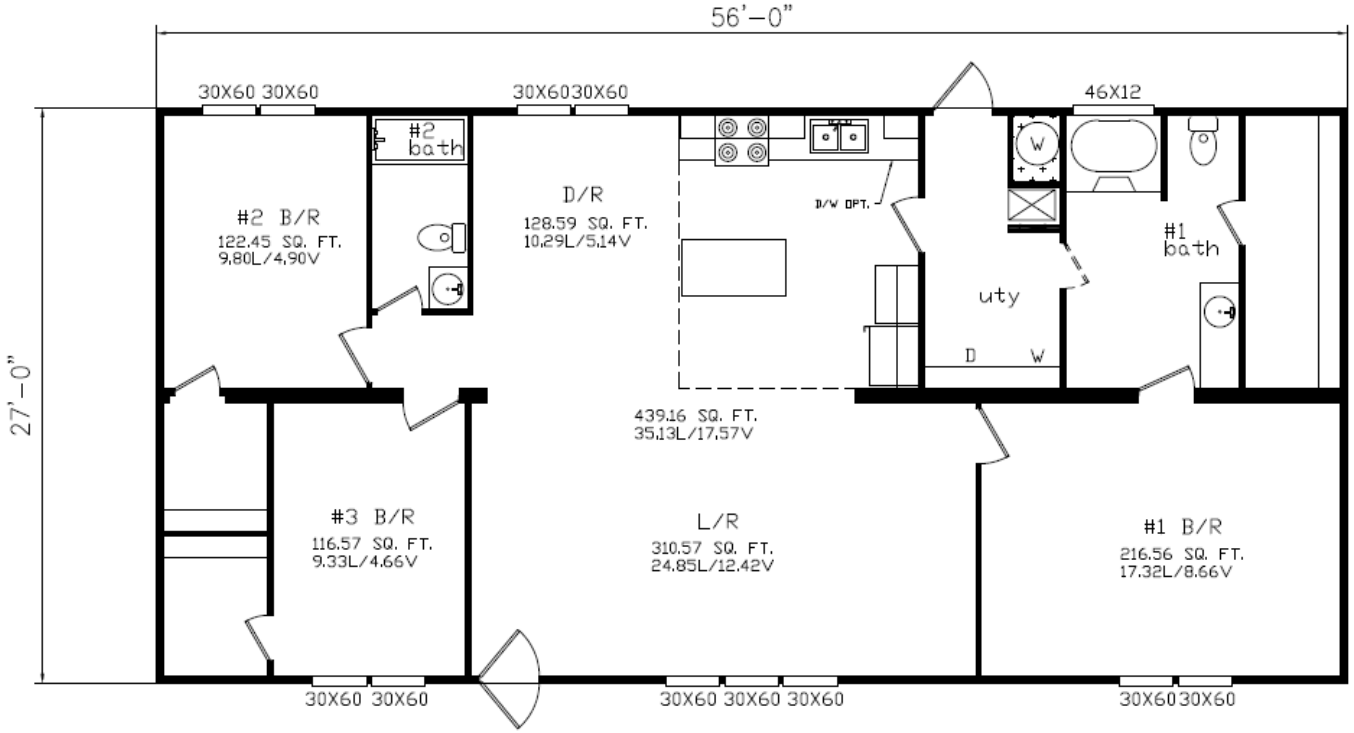
- Industry interviews have predicted that pandemic-related supply chain shortages are likely to persist into 2023
  - For example, one interview noted that there were already insulation shortages, with additional cost increases coming in January 2023
  - New fiberglass insulation plants are capital-intensive and take time to build, and therefore insulation shortages are likely to persist in the medium term
  - Therefore, increased demand from the manufactured housing sector due to the DOE rule may further exacerbate existing insulation shortages
  - Without sufficient fiberglass insulation, manufacturers may be forced to substitute to spray foam insulation for parts of the production process, increasing costs significantly and reducing the total number of homes that can be produced per day
- Additionally, CBRE has predicted that pandemic-related delays and labor shortages will continue in the short term

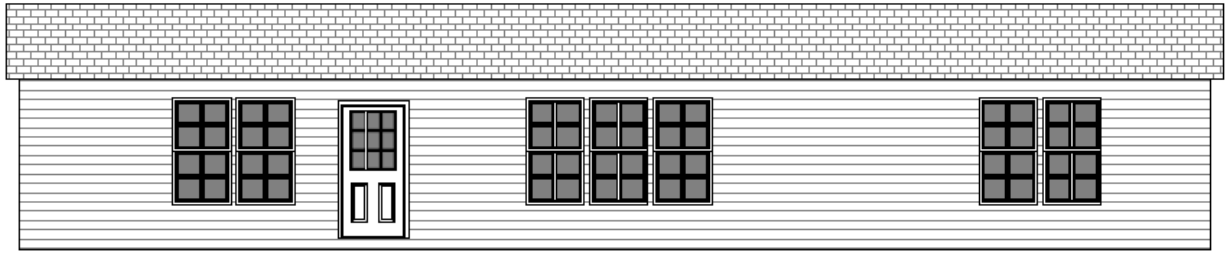
Exhibit C

Architectural Drawings

CURRENTLY BUILT MULTI WIDE – BOX SIZE 27x56

HEATED AREA – 1457 SQUARE FEET





TYPICAL ZONE 3 CONSTRUCTION

INSULATION – 22 FLOOR / 11 WALL / 28 CLG

2x4 WALLS

2x6 FLOOR JOISTS

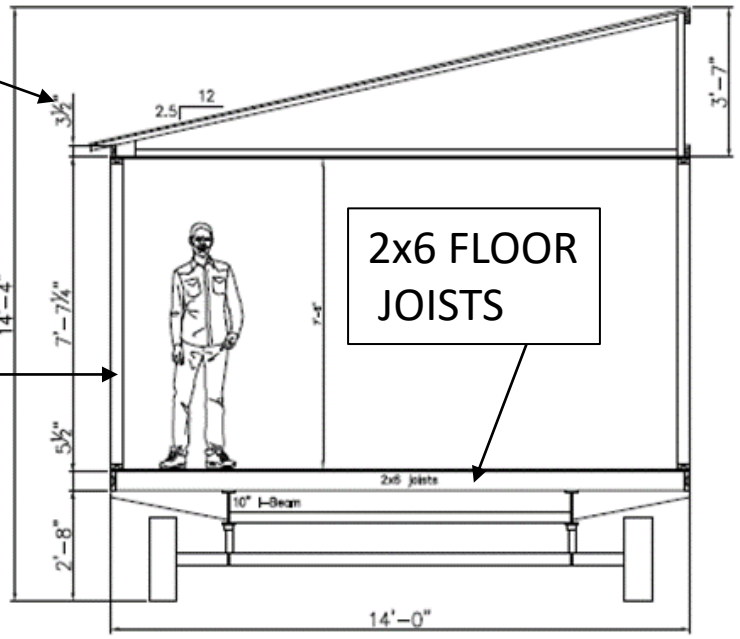
142 SQUARE FEET OF WINDOWS

WINDOW U-VALUE = 0.34

CURRENT TYPICAL CROSS SECTIONS

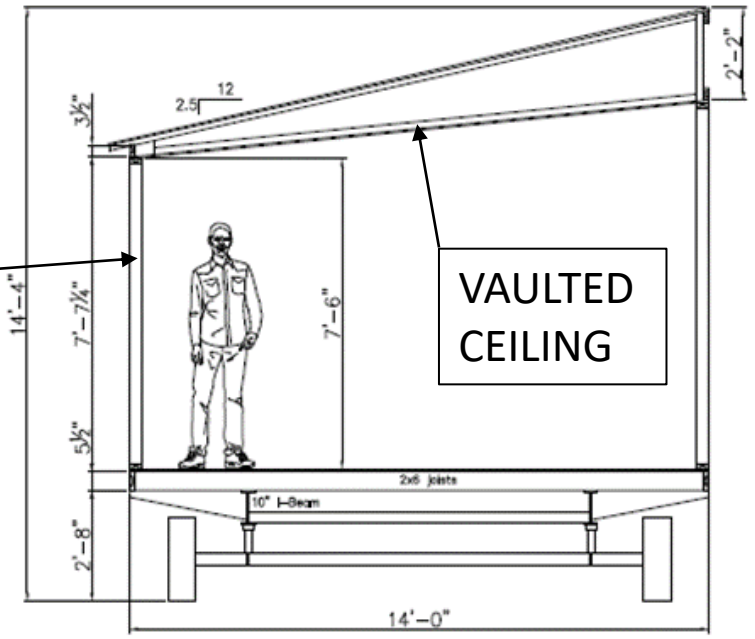
3-1/2” HEEL HEIGHT

2x4 EXT WALLS



2x6 FLOOR JOISTS

2x4 EXT WALLS

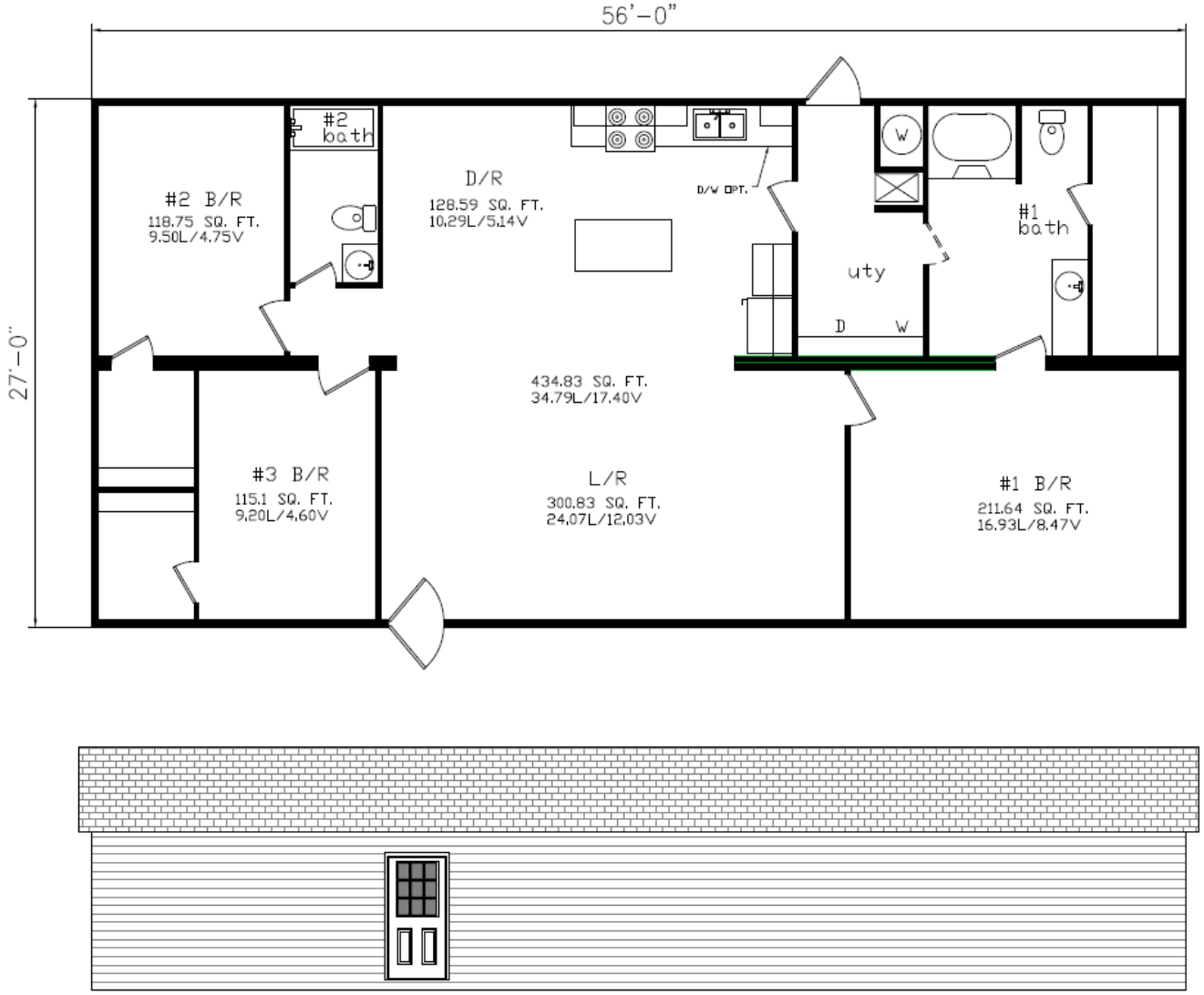


VAULTED CEILING

TYPICAL ZONE 3 CONSTRUCTION: SHIPPING HEIGHT 14’-4”
OPTIONAL VAULT CEILING
7’-6” SIDEWALL HEIGHT
3-1/2” TRUSS HEEL HEIGHT

IMPACT DUE TO DOE PROPOSED MULTI WIDE – BOX SIZE 27x56

HEATED AREA – 1457 SQUARE FEET



PROPOSED ZONE 3 CONSTRUCTION

INSULATION – 33 FLOOR / 15 WALL / 28 CEILING

2x4 WALLS

2x6 FLOOR JOISTS

ZERO WINDOWS

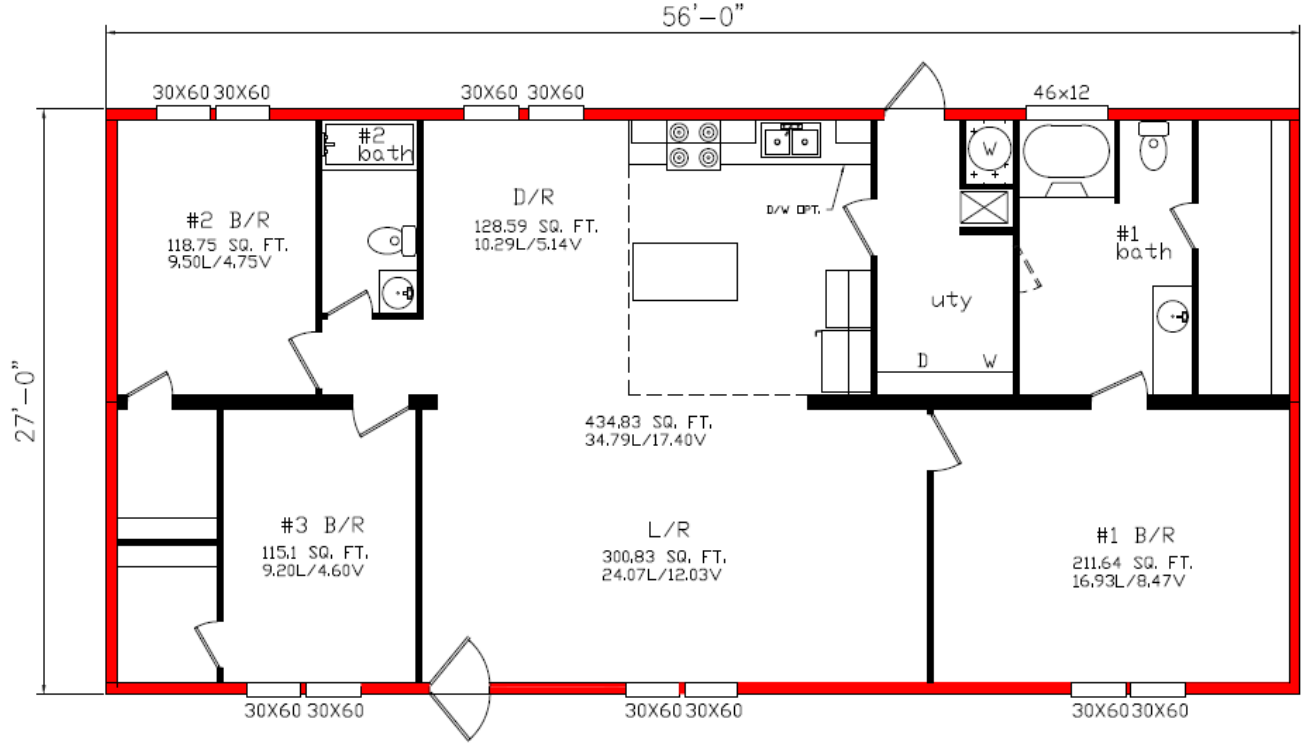
WINDOW U-VALUE = 0.32

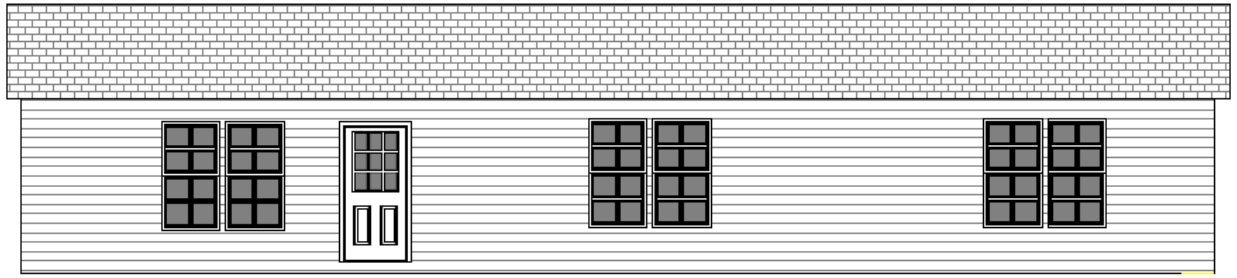
NOTES:

- THIS SLIDE SHOWS THE CHANGES REQUIRED IN ORDER TO REACH THE REQUIRED U-VALUE (0.055) WITHOUT CHANGING THE HOME CONSTRUCTION .
- FLOOR INSULATION WAS CHANGED TO R-33, WALL INSULATION WAS CHANGED TO R-15, AND CEILING INSULATION REMAINED R-28. THESE INSULATION VALUES ARE THE MAXIMUM POSSIBLE VALUES THAT CAN BE INSTALLED WITHOUT CHANGING THE HOME CONSTRUCTION FRAMING.
- WITH THIS CONSTRUCTION, I WAS ONLY ABLE TO GET THE OVERALL U-VALUE DOWN TO 0.055 IF ALL WINDOWS WERE REMOVED.
- PLEASE NOTE THAT IT IS NOT POSSIBLE TO CONSTRUCT A HOME WITHOUT WINDOWS DUE TO LIGHT, VENTILATION, and EGRESS REQUIREMENTS.

IMPACT DUE TO DOE PROPOSED MULTI WIDE – BOX SIZE 27x56

HEATED AREA – 1430 SQUARE FEET





PROPOSED ZONE 3 CONSTRUCTION

INSULATION – 30 FLOOR / 21 WALL / 38 CEILING
2x6 WALLS
2x8 FLOOR JOISTS
129 SQUARE FEET OF WINDOWS
WINDOW U-VALUE = 0.30
HEEL HEIGHT CHANGED TO 5.5 inches

NOTES:

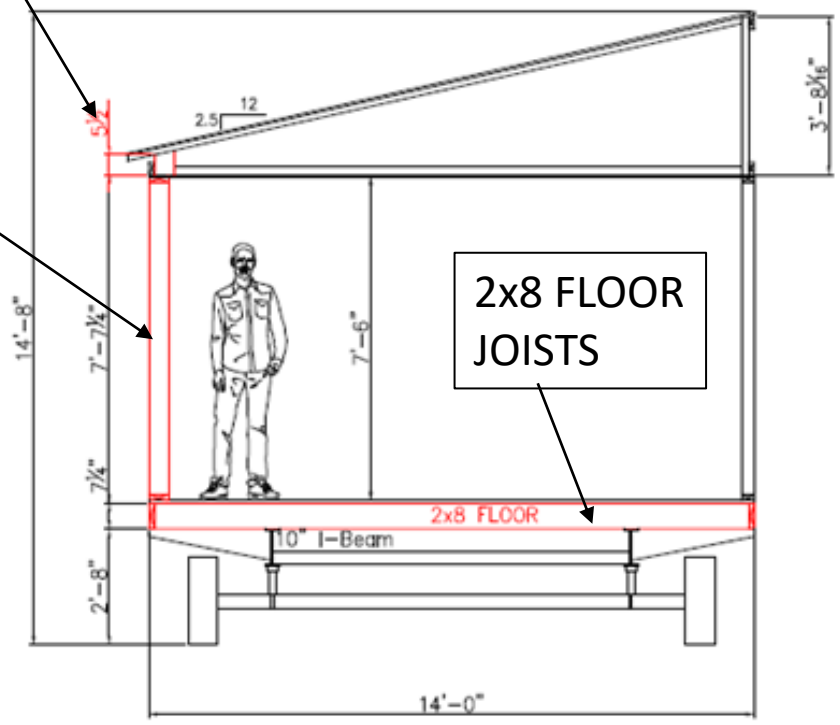
- IN ORDER TO REACH THE REQUIRED U-VALUE (0.055) THE FLOORS WERE CHANGED TO 2x8 , THE WALLS WERE CHANGED TO 2x6 AND THE INSULATION PACKAGE WAS CHANGED TO THE VALUES LISTED IN THE PRESCRIPTIVE SECTION OF THE PROPOSED CODE. HOWEVER, IT WILL BE VERY DIFFICULT TO BUILD THE HOME WITH THIS INSULATION PACKAGE USING CURRENTLY AVAILABLE MATERIALS.
- HEATED AND COOLED INTERIOR SPACE REDUCED BY 27 SQUARE FEET DUE TO THE INCREASED WALL THICKNESS.
- R-30 IN THE FLOOR WILL REQUIRE BATT INSULATION TO BE INSTALLED BETWEEN THE FLOOR JOISTS COMBINED WITH A BLANKET BELOW THE JOISTS. CURRENTLY, MOST MANUFACTUER'S DO NOT USE THIS FLOOR INSULATION TECHNIQUE.
- R-21 IS AVAILABLE, BUT IN SMALL QUANTITIES
- R-38 WILL BE PROBLEMATIC TO GET INTO THE ROOF CAVITY DUE TO THE REQUIRED THICKNESS AND AVAILABLE SPACE IN THE ATTIC.
- ADDED BACK 11 OF THE PREVIOSULY REMOVED 12 WINDOWS. UPGRADED THE WINDOWS TO U-VALUE EQUAL TO 0.30. HOWEVER, IT SHOULD BE NOTED THAT THESE UPGRADED WINDOWS ARE NOT AVAILABLE IN THE MARKET TODAY.
- SHIPPING HEIGHTS WILL BE INCREASED DUE TO TALLER FLOORS AND TALLER HEEL HEIGHT TRUSS.
- THE OPTION FOR A VAULTED CEILING WILL NOT BE POSSIBLE DUE TO THE INCREASED INSULATION THCKNESS IN THE ATTIC.
- OPTIONS FOR 8 FEET OR 9 FEET WALL HEIGHTS AND TRANSOM WINDOW WILL ALSO BE IMPACTED.

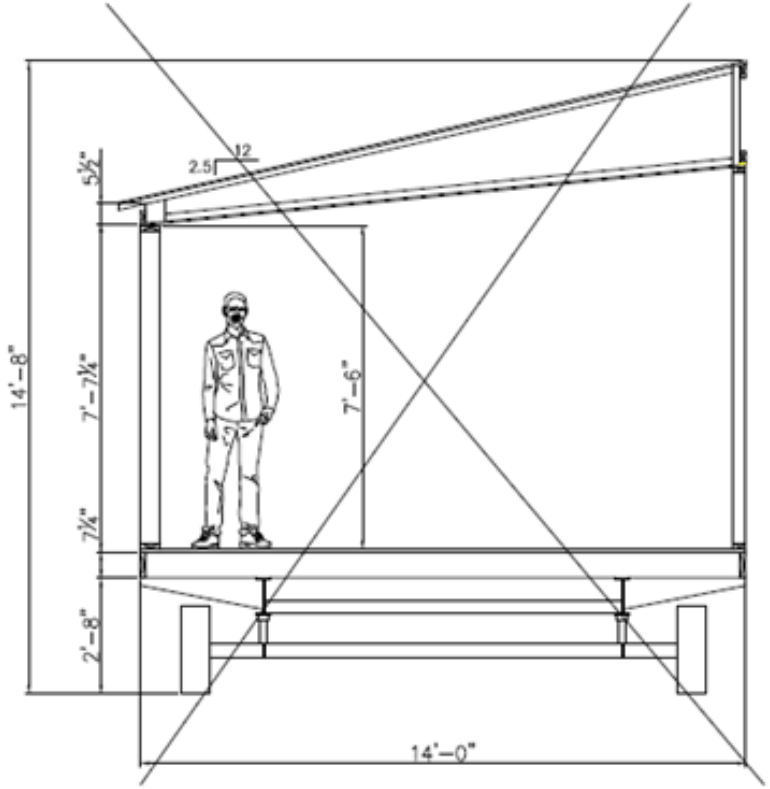
PROPOSED TYPICAL CROSS SECTIONS

5-1/2” HEEL HEIGHT

2x6 EXT WALLS

2x8 FLOOR JOISTS





ZONE 3 CONSTRUCTION:

SHIPPING HEIGHT INCREASED TO 14’-8”
OPTIONAL VAULT CEILING IS NO LONGER AVAILABE DUE TO INSULATION THICKNESS
7’-6” SIDEWALL HEIGHT
5-1/2” TRUSS HEEL HEIGHT
2x8 FLOORS

ADDITIONAL PROPOSED CHANGES

- PROPOSES USING ACCA MANUAL S AND ACCA MANUAL J FOR HEATING AND COOLING EQUIPMENT. HOWEVER, USING ACCA MANUAL J AND ACCA MANUAL S FOR THE DESIGN OF HEATING AND COOLING EQUIPMENT WILL BE PROBLEMATIC, ESPECIALLY IN THERMAL ZONE 3. ACCA MANUAL J REQUIRES KNOWLEDGE OF THE ORIENTATION OF THE HOME WITH RESPECT TO THE SUN FOR COOLING LOAD ANALYSIS. BECAUSE THE ORIENTATION OF THE HOME IS OFTEN UNKNOWN UNTIL INSTALLED, THE PROPOSED RULE MUST ESTABLISH A DEFAULT ORIENTATION. ACCA MANUAL S ESTABLISHES SIZING LIMITS FOR HEATING AND COOLING EQUIPMENT, THESE LIMITS PRESUME THAT THERMAL LOADS ARE ESTABLISHED FOR A SPECIFIC LOCATION AND SPECIFIC BUILDING ORIENTATION. THE VARIATION IN DESIGN PARAMETERS WITHIN A SINGLE THERMAL ZONE EXCEEDS THE SIZING LIMITS OF ACCA MANUAL S. ADDITIONAL GUIDANCE WILL BE REQUIRED TO PROPERLY USE ACCA MANUAL S AND ACCA MANUAL J.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

THE MANUFACTURED HOUSING INSTITUTE; and THE TEXAS MANUFACTURED HOUSING ASSOCIATION,	)	
Plaintiffs,	)	Civil Action No.: 1:23-cv-00174
v.	)	
THE UNITED STATES DEPARTMENT OF ENERGY; and JENNIFER M. GRANHOLM, Secretary of the United States Department of Energy in her official capacity only,	)	
Defendants.	)	

PLAINTIFFS' ORIGINAL COMPLAINT SEEKING TEMPORARY AND PERMANENT DECLARATORY AND STAY/INJUNCTIVE RELIEF UNDER THE APA

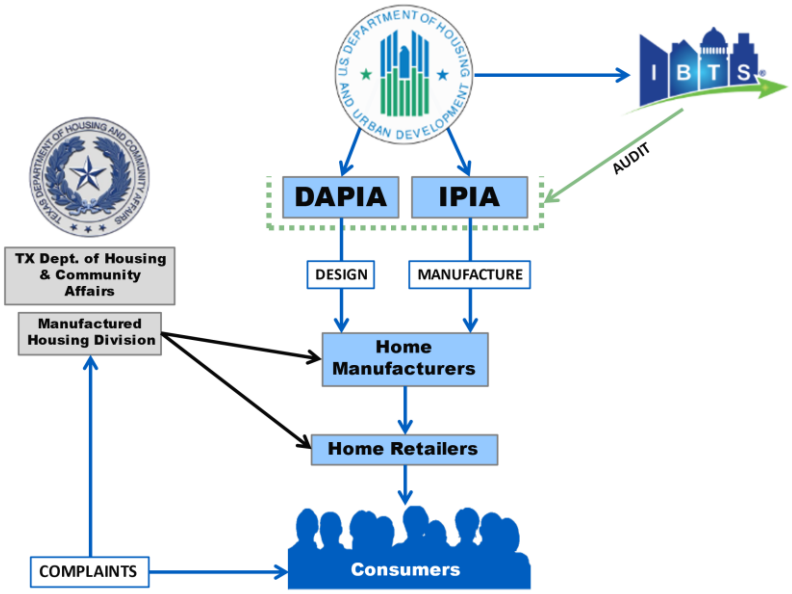
TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiffs the Manufactured Housing Institute ("MHI") and the Texas Manufactured Housing Association ("TMHA"), both trade associations representing all segments of the manufactured housing industry, bring this action for declaratory and injunctive relief.

SUMMARY

Plaintiffs challenge the Department of Energy's ("DOE") recent promulgation of energy standards for manufactured housing in its May 31, 2022 Final Rule, titled "Energy Conservation Program: Energy Conservation Standards for Manufactured Housing." 87 Fed. Reg. 32,728 (the "Final Rule"). Plaintiffs timely make this challenge in advance of the Final Rule's upcoming May 31, 2023 compliance date, and contemporaneously with this Complaint file a Motion to Stay in

accordance with 5 U.S.C. § 705 because that compliance date is arbitrary, capricious, and impracticable. DOE promulgated the Final Rule in contravention of its Congressional mandate to consult with HUD, the primary federal agency setting standards through an extensive regulatory structure, and which has over 50 years of experience regulating the manufactured housing industry. Some aspects of this regulatory structure are described *infra* and are illustrated as follows:



The manufactured housing industry is an avid proponent of energy conservation efforts. The industry's manufacturers are pioneers in the development of construction processes that value and prioritize energy efficiency. Manufacturers are constantly developing new initiatives and technologies, such as comprehensive recycling programs, to reduce waste. Through the controlled environment of the factory-built process, manufacturers are able to use exact dimensions and measurements for most building materials. Today's modern manufacturing plants are so efficient that nearly everything is reused or recycled, including cardboard, plastic, carpet padding, vinyl siding, scrap wood and much more. Similarly, with regard to consumers, a recent study of residential energy consumption showed that existing manufactured homes consume the least

energy of all types of homes. In 2020, more than 30% of new manufactured homes met or exceeded Energy Star efficiency standards.[1]

According to a recent Freddie Mac study, "[e]nergy efficiency built into the homes themselves and an eco-friendly manufacturing process mean manufactured homes far surpass site-built in terms of their environmental footprint. The factory home building process produces a fraction of the waste compared to a site-built home."[2]

While the manufactured housing industry as a whole is an active proponent of energy conservation and efficiency, to ensure that manufactured homes remain the most affordable, unsubsidized housing option in today's market, energy standards must be accurately balanced against their implementation costs. The Final Rule falls woefully short of striking a rational balance between energy conservation and affordable housing. And DOE failed to comply with its requirement to consult with HUD. In sum, the Final Rule is contrary to the law and is in violation of both the Administrative Procedures Act (the "APA"), 5 U.S.C. § 551, *et seq.*, and the Final Rule's enabling legislation, the Energy Independence and Security Act of 2007 (the "EISA"), 42 U.S.C. § 17071.

INTRODUCTION

1. The Department of Energy regulates various aspects of the nation's energy practices. In the EISA, Congress authorized DOE to "establish standards for energy efficiency in manufactured housing." 42 U.S.C. § 17071(a)(1).

---

[1] *See ENERGY STAR Manufactured New Homes*, Environmental Protection Agency and Dept. of Energy, https://www.energystar.gov/newhomes/energy_star_manufactured_homes.

[2] *Four Ways Manufactured Housing Can Help with Affordability Challenges*, Freddie Mac (Oct. 5, 2021), https://sf.freddiemac.com/articles/insights/four-ways-manufactured-housing-can-help-with-affordability-challenges.

2. In the Final Rule, DOE sought to carry out its mandate under the EISA to promulgate energy standards for manufactured housing. But DOE failed to comply with its legislative mandate under the EISA—and, moreover, DOE's Final Rule is arbitrary and capricious in violation of the APA.

3. ***First***, in preparing the energy standards for manufactured housing, DOE failed to consider all relevant costs that affect the purchase price of manufactured homes and the total life-cycle construction and operating costs for consumers. The EISA explicitly directs DOE to ensure that its energy standards for manufactured housing are "cost-effective," taking into account the standards' impact "on the purchase price of manufactured housing and on total life-cycle construction and operating costs." 42 U.S.C. § 17071(b)(1). Openly shirking this mandate, DOE readily admits in the Final Rule that it has "not included any potential associated costs of testing, compliance or enforcement at this time." 87 Fed. Reg. at 32,758. Obviously, testing, compliance, and enforcement (and their associated costs) are integral to both energy standards and construction materials and techniques. Testing, compliance, and enforcement will indisputably and materially increase construction costs of manufactured homes and thereby the purchase price for each manufactured home. DOE wholly ignored these costs in direct contravention of the EISA. For example, potential costs of duct-leakage testing alone have been estimated to be as high as $1,500 per home, far above DOE's original estimates of consumer savings for single-section and multi-section homes over the 10-year analysis period.

4. Relatedly, compliance with the Final Rule will require manufacturers to purchase substantial additional construction materials such as fiberglass insulation. DOE's methodology has completely ignored recent economic realities including the actual costs of construction materials. In 2022, DOE arbitrarily used outdated 2014 materials cost estimates (instead of recent and actual

construction costs) and assumed a hypothetical nominal annual cost increase of 2.3% between 2014 and 2023. Even if this abstract economic model approach could be understandable in some ordinary times or in a college course, this assumption willfully ignores the realities of this remarkable decade and the current macro-economic factors. The DOE's approach fails to comport with the dramatic **actual** cost increases to building and manufacturing materials caused by the Covid-19 pandemic and a series of historic natural disaster events like hurricanes that have hit the United States since 2014 that have created massive economic disruptions to supply chains and home construction. As was well-known at the time DOE promulgated the Final Rule in May 2022, the cost of construction materials has **actually** increased by *6.5% annually* between 2014 and 2021—driven mostly by cost increases of an astonishing *35.1%* from 2020 to 2021. DOE wholly ignored these **actual** cost increases for construction materials contrary to its legislative mandate.

5. For example, using DOE's own modeling but accounting for actual economic realities, DOE's conclusion of net benefits of $743 over a 10-year period to multi-section homebuyers is reversed, and Final Rule will result in a net cost of -$112 to the average multi-section homebuyer over DOE's 10-year analysis period. And nearly all (98 percent) of borrowers using a personal property loan to finance a multi-section home purchase would face net costs over a 10-year horizon.

6. DOE also failed to account for the nation's dire supply chain shortages and just assumed, without any support, that all new materials would be readily available to manufacturers.

7. The real consequences of the faulty assumptions and other problems with the DOE's methodology and non-compliance with the APA mean that the Final Rule—if allowed to be implemented and enforced by May of 2023—will cause substantial disruption to homebuyers and Plaintiffs' members among many others. Based on purchase price increases, economists

estimate that the Final Rule could lead to between 1,703 and 5,101 fewer manufactured home sales *each year* over the next ten years (**for a total of between 17,030 and 51,010 fewer homes**). Worse still, some number of those families may be left with no housing at all, exacerbating and compounding the nation's affordable housing crisis. Equally as important, economists estimate that the Final Rule will disparately impact the lowest income and historically underrepresented groups by rendering home ownership even further from their reach.

8. ***Second***, the Final Rule is arbitrary and capricious in its one-year compliance deadline. In the Final Rule, DOE demands that manufacturers fully comply with its sweeping changes to energy standards by May 31, 2023, a mere one year after the date on which DOE published the new standards. This aggressively short compliance window is unrealistic and arbitrary. The Final Rule will require manufacturers across the manufactured housing industry to redesign every home model—of which there are thousands. Manufacturers must source the new materials required to comply with the Final Rule during a global supply chain crisis. It is patently unreasonable and unjust for DOE to demand these seismic industry shifts in just 12 months. DOE typically allows appliance manufacturers *five (5) years* to comply with new energy standards. Constructing an entire manufactured home is certainly more complicated than constructing an appliance.

9. ***Third***, in contravention of another of the EISA's requirements and critical to the problems that have forced Plaintiffs to file this lawsuit, DOE failed to consult with HUD about the Final Rule's energy standards. The EISA required DOE to bring the specific standards it was contemplating to HUD so that DOE could benefit from HUD's long-standing familiarity and expertise in regulating the construction and affordability of manufactured homes. DOE never did so. At best, in the Final Rule, DOE states in cursory fashion that it did "consult" with HUD. That

perfunctory, conclusory claim is insufficient as a matter of law. The administrative record must reveal actual, substantive consultation with HUD in the development of DOE's energy standards. Tellingly, in response to FOIA requests on behalf of Plaintiffs for any evidence of consultation, DOE has refused to produce any information at all, much less any information that could substantiate any manner in which DOE discharged its lawful obligations. Where, as here, there is no such evidence, the Final Rule should be set aside.

10. DOE's Final Rule has unnecessarily caused conflict with the leading federal agency involved in extensively regulating the manufactured home industry, HUD. In the Manufactured Housing Improvement Act of 2000, Congress established the Manufactured Housing Consensus Committee ("MHCC")—a statutory Federal Advisory Committee body charged with providing recommendations to the HUD Secretary on the revision and interpretation of HUD's manufactured home construction and safety standards and related procedural and enforcement regulations. Because of HUD's long-standing experience in this area, the EISA required DOE to consult with HUD. However, in promulgating the Final Rule, DOE did not consult with HUD or the MHCC. After DOE promulgated the Final Rule, in October and November of 2022, the MHCC convened to review and analyze the Final Rule, and concluded, *inter alia*, that:

a. The MHCC has reviewed the DOE Final Rule and has determined DOE circumvented the standards development process prescribed in EISA which requires cost justification and consultation with HUD.

b. DOE provided an energy conservation standard which was based on site-built construction and applied it to a performance-based national code. *If adopted as written, the Final Rule would adversely impact the entire Manufactured Housing program and cost increases associated with*

compliance would reduce prospective purchasers (especially minorities and low-income consumers) from durable, safe, high quality and affordable housing.

c. The MHCC previously recommended that DOE include the substantial cost of testing, enforcement, and regulatory compliance in its costing analysis. The Final Rule did not consider these costs.

MHCC Working Document from October and November 2022 MHCC Meetings, at 1–2 (emphasis added).[3]

11. The manufactured housing industry values improvements in energy efficiency. Indeed, the industry and its factory construction methods are at the forefront of such innovations. But the statutory mandate under which DOE promulgated its energy standards for manufactured housing quite sensibly requires that DOE balance energy efficiency together with other goals, chief among them the goal of ensuring that affordable housing is broadly available to those who would otherwise lack the ability to pursue homeownership. DOE's Final Rule is out of step with, and in practice undermines, these goals. Indeed, if allowed to go into effect, as mentioned above, it will cause disproportionate harm to historically underrepresented groups within the manufactured housing market.

12. Given these defects in DOE's rulemaking, Plaintiffs ask this Court to declare that the Final Rule is unlawful, set aside the Final Rule, and stay or enjoin DOE from implementing it.

---

3 https://www.hud.gov/sites/dfiles/Housing/documents/MHCC%20Working%20Document%20from%20October%2018-20%20and%20November%2015-17%2C%202022%20Meetings%20.pdf

PARTIES

13. Plaintiff MHI is the only national trade organization representing all segments of the factory-built housing industry. MHI's members include home builders, retailers, community operators, lenders, suppliers, and affiliated state organizations. MHI's members produce approximately 85% of the manufactured homes constructed each year. MHI is an Illinois not-for-profit corporation with headquarters in Arlington, Virginia.

14. MHI works to promote fair laws and regulations, increase and improve financing options, provide technical analysis and research, promote industry professionalism, remove zoning barriers, and educate external audiences about the benefits of manufactured housing. Through these various programs and activities, MHI seeks to promote the use of manufactured housing to consumers, developers, lenders, community operators, insurers, the media and public officials so that more Americans can realize their dream of homeownership.

15. MHI has a substantial interest in this action. MHI is focused on maintaining the affordability of manufactured housing to serve lower-income home purchasers. DOE's Final Rule puts the affordable nature of manufactured housing at substantial risk because the Final Rule failed to consider the actual costs associated with implementation. Additionally, MHI is also focused on the stability of the manufactured housing industry, and the Final Rule introduces significant uncertainty to the industry. By way of example only, the Final Rule requires various new energy efficiency standards, but the Final Rule fails to offer any testing procedures for those standards. The manufactured housing industry faces grave uncertainty complying with energy standards when the industry does not know what testing procedures for those standards DOE will accept as satisfactory.

16. Plaintiff TMHA has served Texas' manufactured housing industry since 1952. TMHA is concerned with the entire scope of the Texas manufactured housing industry. The association represents over 1,400 company members from every facet of the industry, including manufacturers, retailers, communities, insurance companies, suppliers of goods and services, salespeople, real estate companies, title companies, developers, transporters, installers, financial institutions, brokers, and other affiliated companies. TMHA is a not-for-profit incorporated association organized and existing under the laws of the State of Texas, with its principal place of business located at 4520 Spicewood Springs Road, Austin, Travis County, Texas 78759.

17. Texas is home to 26 manufactured housing construction facilities, which is the largest number of facilities in any single state. In 2021 alone, these Texas manufacturing housing facilities produced over 23,500 homes—approximately 22% of all manufactured homes produced in the country during that year.

18. TMHA has a similar interest in this action as MHI. TMHA is also focused on maintaining the affordability of manufactured housing to serve lower-income home purchasers. DOE's Final Rule puts the affordable nature of manufactured housing at substantial risk because the Final Rule failed to consider the actual costs associated with implementation. Additionally, TMHA is focused on the stability of the manufactured housing industry given the number of plants located in Texas. The Final Rule introduces significant uncertainty for those plants. By way of example only, the Final Rule requires various new energy efficiency standards, but the Final Rule fails to offer any testing procedures for those standards. The Texas manufactured housing plants face grave uncertainty complying with energy standards when the Texas plants do not know what testing procedures for those standards DOE will accept as satisfactory.

19. Both MHI and TMHA file this suit in a representative capacity for their members that are home manufacturers and are therefore subject to the Final Rule. Unless the Court grants relief from the Final Rule, MHI's and TMHA's members will suffer irreparable harm. Additionally, the interests that MHI and TMHA seek to vindicate in a representative capacity are germane to both MHI's and TMHA's associational purposes.

20. Defendant the United States Department of Energy is a federal agency with headquarters at 1000 Independence Ave., SW, Washington, D.C. 20585. DOE issued the Final Rule.

21. Defendant Jennifer M. Granholm is the Secretary of DOE and is ultimately responsible for DOE's operations, including the development and implementation of the Final Rule. Secretary Granholm is sued in her official capacity only.

22. Defendants may be served by delivering a copy of the summons and complaint to the United States attorney for the district where the action is brought, with a copy of each sent by registered or certified mail to the civil-process clerk at the United States attorney's office and to the agency or officer against whom relief is sought. *See* Fed. R. Civ. P. 4(i).

JURISDICTION AND VENUE

23. This action arises under the EISA and the APA. This Court has jurisdiction under 28 U.S.C. § 1331 and is authorized to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

24. This Court may hear this action under the APA because Plaintiffs seek review of a final agency action—the Final Rule—for which there is no other adequate remedy.

25. Venue in this Court is proper under 28 U.S.C. § 1391(e) because Plaintiff TMHA resides in the district and no real property is involved in this action. "Courts have held that venue

is proper as to all plaintiffs if suit is brought in a district where any one or more of the plaintiffs resides." *Crane v. Napolitano*, 920 F. Supp. 2d 724, 746 (N.D. Tex. 2013), *aff'd sub nom. Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015).

BACKGROUND

I. The Manufactured Housing Industry

26. Manufactured housing is an indispensable part of the American housing market. Approximately 22 million Americans live in manufactured homes. In 2021 alone, the manufactured housing industry produced over 105,000 homes, which represented 9% of all new single-family home starts. That percentage is expected to increase going forward. Manufactured homes are significantly less expensive than traditional site-built homes and represent a critical part of the solution to the nation's dire need for affordable housing.

27. The average consumer pays $72,600 for a single-section manufactured home and $132,000 for a multi-section manufactured home.[4] In stark contrast, the average cost for a site-built home is $365,904.[5] As of 2019, the United States had a housing deficit of 3,800,000 units, but that estimate has only increased after the Covid-19 pandemic.[6] As stated by Fannie Mae: "One solution to addressing the nation's housing supply shortage is to build more homes. New factory-built manufactured homes, which can be built as single- or multiple-section homes, appear to be significantly more affordable than site-built homes . . . . Factory-built manufactured homes

[4] *2022 Manufactured Housing Facts*, Manufactured Housing Institute (August 2022), at 2, https://www.manufacturedhousing.org/wp-content/uploads/2022/04/2022-MHI-Quick-Facts-updated-05-2022-2.pdf.

[5] *Id.*

[6] Jeffery Hayward, *U.S. Housing Shortage: Everything, Everywhere, All at Once*, Fannie Mae (Oct. 31, 2022), https://www.fanniemae.com/research-and-insights/perspectives/us-housing-shortage.

meeting the HUD Code standard have substantially lower all-in monthly housing costs than site-built homes. As a result, it is important to preserve this source of unsubsidized housing for lower-income residents. In addition, factory-built manufactured housing is an affordable option for buyers desiring a new home."[7] New manufactured homes offer exceptional quality construction as well given that the construction standards for manufactured housing across the country are subject to robust compliance and quality assurance regulations, sometimes more stringent than those for traditional site-built homes.

28. The median household income for those who own manufactured homes is approximately $35,000 per year, far below the national average, and nearly one-half of the average income for site-built homeowners.[8] As DOE noted in the Final Rule, 60% of single-section manufactured home occupants and 45% of multi-section manufactured home occupants fall below 200% of the Federal Poverty Level. *See* 87 Fed. Reg. at 32,750. For a family of four, the 2022 Federal Poverty Level is $27,750 in annual income.[9] Similarly, the Consumer Protection Financial Bureau ("CFPB") recently found that the median annual income for manufactured housing borrowers is between $52,000 and $53,000. *See* CFPB, *Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data* (May 2021), at 34. For contrast, the median family income for the United States was approximately $90,000 in 2022.[10]

---

[7] Tanya Zahalak, *Manufactured Housing Landscape 2022*, Fannie Mae (May 21, 2020), https://multifamily.fanniemae.com/news-insights/multifamily-market-commentary/manufactured-housing-landscape-2020.

[8] *Id.*

[9] *Federal Poverty Level*, Dept. of Health and Human Services, https://www.healthcare.gov/glossary/federal-poverty-level-fpl/

[10] *Methodology for Calculating FY 2022 Medians*, Dept. of Housing and Urban Development, https://www.huduser.gov/portal/datasets/il/il22/Medians-Methodology-FY22.pdf

29. Over 71% of purchasers cite affordability as a key reason they choose manufactured housing.[11] Manufactured housing is the largest source of unsubsidized housing in the country.

30. Manufactured homes are highly affordable because of efficiencies in the factory-building process. They are constructed with standard building materials and built almost entirely off-site in a factory. The controlled construction environment and assembly-line techniques eliminate many of the problems posed by traditional home construction, such as weather, theft, vandalism, damage to building products and materials, and unskilled labor. Factory employees are trained and managed more effectively and efficiently than the contracted labor used by the site-built home construction industry.

31. Manufactured housing supports the United States economy because manufactured homes are made in America. The manufactured housing industry includes approximately 35 domestic corporations with 143 homebuilding facilities located in more than 20 states. The industry produced over 105,000 homes in 2021 alone.

32. Traditionally, building standards for manufactured housing have been created and enforced exclusively by HUD. HUD's mandate to regulate manufactured housing derives from the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. § 5401 *et seq.* (the "Manufactured Housing Act"), an express purpose of which is "to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans." 42 U.S.C. § 5401(b)(2).

33. Pursuant to its statutory authority under the Manufactured Housing Act, HUD has promulgated construction and safety standards for manufactured homes. *See* 24 C.F.R. Part 3280 (the "HUD Code"). In the Manufactured Housing Act, Congress instructed that the HUD Code

[11] *2022 Manufactured Housing Facts*, *supra* n.4.

must "ensure that the public interest in, and need for, affordable manufactured housing is duly considered." 42 U.S.C. § 5401(b)(8).

34. HUD enforces the HUD Code through a comprehensive and exhaustive set of rules and regulations. *See* 24 C.F.R. Part 3282. To take just one example, HUD regulations require *each* manufactured home design to be reviewed and approved by a third-party Design Approval Primary Inspection Agency ("DAPIA"). 24 C.F.R. § 3282.203. In addition, *each* manufactured home must be inspected by a separate Production Inspection Primary Inspection Agency ("IPIA"). 24 C.F.R. § 3282.204. Manufacturers pay DAPIAs and IPIAs directly for their inspection services, and those agencies certify compliance with the HUD Code. 24 C.F.R. § 3282.202. Only after the necessary approval from these primary inspection agencies may a home be certified as compliant with the HUD Code and sold to consumers. Manufacturers also pay HUD a fee for a HUD certification label, which all manufactured homes must display.

35. Manufactured housing is the only form of housing regulated by a federal building code. Unlike site-built homes, which are subject to different state and local regulations, manufactured homes are all built to one uniform federal code, the HUD Code.

36. The manufactured housing industry works collaboratively with HUD to comply with the HUD Code's standards for home construction. The industry has always supported energy conservation efforts and other reasonable environmental protection initiatives and will continue to do so. In 2020, more than 30% of new manufactured homes met or exceeded Energy Star efficiency standards.[12]

37. Indeed, according to the U.S. Census Bureau, in 2020, the median size of a traditional site-built single-family home was 2,261 square feet, while the median size of a

[12] *ENERGY STAR*, *supra* n.1.

manufactured home was only 1,338 square feet. The significant difference is size correlates with a significant reduction in energy usage. As explained by the U.S. Energy Information Administration, "most energy end-uses are correlated with the size of the home. As square footage increases, the burden on heating and cooling equipment rises, lighting requirements increase, and the likelihood that the household uses more than one refrigerator increases."

38. Further, the manufactured home industry is a pioneer in the development of construction processes that value and prioritize energy efficiency. Manufacturers are constantly developing new initiatives and technologies, such as comprehensive recycling programs, to reduce waste. Through the controlled environment of the factory-built process, manufacturers are able to use exact dimensions and measurements for most building materials. Today's modern manufacturing plants are so efficient that nearly everything is reused or recycled, including cardboard, plastic, carpet padding, vinyl siding, scrap wood and much more. *See* Final Rule Admin. Record, EERE-2009-BT-BC-0021-1592.

39. According to a recent Freddie Mac study, "[e]nergy efficiency built into the homes themselves and an eco-friendly manufacturing process mean manufactured homes far surpass site-built in terms of their environmental footprint. The factory home building process produces a fraction of the waste compared to a site-built home."[13]

[13] *Four Ways Manufactured Housing Can Help with Affordability Challenges*, *supra* n.2.

II. DOE's Energy Standards Rulemaking Process and the Final Rule

A. In 2007, Congress Directs DOE to Promulgate Energy Standards for Manufactured Housing

40. In 2007, Congress passed the EISA, which provides that "[n]ot later than 4 years after December 19, 2007, the [DOE] Secretary shall by regulation establish standards for energy efficiency in manufactured housing." 42 U.S.C. § 17071(a)(1).

41. The EISA imposes two significant requirements for DOE's rulemaking.

42. ***First***, the EISA directs DOE to consult with HUD in preparing the standards. *See* 42 U.S.C. § 17071(a)(2)(B) (providing that the energy standards "shall be established after . . . consultation with the Secretary of Housing and Urban Development, who may seek further counsel from the Manufactured Housing Consensus Committee").

43. ***Second***, the EISA directs that, in promulgating the energy standards, DOE must ensure that the standards are "cost-effective," taking into account the economic impact on "**the purchase price of manufactured housing** and on **total life-cycle construction and operating costs**." 42 U.S.C. § 17071(b)(1) (emphasis added). More specifically, the statute provides that the standards "shall be based on the most recent version of the International Energy Conservation Code (including supplements), except in cases in which the Secretary finds 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." *Id.*

B. Between 2010 and 2016, DOE Prepares and Then Withdraws a Set of Proposed Energy Standards for Manufactured Housing

44. In February 2010, DOE initiated the process of developing energy standards for manufactured housing with an advance notice of proposed rulemaking in which it solicited information and data from stakeholders. *See* 81 Fed. Reg. at 39,762.

45. DOE ultimately decided that the development of its energy standards for manufactured housing would benefit from a negotiated rulemaking process. In June 2014, DOE published a notice of intent to establish a manufactured housing ("MH") working group to discuss and, if possible, reach consensus on a proposed set of energy standards. The MH working group was made up of representatives from interested stakeholders with a directive to consult, as appropriate, with a range of external experts on technical issues. The working group consisted of 22 members, including one member from the Appliance Standards and Rulemaking Federal Advisory Committee ("ASRAC") and one DOE representative. There was no HUD representative in the working group.

46. The MH working group met in person during four sets of public meetings held in 2014. *See* 81 Fed. Reg. at 39,765. In October 2014, the working group reached consensus on a proposed set of energy standards for manufactured housing and assembled its recommendations for DOE into a term sheet that was presented to ASRAC. ASRAC approved the term sheet during an open meeting in December 2014 and sent it to DOE to develop a proposed rule. *See* 81 Fed. Reg. at 39,765.

47. In June 2016, DOE published a notice of proposed rulemaking in which it proposed a set of energy standards for manufactured housing. 81 Fed. Reg. 39,756 (the "2016 Proposed Rule"). Importantly, the 2016 Proposed Rule was "based on the 2015 edition of the International Energy Conservation Code" ("2015 IECC"). *Id.* Likewise, the cost estimates that the MH working group considered in preparing its recommendations were also based on the 2015 IECC. *See, e.g.*, Final Rule Admin. Record, EERE-2009-BT-BC-0021-0090.

48. In conjunction with the 2016 Proposed Rule, DOE published a companion notice of proposed rulemaking in which it set out procedures for testing manufacturer compliance with the proposed energy standards. As stated by DOE in that proposed "test procedures" rulemaking:

> Test procedures **are necessary** to provide for accurate, comprehensive information about energy characteristics of manufactured homes and provide for the subsequent enforcement of the standards. See 42 U.S.C. 7254, 17071. The test procedure [notice of proposed rulemaking] proposes applicable test methods to support the energy conservation standards for the proposed thermal envelope requirements, air leakage requirements, and fan efficacy requirements. **The test procedure would therefore dictate the basis on which a manufactured home's performance is represented and how compliance with the proposed energy conservation standards, if adopted, would be determined**.

81 Fed. Reg. at 78,734 (emphasis added). In sum, "[**t**]**he proposed test procedures are used as the basis for manufacturers to show compliance with the energy conservation standards, once finalized and compliance is required.**" 81 Fed. Reg. at 78,735 (emphasis added).

49. In proposing test procedures to accompany its energy standards, DOE adopted existing and successful, industry-accepted testing methods. As it explained in the proposed rulemaking, "by aligning with industry-accepted test methods, it is expected that the DOE test procedures will be less burdensome than if DOE were to establish new test procedures for manufactured housing manufacturers." 81 Fed. Reg. at 78,737. Toward that end, the proposed test procedures would have expressly allowed manufacturers to rely on energy efficiency "values currently being determined by component manufacturers and that are provided as part of the component specification sheets." *Id.*

50. The 2016 Proposed Rule did not clear the Office of Information and Regulatory Affairs' ("OIRA") review process under Executive Order 12866 and was withdrawn in January 2017. *See* 83 Fed. Reg. at 38,074–75. In withdrawing the 2016 Proposed Rule, DOE cited Executive Order 13771 from the Administration of President Donald J. Trump, which required DOE "to manage the costs associated with the imposition of expenditures required to comply with

Federal regulations." *See* 83 Fed. Reg. at 38,075. Executive Order 13771 stated, for example, that "[u]nless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed." 82 Fed. Reg. at 9,339.

C. In 2017, the *Sierra Club* Files Suit to Compel DOE to Complete Its Rulemaking

51. In the wake of DOE withdrawing the 2016 Proposed Rule, in December 2017, the Sierra Club filed suit in the United States District Court for the District of Columbia to compel DOE to complete its energy standards rulemaking. *See Sierra Club v. Rick Perry*, Civil Action No. 1:17-cv-02700-EGS, Dkt. No. 1 (D.D.C. Dec. 18, 2017). In that suit, the Sierra Club alleged that DOE had failed to comply with its statutory mandate to promulgate energy standards for manufactured housing. *Id.* It demanded that DOE complete a final rule establishing those standards as required by the EISA. *Id.*

52. In November 2019, DOE and the Sierra Club entered into a stipulated consent decree in which DOE agreed to publish a final rule establishing energy standards for manufactured housing no later than February 14, 2022. *Sierra Club*, Dkt. No. 42. By agreement of those parties, that deadline was later extended until May 16, 2022. *Sierra Club*, Dkt. No. 45.

D. In 2022, DOE Prepares a New Set of Energy Standards and Publishes the Final Rule

53. Faced with the *Sierra Club* litigation, in August 2018, DOE published a new notice of data availability and request for information in which it solicited public input on some of the data it planned to use to develop a new set of proposed energy standards for manufactured housing. *See* 83 Fed. Reg. at 38,073. And in August 2021, DOE published a supplemental notice of proposed rulemaking in which it set out those proposed standards (the "2021 Proposed Rule"). *See* 86 Fed. Reg. at 47,744.

54. Unlike the 2016 Proposed Rule, which had proposed energy standards that were based on the 2015 IECC, the 2021 Proposed Rule proposed standards that were based on a more recent version of the IECC, the 2021 edition ("2021 IECC"). *See* 87 Fed. Reg. at 32,738. Despite material differences between the 2021 and 2015 versions of the IECC, DOE did not reconvene the MH working group to assess those differences at any point during its rulemaking. In fact, following its withdrawal of the 2016 Proposed Rule, DOE has not reconvened the MH working group at all.

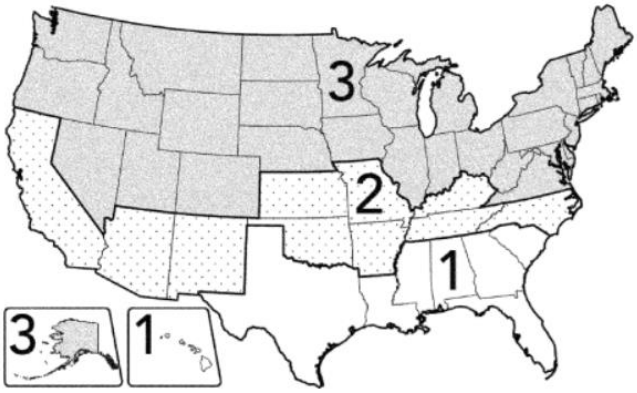
55. Unlike manufactured housing that is governed by HUD or State Administrative Agencies to which HUD has delegated authority, site-built residential construction is governed by local code authorities that adopt various versions of model codes. Only four states have adopted the 2021 IECC's standards for construction of site-built homes. The vast majority of local code authorities have adopted and enforce the 2012 or 2015 IECC's standards for construction of site-built homes. No stakeholders from the manufactured housing industry were involved in drafting the 2021 IECC.

56. After a public comment period, DOE promulgated a final set of energy standards for manufactured housing in the Final Rule. The Final Rule was published on May 31, 2022, with an effective date of August 1, 2022. The Final Rule requires that all construction of new manufactured homes must comply with the new energy standards beginning on May 31, 2023—only one year after the date the standards were published and less than a year after the Final Rule's effective date. *See* 87 Fed. Reg. at 32,728.

57. The Final Rule promulgated a detailed set of energy conservation regulations governing the construction of manufactured homes, to be codified in 10 C.F.R. Part 460. It establishes two "tiers" of energy standards that are both based on the 2021 IECC. As stated in the Final Rule, "DOE is finalizing a tiered standard whereby **single-section** manufactured homes

("**Tier 1**" manufactured homes) would be subject to different building thermal envelope requirements (subpart B of 10 CFR part 460) than **all other manufactured homes** ("**Tier 2**" manufactured homes). Both tiers are based on the 2021 IECC in that both tiers have requirements for the building thermal envelope, duct and air sealing, installation of insulation, HVAC specifications, service hot water systems, mechanical ventilation fan efficacy, and heating and cooling equipment sizing provisions consistent with the 2021 IECC." 87 Fed. Reg. at 32,741.

58. The Final Rule applies these two "tiers" to each of the three "climate zones" for manufactured housing as established by HUD—thereby resulting in standards for each climate zone by each tier. The climate zones in the Final Rule are depicted below:



59. In the Final Rule, DOE projects that the Tier 1 standards (*i.e.*, the standards for single-section homes) will result in an average incremental purchase price increase of approximately $700 per home. And DOE projects that the Tier 2 standards (*i.e.*, the standards for multi-section homes) will result in an average incremental purchase price increase of approximately $4,100 to $4,500 per home. 87 Fed. Reg. at 32,741.

60. The Final Rule also purports to calculate the life-cycle costs ("LCC") that will result from the energy standards, taking into account projected costs during the construction phase and projected savings in consumers' operation of their homes. "The LCC savings accounts for the

energy cost savings and purchase costs (including down payment, mortgage and taxes based on incremental purchase price) over the entire analysis period discounted to a present value." 87 Fed. Reg. at 32,742. As for the effect the purchase price increases will have on the housing market, DOE estimates that the Final Rule "would result in a loss in demand and availability of about 31,975 homes (single section and multi-section combined) for the tiered standard using a price elasticity of demand of -0.48 for the 30-year analysis period (2023-2052)." 87 Fed. Reg. at 32,746.

III. The Final Rule Is Unlawful in Several Respects

A. DOE Failed to Analyze Test Procedures and Compliance and Enforcement Costs for the New Energy Standards

61. In its rush to meet the *Sierra Club* deadline, DOE issued a Final Rule that was procedurally and substantively legally defective in a number of ways. The first error in DOE's rulemaking was its deliberate choice to ignore test procedures and compliance and enforcement costs. DOE readily concedes that it "is not addressing a test procedure, or compliance and enforcement provisions for energy conservation standards for manufactured housing." 87 Fed. Reg. at 32,743. In other words, while the Final Rule promulgates energy standards for manufactured housing, DOE has not established any test procedures for determining compliance with those standards, nor has DOE conceptualized an enforcement scheme for the standards.

62. In contrast, when it developed the 2016 Proposed Rule, DOE acknowledged and recognized that test procedures are a "necessary" part of its energy standards rulemaking. In DOE's words at that time, test procedures "dictate the basis on which a manufactured home's performance is represented and how compliance with the proposed energy conservation standards, if adopted, would be determined." 81 Fed. Reg. at 78,734. For the 2016 Proposed Rule, DOE contemplated that "[t]he proposed test procedures [would be] used as the basis for manufacturers to show compliance with the energy conservation standards, once finalized and compliance is required."

Id. at 78,735. Yet, in the Final Rule, DOE demands compliance with its overhauled set of energy standards by May 31, 2023, without even having begun rulemaking to develop test procedures for determining compliance with those standards—assuming it intends to do so at all.

63. DOE states in the Final Rule that it "continues to consult with HUD about pathways to address testing, compliance and enforcement for these standards in a manner that may leverage the current HUD inspection and enforcement process so that such testing, compliance and enforcement procedures are not overly burdensome or duplicative for manufacturers, and are well understood by manufacturers and consumers alike." 87 Fed. Reg. at 32,743. But that alleged perfunctory consultation has produced nothing official. Absent formal test procedures or compliance and enforcement standards, DOE has no way to know how burdensome or duplicative for manufacturers the Final Rule's energy standards will actually be.

64. Moreover, in November 2022, the MHCC convened to address DOE's Final Rule as it relates to possible revisions to the HUD Code. Rather than recommending that HUD enforce DOE's Final Rule, the MHCC rejected the DOE's Final Rule and recommended that HUD adopt *different* energy efficiency standards into the HUD Code. *See supra* at ¶ 10.

65. Indeed, with regard to the costs its energy standards will impose on manufacturers, DOE flatly concedes that it "has also not included any potential associated costs of testing, compliance or enforcement at this time." 87 Fed. Reg. at 32,758; *see also* 87 Fed. Reg. at 32,790. In fact, in the Final Rule's cost analysis, DOE presents "the average purchase price increase of a manufactured home as a result of the energy conservation standards," while admitting that its calculation of that projected price increase "**does not include any potential testing or compliance costs**." 87 Fed. Reg. at 32,730 (emphasis added).

66. With no guidance from DOE about testing procedures or compliance and enforcement costs, the industry is arbitrarily and capriciously burdened with the actual, unidentified costs caused by the Final Rule. The industry has every reason to expect that testing procedures—assuming DOE at some point develops them—will be costly.

67. As just one example, the industry initially estimated that testing for duct system compliance under the new energy standards could cost more than $600 per home for Tier 1 homes and more than $1,000 per home for Tier 2 homes. A more recent estimate from a leading manufactured housing duct-testing expert found that in-field duct testing could cost approximately $1,500 per home for both Tier 1 and Tier 2 homes given that manufactured housing is predominately located in rural areas which would entail extensive travel requirements for in-field examiners. This estimate assumes that the homes would pass such in-field duct testing on the first attempt. Any failed test would further increase testing and remediation costs. And this duct testing expert also opined that there is a severe shortage of qualified entities capable of performing such in-field duct testing on manufactured homes.

68. DOE explicitly acknowledges that it failed to factor testing costs into its assessment of the Final Rule's impact to the purchase price and life-cycle costs of manufactured homes. Yet, if DOE had attempted to account for the cost of testing procedures related solely to the new duct system standard—which is only *one* of the many new energy standards the Final Rule imposes—then DOE's 10-year LCC assessment would fail. DOE estimated that over a 10-year period, customers would save a total of $720 for Tier 1 homes and a total of $743 for Tier 2 homes—which essentially calculates the total 10-year energy savings minus the total 10-year cost increases for implementing the energy efficiency measures. *See* 87 Fed. Reg. at 32,793. Assuming duct testing costs $1,500 on average per home, then manufactured housing consumers *will lose money*

over 10 years based on the DOE's Final Rule. Again, this analysis relates *only* to duct system testing and not the total cost of testing procedures for *all* of the Final Rule's energy standards.

69. DOE specifically stated that its cost-effective analysis requires that the Final Rule's standards create *savings* for consumers after 10 years. *See* 87 Fed. Reg. at 32,786 ("DOE continues to rely on the 10-year time period as a reasonable representation of the ownership period of the first homebuyer for the overall manufactured housing market . . . ."). Yet, when accounting for only *some* of the costs that DOE willfully ignored, consumers will not see any savings within the first 10 years after their purchase of a manufactured home.

70. During rulemaking, DOE was fully aware of the significant costs that testing procedures are likely to impose on manufacturers, but nonetheless elected to ignore these additional costs. Plaintiff MHI raised this issue with DOE during the public comment period, noting in a letter that "the required testing for the duct leakage limitation is also unknown at this time and therefore has not been included in the DOE cost analysis." *See* Final Rule Admin. Record, EERE-2009-BT-BC-0021-1592. The unknown burden on the industry associated with DOE's failure to develop testing procedures and consider their costs was explained in this same letter:

> For multi-sectional units where ductwork is installed on-site, the rule does not establish enforcement procedures for testing. More specifically, what qualifications are required for those performing the testing? Can installers certify their own work? What training is required for installer personnel performing this work? How are the test results documented? Is the installer responsible for any remedial work that may be required after the testing is performed? These questions must be answered in order to determine the additional costs which may be attached to such.

Id.

71. As to compliance and enforcement, Plaintiffs' members similarly have no way to know the costs that DOE's enforcement and compliance mechanisms will impose without knowing what those mechanisms will be. For reference, HUD's inspection agencies and HUD labeling requirements cost manufacturers approximately $180 to $360 per home. If DOE develops its own

enforcement mechanism, manufacturers would presumably have to pay additional fees to DOE's inspection agencies on top of the HUD-specific inspection fees. Those DOE inspection fees will only further increase the purchase price of manufactured housing. Again, because the Final Rule fails to develop or identify any compliance and enforcement mechanisms, DOE did not factor the costs of such mechanisms into the Final Rule's assessment of purchase price or life-cycle cost increases to manufactured housing.

B. In Requiring Manufacturers to Comply with the New Energy Standards by May 31, 2023, DOE Failed to Account for Current Economic Conditions and Supply Chain Realities.

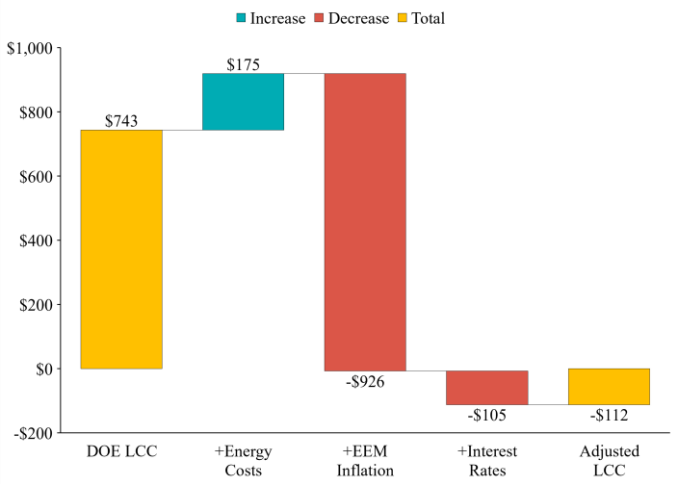
72. The defects in DOE's rulemaking do not end with its failure to consider testing procedures and compliance and enforcement costs. The Final Rule also fails to account for actual market conditions.

73. To determine 2023 materials cost for the newly required energy efficiency measures, the Final Rule arbitrarily and capriciously took outdated 2014 cost estimates and applied a hypothetical nominal materials cost increase of 2.3% annually from 2014 to 2023. However, this assumption fails to comport with actual cost increases caused by the Covid-19 pandemic as well as other macroeconomic factors. As was well-known at the time DOE published the Final Rule in May 2022, the cost of construction materials has actually increased by *6.5%* annually between 2014 and 2021—driven mostly by materials cost increases of *35.1%* from 2020 to 2021. Another economic study concluded that construction materials increased on average *41%* from March 2020 to March 2022. The manufactured housing construction costs may be even higher.

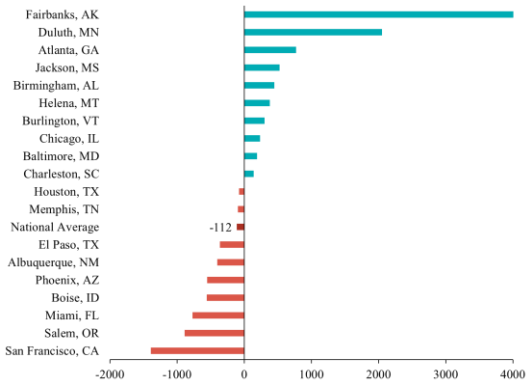
74. Additionally, in assessing financing for manufactured homes—which is a component of the DOE's LCC model—DOE assumed that real estate mortgage loans would have a 5% interest rate. The current 30-year fixed mortgage rate is now 6.3%, meaning that DOE

woefully underestimated the borrowing cost to finance these newly required energy efficiency measures.

75. Economists conclude that if DOE's 10-year LCC model appropriately considered the *actual* annual cost increase for construction materials since 2014 and considered the *actual* cost of borrowing, DOE's own 10-year LCC model would fail completely for Tier 2 manufactured homes. This analysis accounts for the increased energy savings that may also result from inflation. Fixing *only these two inputs* to reflect actual materials cost increases and actual interest rates, based on DOE's own 10-year LCC model for Tier 2 homes, the average 10-year LCC is negative—meaning that the average purchaser of a Tier 2 home will lose money over a 10-year period.



76. In terms of geographic distribution, *approximately 60%* of Tier 2 shipments will have a *negative* 10-year LCC. Of the 19 "representative" cities chosen by the DOE to analyze in the Final Rule, nine cities will have a negative 10-year LCC for Tier 2 homes.



77. Again, DOE specifically stated that the legitimacy of its cost-effective analysis depends on the Final Rule's standards creating *savings* for consumers after 10 years. *See* 87 Fed. Reg. at 32,786. But when appropriate, realistic economic assumptions are made, the vast majority of Tier 2 manufactured home consumers will actually lose money in this time period as a result of the Final Rule.

78. Moreover, DOE also arbitrarily assumed that existing supply chains could support the materials necessary for manufacturers to comply with the Final Rule by May 31, 2023. In the Final Rule, DOE undertook no meaningful analysis to determine whether supply chains could in fact support the increased demand for the materials needed to satisfy the Final Rule's standards in such a short time frame.

79. As one commentator to the Final Rule stated during the rulemaking period, the new standards would "require manufactured homes to have significantly more insulation, which would cause the demand for fiberglass insulation to overwhelm a market that is already under substantial stress from the current insulation shortage, which is projected to continue for a few more years." *See* 87 Fed. Reg. at 32,774. As a result, the effect of the proposed rule would significantly limit the number of new homes starts in America while increasing national building costs.

80. To illustrate, one 2022 study found a 40-50 week lead time for roofing insulation, which represents a 667% *increase* over the past two years. The Federal Reserve Bank of St. Louis'

Producer Price Index (PPI) for insulation materials establishes that insulation costs have increased by over 35% since 2020.

81. The industry fully expects that production ramp-ups from insulation supply manufacturers will lag behind the Final Rule's May 31, 2023 compliance date. Thus, in the short to medium term, the cost of insulation will almost certainly increase substantially above DOE's projected materials cost, and new home starts in America may be severely limited by the current insulation shortage until supply chain issues are resolved.

82. DOE's response to these serious and specific concerns in the Final Rule was severely underwhelming. DOE stated simply that "the performance path, i.e., Uo[14] method, gives manufacturers the flexibility in using any combination of energy efficiency measures as long as the minimum Uo is met. Manufacturers do not need to meet both the prescriptive and the performance method; rather they have the option to only meet one. As such, manufacturers can continue to use current insulation types and techniques to meet the energy conservation standards. DOE is not restricting the type of insulation being used, as long as the standards (either prescriptive or performance) are met." 87 Fed. Reg. at 32,774. But the "performance path" will still require sourcing additional insulation. If fiberglass insulation is not available, manufacturers may be forced to substitute spray foam insulation for parts of the production process, which will further increase costs and will reduce the total number of homes that can be produced per day.

83. DOE also failed to assess whether the "performance path" described above is actually achievable for the manufactured housing industry using existing construction methods. It may not be for many Tier 2 homes especially in climate Zone 3, which covers the northern part of

[14] The Uo method assesses the overall coefficient of thermal transmittance of a fenestration, wall, floor, or roof/ceiling component.

the United States. At no point in the Final Rule did DOE meaningfully grapple with the severity of the market impact from supply shortages.

84. For example, manufacturers likely cannot meet Tier 2 requirements using 2x4 wall constructions. Rather, for Tier 2 homes, manufacturers must change to 2x6 wall constructions. *See, e.g.*, Final Rule Admin. Record, EERE-2009-BT-BC-0021-1592 (estimating a "cost increase of over $7,000 for a multi-section home located in climate zone 3 – without including the costs of energy testing or compliance"—almost double the $4,111 incremental cost increase estimated by DOE).

85. As yet another example, the Final Rule's approach to equipment sizing is flawed. Absent the Final Rule, a Zone 2 home can be placed in Zone 1 because Zone 2 is more restrictive than Zone 1. However, the Final Rule adopts Manual S, and under Manual S, a Zone 2 home cannot be placed in Zone 1 because the equipment sized for Zone 2 would be *oversized* for Zone 1. In this regard, the Final Rule severely restricts current sales practices, especially for retailers located near the zone boundaries. *See* Final Rule Admin. Record, EERE-2009-BT-BC-0021-1592.

86. The Final Rule also fails to account for increased transportation costs. Additional insulation and framing requirements may increase the weight of manufactured homes, requiring an additional axle, which may cost at least $400 for Tier 2 homes. Even without these considerations, transportation costs have generally increased dramatically during the Covid-19 pandemic with increased fuel and labor costs due to shortages. DOE did not account for the economic realities imposed by these additional costs despite the DOE being required to do so as part of its creation and implementation of the Final Rule.

C. Many Consumers will be Priced Out of the Manufactured Housing Market.

87. Beyond the fact that many consumers will be forced to purchase energy efficiency measures that will not pay for themselves even over a 10-year period, these unaccounted-for costs

will mean that *thousands of* consumers are simply priced out of the manufactured home market altogether. As stated by Plaintiff MHI in its November 23, 2021 letter to DOE, "the proposed energy standards ignore the large number of homebuyers that will no longer be able to buy a manufactured home, because they no longer qualify for an FHA, GSE, or non-agency mortgage loan, due to the impact of increased mortgage payments on debt-to-income ratios." *See* Final Rule Admin. Record, EERE-2009-BT-BC-0021-1592.

88. To assess how many customers would be priced out of home ownership given the estimated increased purchase price associated with the newly mandated energy efficiency measures, DOE relied on a 2008 study that cited a -0.48 price elasticity of demand for manufactured housing. Price elasticity of demand measures how many customers will no longer be willing to purchase a product as the product's price increase. DOE also performed a sensitivity analysis relying upon another study which suggested a -2.4 price elasticity of demand. Another 2021 study found a -0.8 price elasticity of demand. Based on purchase price increases, economists estimate that the Final Rule could lead to between 1,703 and 5,101 fewer manufactured home sales each year over the next ten years (**for a total of between 17,030 and 51,010 fewer homes**).

89. Consumers cannot reap any benefits of energy standards if they are priced out of home ownership to begin with. DOE's Final Rule therefore only exacerbates an already dire affordable housing crisis facing many millions of American families. And in that regard, the Final Rule cuts against the current Administration's affordable housing initiative to "boost the supply of manufactured housing."[15]

[15] *FACT SHEET: Biden-Harris Administration Announces Immediate Steps to Increase Affordable Housing Supply*, White House (Sept. 1, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/01/fact-sheet-biden-harris-administration-announces-immediate-steps-to-increase-affordable-housing-supply/.

D. The Final Rule Will Disproportionally Impact Minority and At-Risk Purchasers.

90. DOE acknowledges that most manufactured home buyers finance their purchases through personal property loans that resemble vehicle financing rather than traditional mortgage financing. *See* 87 Fed. Reg. at 32,742. In the Final Rule, DOE noted that personal property loans typically carry significantly higher interest rates than traditional mortgage loans. *Id.* And DOE recognized that, for manufactured home buyers who do not own the land on which they reside, personal property financing is usually the only type of financing available. *See id.* at 32,788.

91. Data from the CFPB, which DOE relied upon extensively throughout the Final Rule, **indicates that manufactured home buyers from underrepresented groups are disproportionately likely to obtain personal property loans rather than traditional mortgage loans**. *See* CFPB, *Manufactured Housing Finance: New Insights from the Home Mortgage Disclosure Act Data* (May 2021), at 5 (noting that "Hispanic, Black and African American, American Indian and Alaska Native, and elderly borrowers are more likely than other consumers to take out chattel loans," and that "Black and African American borrowers are the only racial group that are underrepresented in manufactured housing lending overall compared to site-built, but overrepresented in chattel lending compared to site-built").

92. Given the prevalence of personal property loans among underrepresented groups, one might expect that DOE would have taken special care to ensure that manufactured home buyers who finance their purchases with personal property loans will not be negatively affected by its new energy standards. But DOE's *own* data reveals quite the opposite—it shows that personal property loan borrowers will be ***especially*** negatively affected. The Final Rule thus makes affordable housing even more difficult for people in these underrepresented groups.

93. In supporting technical documentation released in conjunction with the Final Rule, DOE openly admitted that, although it projects the "national average" manufactured home buyer to recoup the higher purchasing and operating costs associated with the new energy standards within the first 10 years of homeownership, DOE fully expects that consumers who purchase Tier 2 manufactured homes **with personal property financing** will on average ***lose*** money in the first 10 years as a result of the new standards.

Table 9.4 10-Year Analysis Period LCC Savings of Standards Compared to the HUD code for the Subgroup Analysis

Climate Zone	City	LCC Savings *2020$* [†]	
		Tier 1 - Single-Section	Tier 2 - Multi-Section

9-4

1	Miami	$96.55	($530.33)
1	Houston	$363.73	$62.00
1	Atlanta	$705.10	$784.45
1	Charleston	$455.98	$241.67
1	Jackson	$580.11	$574.35
1	Birmingham	$582.72	$506.37
2	Phoenix	$177.01	($358.06)
2	Memphis	$679.49	$30.06
2	El Paso	$396.59	($187.60)
2	San Francisco	$123.82	($1,154.90)
2	Albuquerque	$429.10	($303.99)
3	Baltimore	$1,185.83	$261.44
3	Salem	$614.05	($759.93)
3	Chicago	$1,144.52	$161.85
3	Boise	$729.19	($483.23)
3	Burlington	$1,142.38	$145.95
3	Helena	$1,145.88	$286.67
3	Duluth	$1,956.37	$1,663.69
3	Fairbanks	$3,048.47	$3,895.78
[redacted]	**National Average***	**$720.48**	**($18.97)**

* National average represents a shipment-weighted average based on fraction of national shipments presented in Table 10.2.
[†] Values in parenthesis are negative values.

Final Rule Admin. Record, EERE-2009-BT-BC-0021-1999, at 9-4 & 9-5.

94. Thus, not only will DOE's Final Rule not advance the goal of improving racial equity in homeownership—it will actively work against it by disproportionately harming a large sector of the manufactured housing market in which minority groups are overrepresented.

E. The Final Rule's One-Year Compliance Period Is Unreasonable.

95. Strikingly, when DOE substantially overhauls energy standards *for household appliances*, it generally provides a five-year compliance period. Notwithstanding the fact that the

process for manufacturing homes is far more complex than a single appliance manufacturing processes, in the Final Rule, DOE capriciously shortened and compressed the typical compliance deadline to one year (and less than one year from the Final Rule's effective date). Every home design currently being utilized by the manufactured housing industry—of which there are thousands—would need to be redesigned and reapproved during this brief time period.

96. Indeed, despite never regulating manufactured housing before, DOE's Final Rule is based on standards from the 2021 IECC. In doing so, DOE bypassed incremental upgrades to energy efficiency measures from the 2015 and 2018 versions of the IECC and disregarded the existing regulations that HUD has established over decades. The Final Rule therefore condensed almost a decade of incremental energy efficiency upgrades into the Final Rule and demanded that the manufactured housing industry comply with such expansive requirements within 12 short months.

97. DOE ignored these concerns as raised by Plaintiff MHI in its February 28, 2022 comment letter:

> In the draft EIS, the DOE proposes a one-year implementation period. However, when the DOE makes changes to appliance standards there is at least a five-year compliance period. For example, on January 6, 2017, the DOE published a final rule to establish energy conservation standards for residential central air conditioners and heat pumps with a compliance date of January 1, 2023 (Docket Number EERE-2014-BT-STD-0048-0200). Additionally, on April 16, 2010, the DOE published amendments to the existing energy conservation standards for residential water heaters, gas-fired direct heating equipment, and gas-fired pool heaters. While the effective date of the rule was June 15, 2010, compliance with the standards was not required until April 16, 2015 (Docket Number EE–2006–BT–STD–0129).

Final Rule Admin. Record EERE-2009-BT-BC-0021-1990.

98. DOE also ignored comments from HUD as expressed through MHCC on this topic, which "commented that major changes to the manufacturer's process, facilities, home designs, and

supply chains would be required to comply with the DOE standards and a more realistic time frame for implementation would be a minimum of 5 years." 87 Fed. Reg. at 32,759. Similarly, Plaintiff TMHA "requested that any effective date consider having backlogs and supply-chains to have returned to normal." *Id.*

99. In the Final Rule, DOE did not consider whether manufacturers could actually meet the May 31, 2023 compliance deadline for the new energy standards. Instead, DOE arbitrarily assumed, without any support, that because manufacturers have had to comply with HUD's energy requirements, they can also comply with the Final Rule's dictates within a year. *See* 87 Fed. Reg. at 32,759. DOE made that uninformed determination without considering the compliance runway provided by such other energy standards applicable to the manufactured housing industry.

100. The arbitrariness of the May 31, 2023 compliance date is further underscored by the fact that DOE has demanded compliance with the new energy standards on an aggressive timetable before it has adopted or even developed any testing procedures or compliance and enforcement mechanisms.

F. DOE Failed to Consult with HUD About the New Energy Standards

101. In developing the Final Rule, DOE also failed to meaningfully consult with HUD as is required by the EISA.

102. Years ago, when it prepared a different set of proposed (and never-adopted) energy standards culminating in the 2016 Proposed Rule, DOE appears to have interacted with HUD to at least some minimal extent. Leading up to the 2016 Proposed Rule, it appears the following events may have taken place: (a) DOE purportedly provided a draft notice of proposed rulemaking and technical support document for HUD to review; (b) HUD attended the MH working group meetings (even though it was not a member of the MH working group); (c) DOE met with HUD's MHCC; (d) DOE's and HUD's general counsels spoke by phone several times; and (e) HUD

participated in the interagency review of the 2016 Proposed Rule coordinated by OIRA. *See, e.g.*, Final Rule Admin. Record EERE-2009-BT-BC-0021-0146, at 11.

103. However, even if DOE's efforts to consult with HUD regarding the *2016 Proposed Rule* were sufficient to satisfy the EISA's consultation requirement—and they were not—DOE undertook no such efforts to consult with HUD in promulgating the Final Rule, which materially differs from the 2016 Proposed Rule. *See, e.g.*, 87 Fed. Reg. at 32,763.

104. With regard to the energy standards set forth in the Final Rule, DOE never met with the MH working group. In technical documentation it prepared in conjunction with the new energy standards, DOE acknowledged that the Final Rule is based on the 2021 IECC, not the 2015 IECC. And, DOE concedes that "the 2015 edition of the IECC was the latest edition of the IECC at the time of the MH working group meetings." Final Rule Admin. Record EERE-2009-BT-BC-0021-0590, at 3-1.

105. While the Final Rule cites DOE meetings with HUD and the MHCC, those citations generally refer to meetings related to the 2016 Proposed Rule, *see, e.g.*, 87 Fed. Reg. at 32,737, **not** the materially different Final Rule published six years later. DOE cannot reasonably claim that DOE complied with the EISA's consultation requirement when DOE's cited consultation relates to a completely different set of proposed energy standards. At best, the Final Rule cites in passing that some representatives from DOE "attended" a MHCC meeting in June 2021. Sitting at one meeting does not constitute a consultation about the substance of the energy standards proposed by DOE.

106. Indeed, as to the Final Rule, the MHCC commented that "they believe the energy efficiency requirements from the 2021 IECC, as currently proposed, are **not** the appropriate

resource to be used in updating manufactured housing energy requirements, as the 2021 IECC was not developed or intended for these homes." 87 Fed. Reg. at 32,748 (emphasis added).

107. The MHCC met again in October and November 2022 after DOE promulgated the Final Rule, and the MHCC flatly rejected the DOE's Final Rule. *See supra* at ¶ 10.

108. The Final Rule indicates that HUD voiced concerns about the *2016* Proposed Rule. *See, e.g.,* 87 Fed. Reg. at 32,729. But there is no record of DOE consulting with HUD to actually develop the Final Rule. Rather, DOE pays lip service to HUD, stating: "DOE remains cognizant of the HUD Code, as well as HUD's Congressional charge to protect the quality, durability, safety, affordability, and availability of manufactured homes." 87 Fed. Reg. at 32,736. Remaining "cognizant" of the HUD Code is a far cry from actually consulting with HUD to obtain HUD's expertise in manufactured housing, especially considering that the MHCC adamantly opposes adoption of the Final Rule.

109. In cursory fashion and with no information as to the substance of any such meeting, DOE states that it "consulted HUD in the development of the August 2021 SNOPR, the October 2021 NODA and this final rule." 87 Fed. Reg at 32,756. No additional information is provided and the administrative record is devoid of any evidence of those cited "consultations." The Final Rule's administrative record contains no documentation memorializing *any* meeting between HUD and DOE about the Final Rule.

110. Similarly, there is no indication in the Final Rule that HUD participated in the interagency review of the 2021 Proposed Rule coordinated by OIRA. Indeed, six months after receiving FOIA requests on this specific subject from MHI, DOE has provided no responsive documentation.

111. The MHCC did provide public comments to DOE regarding the Final Rule, but offering public comments does not equate to consultation. Public comment is always available for agency rulemaking, so the EISA's consultation requirement must mean something more.

CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF

Count I – the Final Rule Violates the APA and the EISA (Contrary to Law)

112. Plaintiffs incorporate the foregoing allegations by reference.

113. The APA authorizes courts to hold unlawful and set aside agency action, findings, and conclusions that are "in excess of statutory jurisdiction, authority or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C). Additionally, agency action must be set aside where it is "without observance of procedure required by law." *Id.* § 706(2)(D).

114. In promulgating the Final Rule, DOE acted contrary to the EISA in several ways, including in the following respects:

115. ***First***, by failing to consider any costs related to testing procedures or compliance and enforcement, DOE failed to satisfy its statutory obligation to consider the impact of the Final Rule's energy standards on the "purchase price of manufactured housing and on total life-cycle construction and operating costs." 42 U.S.C. § 17071(b)(1). "There can be no 'hard look' at costs and benefits unless all costs are disclosed." *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983); *Gas Appliance Mfrs. Ass'n, Inc. v. Dep't of Energy*, 998 F.2d 1041, 1047–49 (D.C. Cir. 1993) (holding that DOE had entirely failed to consider the cost to manufacturers of installing new devices such as flue dampers necessary to meet the new standards' requirements, and that those costs "must be included if the cost-benefit analysis is to be a coherent marginal analysis").

116. ***Second***, by woefully understating the actual costs necessary to comply with the Final Rule due to current economic conditions, DOE failed to satisfy its statutory obligation to

consider the impact of the Final Rule's energy standards on the "purchase price of manufactured housing and on total life-cycle construction and operating costs." 42 U.S.C. § 17071(b)(1). *Cf. Gas Appliance Mfrs. Ass'n, Inc. v. Sec'y of Energy*, 722 F. Supp. 792, 795 (D.D.C. 1989) ("Increased energy efficiency must be weighed against potential increases in overall dollar costs arising from new standards under some articulated formula.").

117. ***Third***, the Final Rule violates EISA because DOE failed to consult meaningfully with HUD. *See Campanale & Sons, Inc. v. Evans*, 311 F.3d 109, 116–21 (1st Cir. 2002) ("[C]onsultation, within the parameters of the Atlantic Coastal Act, must mean something more than general participation in the public comment process on environmental impact statements, otherwise the consultation requirement would be rendered nugatory.").

118. Plaintiffs' members will suffer irreparable harm if the Final Rule is not set aside. Despite the fact that the Final Rule is invalid, Plaintiffs' members will be forced to redesign all of their homes and retool all of their factories in an effort to comply with the Final Rule. Yet, Plaintiffs' members will have no way to ascertain compliance in the absence of testing procedures and compliance and enforcement provisions. In addition, a true cost assessment of the purchase price of homes and the life cycle of construction costs—as informed by actual consultation with HUD—may result in a substantially different set of energy standards. Plaintiffs' members would then be forced to redesign all of their homes and retool all of their factories again for compliance with purportedly valid energy standards.

119. The public interest will in no way be harmed, and to the contrary, will be greatly served if the Final Rule is set aside. If a stay is not granted, the public interest will be harmed through the adverse effects on consumers that will result from a loss of affordable housing. Maintaining the affordability of this sector is crucial to addressing the housing crisis sweeping the

nation.[16] Yet the Final Rules threatens to do just the opposite. As it stands, tens of thousands of American families will be priced out of purchasing a manufactured home due to purchase price increases mandated by the Final Rule. For those who can still afford a manufactured home even after absorbing these purchase price increases, the Final Rule will result in a net *cost* to the vast majority of manufactured home purchasers within the first 10 years of their purchase. Plaintiffs, and the public at-large, support energy efficiency measures—but those energy efficiency measures must be balanced against their cost. Where, as here, the energy efficiency measures result in consumer harm, they should not be mandated by a governmental agency. That was the EISA's directive for which DOE failed to comply.

Count II – the Final Rule Violates the APA (Arbitrary and Capricious)

120. Plaintiffs incorporate the foregoing allegations by reference.

121. The APA authorizes courts to hold unlawful and set aside agency action, findings, and conclusions that are "arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). To satisfy this standard, an agency must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted). An agency acts arbitrarily and capriciously if it "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, [or] offered an explanation

[16] This public interest is especially important in Texas and other places where its residents have struggled immensely with homelessness and inadequate or unaffordable housing. *See* https://www.texastribune.org/series/texas-homeless-austin-greg-abbott-dallas-houston/ (last accessed Feb. 9, 2023).

for its decision that runs counter to the evidence before the agency[] or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.* at 43.

122. In promulgating the Final Rule, DOE acted arbitrarily and capriciously in the following ways:

123. ***First***, it was arbitrary and capricious for DOE to mandate compliance with the Final Rule *before* it establishes any testing procedures or a compliance and enforcement scheme related to the Final Rule. *See Gas Appliance*, 998 F.2d at 1045 (requiring "a discernible path to compliance" "where the agency must perform a direct balance of costs and benefits"). In the 2016 Proposed Rule, DOE stated that test procedures are "necessary" for any promulgated energy standards. But now in the Final Rule, DOE reverses course and demands industry compliance with energy standards that have no corresponding test procedures. That unexplained about-face in the agency's approach to this important topic was arbitrary and capricious.

124. In fact, with regard to other energy efficiency standards, DOE has refused to mandate compliance unless and until test-procedure rulemaking has been finalized. For example, on July 8, 2014, with regard to "Off Mode Standards for Central Air Conditioners and Central Air Conditioning Heat Pumps," DOE issued a policy statement that: "In light of the lack of a final test method for measuring off mode electrical power consumption for CAC/HP, DOE will not assert civil penalty authority for violation of the off mode standard for CAC/HP specified at 10 C.F.R. § 430.32(c)(6) until 180 days following publication of a final rule establishing a test method for measuring off mode electrical power consumption for CAC/HP." Based on DOE's own policy guidance, it is arbitrary and capricious for DOE to demand a compliance deadline before finalizing rulemaking for test procedures and methodologies.

125. ***Second***, by failing to consider any costs related to testing procedures or compliance and enforcement, DOE failed to consider an important aspect of the problem—that is, whether the Final Rule's energy standards will too greatly impact the purchase price of manufactured housing or the total life-cycle construction and operating costs of manufactured housing. *See Business Roundtable v. SEC*, 647 F.3d 1144, 1148–52 (D.C. Cir. 2011) ("[B]y ducking serious evaluation of [these] costs," the agency "acted arbitrarily.").

126. ***Third***, in choosing a one-year compliance window, DOE failed to consider several critical difficulties the short compliance window will impose on the manufacturing process—and the significant harms to consumers and manufacturers that will result. By failing to consider several "important aspect[s] of the problem," DOE acted arbitrarily and capriciously in its rulemaking. *State Farm*, 463 U.S. at 43; *see also Gas Appliance*, 722 F. Supp. at 797 ("There is no indication from the record that DOE ever independently attempted to verify the feasibility of implementing the standards prior to 1992.").

127. ***Fourth***, by woefully understating the actual costs necessary to comply with the Final Rule due to current economic conditions, DOE failed to consider an important aspect of the problem—that is, whether the Final Rule's energy standards will too greatly impact the purchase price of manufactured housing or the total life-cycle construction and operating costs of manufactured housing.

128. ***Fifth***, DOE acted arbitrarily and capriciously by promulgating the Final Rule without consulting HUD. HUD has over 50 years of experience regulating the manufactured housing industry, but DOE never meaningfully sought guidance or the benefit of this expertise when drafting the Final Rule. *See Nat'l Constructors Assoc. v. Marshal*, 581 F.2d 960, 967–72 (D.C. Cir. 1978) ("[A]dvisory committee consultation should, but in this case did not, consist of

something more than a single and brief rest stop on the route between a tentative proposal of one construction health and safety standard, and the final promulgation of another, superficially related, but substantively quite different, standard.").

129. Plaintiffs' members will suffer irreparable harm if the Final Rule is not set aside. Despite the fact that the Final Rule is invalid, Plaintiffs' members will be forced to redesign all of their homes and retool all of their factories in an effort to comply with the Final Rule. Yet, Plaintiffs' members will have no way to ascertain compliance in the absence of testing procedures and compliance and enforcement provisions. In addition, a true cost assessment of the purchase price of homes and the life cycle of construction costs—as informed by actual consultation with HUD—may result in substantially different energy standards. Plaintiffs' members would then be forced to redesign all of their homes and retool all of their factories again for compliance with purportedly valid energy standards.

130. The public interest is greatly served if the Final Rule is set aside. As it stands, tens of thousands of American families will be priced out of purchasing a manufactured home due to purchase price increases mandated by the Final Rule. For those who can still afford a manufactured home even after absorbing these purchase price increases, the Final Rule will result in a net *cost* to the vast majority of manufactured home purchasers within the first 10 years of their purchase. Plaintiffs, and the public at-large, support energy efficiency measures—but those energy efficiency measures must be balanced against their cost. Where, as here, the energy efficiency measures result in consumer harm because of arbitrary and capricious rulemaking, they should not be mandated by a governmental agency.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek temporary orders and relief, and after a full consideration of the merits, a final judgment:

a. Staying or postponing the compliance deadline of the Final Rule or otherwise preserving all status and rights pending judicial review pursuant to 5 U.S.C. § 705;

b. Holding unlawful, setting aside, and declaring invalid the Final Rule in its entirety;

c. Enjoining Defendants from implementing or enforcing any aspect of the Final Rule;

d. If necessary and appropriate, remanding this proceeding to DOE for reconsideration in light of the relief requested above;

e. Retaining jurisdiction to ensure compliance with this Court's orders;

f. Awarding Plaintiffs the costs of their participation in this action, including attorneys' fees; and

g. Granting such other relief as the Court deems just and proper.

Respectfully submitted, this 14th day of February, 2023.

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

Thomas W. Thagard (*pro hac vice* to be filed)
tthagard@maynardcooper.com
James C. Lester (*pro hac vice* to be filed)
jlester@maynardcooper.com
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North, Suite 1700
Birmingham, AL 35203
(205) 254-1000

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

Attorneys for Plaintiffs

Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 512 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

January 24, 2024

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

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

Re: Energy Conservation Program: Energy Conservation Standards for Manufactured Housing: Enforcement (EERE-2009-BT-BC-0021)

Dear Secretary Granholm:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a Washington, D.C.-based national trade organization representing the views and interests of producers of manufactured housing regulated by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000 (2000 Reform Law) (42 U.S.C. 5401, et seq.) and subject to potential[1] energy-related regulation by the U.S. Department of Energy (DOE) pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA) (42 U.S.C. 17071). MHARR was founded in 1985. Its members include independent producers of manufactured housing from all regions of the United States.[2]

On December 26, 2023 – some eighteen months after the promulgation of supposedly 'final" energy conservation standards for HUD-regulated manufactured homes -- DOE published a Notice of Proposed Rulemaking (NPR) to establish a regulatory enforcement and compliance framework for those standards.[3] For the reasons stated below – and as previously set forth in multiple written comments submitted by MHARR in this rulemaking and related administrative

[1] Manufactured housing energy standards purportedly adopted by DOE on May 31, 2022 pursuant to 42 U.S.C. 17071, are subject to pending litigation in the United States District Court for the Western District of Texas seeking their invalidation on multiple grounds including, but not limited to, consumer cost burdens which significantly exceed alleged "benefits."

[2] MHARR's member manufacturers include "small businesses" as defined by the U.S. Small Business Administration (SBA) and "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

[3] See, 88 Federal Register, No. 246 (December 26, 2023) "Energy Conservation Standards for Manufactured Housing; Enforcement," p. 88844, et seq.

proceedings[4]from the outset – MHARR strenuously opposes both DOE's current proposed enforcement and regulatory compliance criteria for its pending May 31, 2022 manufactured housing energy standards and the underlying standards themselves. Those regulations and standards – conceived and developed without full compliance with all applicable provisions of their relevant enabling legislation – would, if implemented, needlessly and prohibitively increase the acquisition cost of manufactured housing, excluding millions of Americans from all of the socio-economic benefits of homeownership, while providing no (or de minimis) energy savings – all in violation of applicable law. Accordingly, MHARR again calls on DOE to withdraw all aspects of its May 31, 2022 "final standards" and current proposed enforcement procedures, and instead initiate a cooperative manufactured housing energy standards process with the U.S. Department of Housing and Urban Development (HUD) – through the statutory Manufactured Housing Consensus Committee (MHCC) -- in full and complete compliance with all relevant statutory mandates.

I. INTRODUCTION

The manufactured housing energy standards rulemaking, since it was first initiated by DOE, has involved little more than a needless, deceitful and callous attack on the nation's lowest-income homebuyers, at a time (now) when both the availability of affordable homes and homeownership itself stand near record lows. From the outset, this entire proceeding has been rife with deception, fraud and bad faith on the part of DOE as it has sought to impose the "climate change" agenda of its extremist special interest allies on the backs of hard-working lower and moderate-income Americans who are least able to afford and subsidize the activists' pet ideological fantasies.

The squalid history and background of this scandalous rulemaking is set forth in detail in MHARR's August 8, 2016 comments and subsequent filings with both DOE and the statutory Manufactured Housing Consensus Committee. These comments document efforts by DOE, "climate change" special interest groups and even some within the industry to foist discriminatory,

[4] MHARR hereby incorporates by reference herein as if restated in full, its August 8, 2016 Comments and Attachments in response to DOE's June 17, 2016 Notice of Proposed Rulemaking regarding Energy Conservation Standards for Manufactured Housing; its August 2, 2021 Comments and Attachments in response to DOE's July 7, 2021 Notice of Intent to Prepare an Environmental Impact Statement for Energy Conservation Standards for Manufactured Housing; its October 25, 2021 Comments and Attachments in response to DOE's August 26, 2021 Supplemental Notice of Proposed Rulemaking regarding Energy Conservation Standards for Manufactured Housing; its November 22, 2021 Supplemental Comments and Attachments in response to DOE's August 26, 2021 Supplemental Notice of Proposed Rulemaking regarding Energy Conservation Standards for Manufactured Housing; its February 25, 2022 Comments and Attachments in Response to DOE's January 14, 2022 proposed Environmental Impact Statement regarding Energy Conservation Standards for Manufactured Housing; and its April 13, 2023 Comments and Attachments in response to DOE's Notice of Proposed Rulemaking regarding Extension of the Compliance Date for the May 31, 2022 Manufactured Housing Energy Conservation Standards. MHARR also incorporates by reference herein its September 15, 2021 Comments and Attachments to the Manufactured Housing Consensus Committee regarding DOE's August 26, 2021 proposed Energy Conservation Standards for Manufactured Housing; its October 1, 2021 Comments and Attachments to the Manufactured Housing Consensus Committee regarding DOE's August 26, 2021 proposed Energy Conservation Standards for Manufactured Housing; its October 13, 2021 Comments and Attachments to the Manufactured Housing Consensus Committee regarding DOE's August 26, 2021 proposed Energy Conservation Standards for Manufactured Housing; and its November 9, 2022 Comments to the Manufactured Housing Consensus 1Committee regarding Energy Conservation Standards for Manufactured Housing.

ultra-high cost DOE energy standards on lower and moderate-income manufactured housing consumers, even though energy operating costs for manufactured homes, according to U.S. government data are —and have been – lower than those for site-built single-family homes.[5] While MHARR incorporates those prior comments herein by reference – and the information and observations contained therein continue to be highly relevant to the current proceeding – MHARR will not expressly re-state them here. Nevertheless, the deception, fraud and bad faith that have characterized nearly every phase of this proceeding since its inception, fatally impact, infect and invalidate all of its various aspects, including the development of enforcement regulations as addressed in this proceeding.

Accordingly, on August 26, 2021, DOE published a Supplemental Notice of Proposed Rulemaking (SNPR) in the Federal Register in a third effort to establish "Energy Conservation Standards for Manufactured Housing" pursuant to EISA section 413.[6] While that publication purported to include a "cost-benefit" analysis of the proposed standards as affirmatively required by EISA itself[7] and other applicable federal law[8] -- that assessment, by DOE's own admission,[9] did not estimate or even attempt to consider the cost-benefit impact(s) of ongoing regulatory compliance costs related to the proposed standards that would inevitably be passed to consumers under the proposed standards. In relevant part, DOE stated: "DOE is not proposing any testing, compliance or enforcement provisions at this time. DOE has also not included any potential associated costs of testing, compliance or enforcement." (Emphasis added). Thus, the alleged "benefits" of the proposed energy standards for manufactured housing consumers were not – at the time of the purported adoption of the "final" DOE standards[10] -- netted-out against the full, likely and predictable cost of the standards and their implementation, thereby rendering the entire regulatory scheme and cost-benefit "analysis" "arbitrary, capricious and abuse of discretion or otherwise not in accordance with law" pursuant to the Administrative Procedure Act (APA).[11]

In written comments filed on October 25, 2021 opposing DOE's proposed standards, MHARR emphasized this fatal flaw, among many others, stating: "DOE's August 26, 2021 SNPR

---

[5] See, e.g., MHARR October 25, 2021 Comments and Attachment in Response to Supplemental Notice of Proposed Rulemaking Regarding Manufactured Housing Energy Conservation Standards, supra at pp. 5-7.

[6] See, 86 Federal Register, No. 163 (August 26, 2021), Energy Conservation Standards for Manufactured Housing," pp. 47744, et seq. This followed an earlier (June 17, 2016) DOE Notice of Proposed Rulemaking on the same topic with proposed manufactured housing "energy" standards which were rejected by the Office of Information and Regulatory Affairs (OIRA). See, 81 Federal Register, No. 117 at pp. 39756, et seq. A modified standards regimen was proposed via a Notice of Data Availability (NODA) issued by HUD on August 3, 2018. See, 83 Federal Register, No.150 (August 3, 2018) at p. 38073, et seq.

[7] See 42 U.S.C. 17071(b)(1): "The energy conservation standards established under this section shall be … 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."

[8] See, e.g., 42 U.S.C. 5401(b)(2); 5 U.S.C. 706 and Executive Order 12866, among others.

[9] See, 86 Federal Register, supra at p. 47759, col. 1.

[10] DOE has – and continues – to take the anomalous position that its May 31, 2022 manufactured housing energy standards are "final" (see, e.g., Defendant's Reply in Support of Motion to Dismiss, Manufactured Housing Institute v. Department of Energy, No. 1:23-CV-00174DAE) ("DOE never argued that the standards rule does not constitute final agency action"), despite the fact that DOE has not now and has not ever established the full costs of the standards (including regulatory compliance) for purposes of the cost-benefit analysis affirmatively required by applicable law to justify and establish a "final" standard.

[11] See, 5 U.S.C. 706.

asserts that proposed manufactured housing energy conservation standards will result in net "life-cycle" operating cost savings to manufactured housing purchasers that would offset and exceed projected purchase price increases attributable to the proposed standards. The findings of DOE's cost analysis are necessarily flawed, skewed and materially inaccurate, however, in that they do not reflect, consider or account for key cost components or information. As a result, the claimed benefits of the proposed rule are deceitfully netted against incomplete and/or inaccurate cost data, thereby yielding alleged "payback" amounts that are distorted and biased in favor of the proposed rule." Most significantly, the DOE cost-benefit analysis fails to include or consider significant additional costs that will be incurred by manufacturers – and inevitably passed to consumers in the purchase price of a new manufactured home – for (1) testing, certification, inspections and other related activities to ensure compliance with any new DOE standards; (2) enforcement compliance and related activity; and (3) ongoing regulatory compliance, all of which are unique to federally-regulated manufactured housing and the manufactured housing industry. Although such expenses are recognized as an integral component of the ultimate consumer-level cost of any mandatory rule, they are totally excluded from DOE's cost benefit and life-cycle cost (LLC) analyses in this rulemaking."[12]

Despite these (and other) fatal defects, DOE purported to publish "final" manufactured housing energy conservation standards on May 31, 2022 – with a compliance date of May 31, 2023 -- without developing, establishing, or considering the consumer-level cost impact of testing, enforcement and regulatory compliance. DOE's purported "final" rule, therefore, failed to include an essential element of any legislative "rule," i.e., a cost-benefit analysis incorporating all of the cost elements of the impending regulatory regime. As such, any purported "cost-benefit" analysis performed by DOE in connection with that "final" rule is necessarily incomplete and insufficient. As a result, the so-called "final" rule itself is – and continues to be -- incomplete, insufficient, arbitrary and not otherwise in accordance with law.

Consistent with MHARR's longstanding position that the absence of a valid cost-benefit analysis (or, indeed, any cost-benefit analysis) incorporating testing, regulatory compliance and enforcement costs necessarily renders the May 31, 2022 DOE standards fatally defective, litigation was filed against DOE in the U.S. District Court for the Western District of Texas on February 15, 2023, alleging, among other things, that the DOE "final" standards were in violation of EISA section 413, as well as the APA. Faced with judicial review in this manner, DOE immediately backtracked, claiming that it had planned all along to defer enforcement of the May 31, 2022 standards (notwithstanding the purported May 31, 2023 "effective" date). It therefore published a Notice of Proposed Rulemaking on March 24, 2023 to extend the "compliance" dates for the so-called "final" manufactured housing energy, standards, so that those supposedly already "final" standards could in fact be "finalized" with regulatory compliance regulations that should – legally—have been part of the May 31, 2022 "final" standards – but were not.[13]As a result compliance with the so-called "final" standards and any enforcement regulations ultimately adopted through this proceeding has been deferred to a date sixty days after the adoption of DOE's

---

[12] See, MHARR's October 25, 2021 Comments and Attachments in response to DOE's Supplemental Notice of Proposed Rulemaking regarding Manufactured Housing Energy Conservation Standards, supra at pp. 19-20 and notes thereto. Footnotes omitted.

[13] See, 88 Federal Register, No. 57 (March 24, 2023) "Energy Conservation Standards for Manufactured Housing; Extension of Compliance Date," p. 17745, et seq.

enforcement regulations for the manufactured housing energy conservation standards for so-called "Tier1" homes and to July 1, 2025 for so-called "Tier 2" homes.

Having delayed enforcement of the May 31, 2022 "final" energy standards in this manner, DOE has now issued a separate Notice of Proposed Rulemaking (NPR) to promulgate the enforcement and regulatory compliance criteria that it initially and intentionally failed to include (together with applicable costs) in its so-called "final energy standards rule."[14] For all of the reasons stated below, DOE's proposed enforcement and regulatory compliance regulations are needlessly costly, would impose significant new and additional cost burdens on both manufactured housing producers (especially including smaller, independent producers), would needlessly and exponentially increase the acquisition cost of currently affordable manufactured homes, would exclude millions of lower and moderate-income Americans from the manufactured housing market – and from homeownership generally – and would devastate an already struggling manufactured housing industry. Indeed, HUD statistics show that manufactured housing production has been in steep decline since DOE's May 31, 2022 "final rule" was announced. As a result, 2023 production will be well below the 100,000 home benchmark and some 22% lower than 2022 production – all at a time when the nation is in dire need of affordable housing. Consequently, the proposed enforcement regulations and the DOE standards themselves should be withdrawn and subject to a de novo rulemaking process in full compliance with all applicable law and statutory criteria.

II. ARGUMENT

A. THE PROPOSED REGULATIONS WILL SIGNIFICANTLY INCREASE CONSUMER AND PRODUCER COST BURDENS

DOE incredulously maintains, in its December 26, 2023 NPR, that the cost impact of enforcement and regulatory compliance with its proposed enforcement regulations will either be minimal or non-existent. The NPR, accordingly, states that "DOE tentatively concludes, consistent with the expectations it stated in the May 2022 Final Rule … that the costs of complying with DOE's enforcement mechanisms will be minimal."[15](Emphasis added). Shortly thereafter, though, DOE maintains that the "proposed rule would not impose any new, additional costs beyond the costs already required by separate requirements."

inconsistent among themselves (i.e., "none" versus "minimal") – are absurd and without any demonstrable basis in evidence or fact.

First, DOE offers no evidence to show that the cost of collecting, maintaining, organizing, retaining, archiving and, where necessary, researching and retrieving additional records relating to the DOE energy standards – over, above and different – from those currently maintained for and pursuant to the HUD enforcement system for the Federal Manufactured Housing Construction and Safety Standards (FMHCSS),[16] will be zero or, alternatively, "minimal." Rather than attempt to estimate and reconcile the costs of maintaining such additional records and responding to

---

14 See, Note 3, supra.

15 See, 88 Federal Register, supra at p. 88848, col.3.

16 See, 24 C.F.R. 3282.

document requests and inquiries by DOE and related investigatory activities, (i.e., rather than developing and legitimately evaluating real data and evidence concerning such costs) the NPR simply sets forth a summary conclusion and assertion with no supporting facts or analysis. DOE's bald assertion, however, is totally inconsistent with reality.

While DOE maintains that manufacturers, under the proposed enforcement regulations, will only be required to maintain and provide access to records that are already mandated under the HUD FMHCSS enforcement system,[17]this contention is simply not true. While the records required by DOE may be similar in nature to those already required by the HUD FMHCSS regulations with respect to the HUD manufactured housing standards (which are separate and distinct from the pending DOE energy standards), the DOE-mandated records involve and relate to totally separate and new features, measures, and parameters specific to the DOE standards. Thus, the type, volume and focus of the new records required by DOE will significantly exceed in scope and substance those currently required separately by HUD. And inevitably, by requiring a higher volume of records, relating to subjects and criteria that are not now addressed specifically by the FMHCSS standards, and by establishing a sprawling "star chamber" investigatory system specifically tied to those new and additional records,[18] the DOE enforcement system will precipitate new, additional and substantial costs for manufacturers that will ultimately be passed to consumers in the retail price of new manufactured homes.

Consequently, DOE's assertion that its energy standards enforcement regulations will have zero cost impact is absurd and false on its face. Conversely, DOE also maintains – incongruously – that additional costs related to regulatory compliance with its standards will be "minimal." This contention, however, is subjective, without any evidentiary basis or context and, effectively, meaningless. At the outset, DOE does not define or quantify the term "minimal." A cost that is considered "minimal," for example, by an industry corporate conglomerate may not be "minimal" to a smaller independent manufacturer. Similarly, a cost considered "minimal" by those within higher income brackets may not be "minimal" for the lower and moderate-income Americans who predominately depend on the purchase price affordability of federally-regulated manufactured homes as their only available source of affordable homeownership. The claim, therefore, that the cost impact of the proposed DOE enforcement regulations would be "minimal," is effectively

---

[17] See e.g., 88 Federal Register, supra at p. 88848, col. 3: "[T]he documentation that manufacturers would be required to maintain by section 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." (Emphasis added). This contention, however, is undermined and shown to be false and misleading by the proposed regulations themselves. See, note 20, infra.

[18] The virtually open-ended, unlimited writ that would be provided to DOE by the proposed regulations to demand from HUD Code manufacturers any and all records related to the DOE standards – and not just those required by HUD – is demonstrated by proposed section 460.306(c). That section provides in relevant part: "A manufacturer must provide to DOE the information and records described in paragraph (a) of this section [i.e., records otherwise required by HUD], 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." (Emphasis added). In reality, then, and pursuant to precedents that will undoubtedly be established during various DOE investigations and "administrative actions" pursuant to the proposed regulations, manufacturers will inevitably be required to maintain and produce virtually any document or scrap of information pertaining in any way to the DOE energy standards. This, in turn, will further increase and exacerbate manufacturers' regulatory compliance costs.

meaningless and without content, and thereby clearly insufficient to satisfy the substantive cost-benefit mandates of applicable law.

Furthermore, and more particularly, DOE ignores the predictably significant costs of compliance with its various proposed investigatory and administrative functions. These include, but are not limited to: (1) the cost of investigating and responding to a Notice of Noncompliance (section 460.310); (2) the cost of investigating and responding to a Notice of Proposed Civil Penalty (section 460.312); (3) the cost of investigating and responding to a Final Notice of Proposed Covil Penalty (section 460.316); (4) the cost of proceedings before an administrative law judge (section 460.320); and/or (5) the cost of a judicial proceeding to vindicate the manufacturers' rights. Even aside from responding to DOE-initiated actions and/or inquiries, however, manufacturers, under the proposed enforcement regulations, would bear the increased cost and capital burden of maintaining, retaining, organizing, managing, storing, retrieving and investigating records pertaining to the DOE energy standards. This will inevitably result in additional employee-hours and employees, thereby increasing production costs that are ultimately passed to consumers in the acquisition cost of the home. Thus, far from having little or no cost impact, DOE's proposed enforcement regulations would impose significant additional costs on manufacturers and ultimately consumers in return for little – if any – energy operating savings.

DOE's cost "analysis," therefore, consists of bald, baseless assertions and declarations, with no apparent (or stated) consideration of entirely predictable costs that will inevitably result from its new and expanded energy regulation mandates. In a very recent decision – also involving DOE -- the Fifth Circuit U.S. Court of Appeals held that such a "process" was inherently deficient, arbitrary and capricious in violation of the APA (5 U.S.C. 706). In that January 8, 2024 opinion, the court stated:

> "[B]are acknowledgment is no substitute for reasoned consideration. We have previously held that "conclusory statements"—like DOE's—do not constitute adequate agency consideration of an important aspect of a problem. See Corrosion Proof Fittings v. EPA, 947 F.2d 1201, 1227 (5th Cir. 1991); see also Getty v. Fed. Sav. & Loan Ins. Corp., 805 F.2d 1050, 1055 (D.C. Cir. 1986) ("Stating that a factor was considered, however, is not a substitute for considering it."). The Repeal Rule appears to rest on DOE's unexplained balancing of evidence. It's a well-worn principle of arbitrary-and-capricious review that an administrative agency "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." State Farm, 463 U.S. at 43 (quotation omitted). Here, however, the 2022 DOE recognized the facts that undermined its Repeal Rule, cited other facts to suggest the Repeal Rule would conserve water and energy, see 87 Fed. Reg. at 2683–85, and then implicitly credited the latter without explaining why. That is the touchstone of arbitrary and capricious agency action."

See, Slip Opinion, Louisiana v. U.S. Department of Energy, No. 22-60146 (5th Cir. 2024). (Emphasis added). The situation is no different here. As is demonstrated above, DOE's NPR, ignores clearly inevitable costs that would be necessitated by its standards and proposed

enforcement system and, instead, puts forward its own conclusory assertions with no supporting data or analysis.

Beyond these procedural costs, the NPR is vague and fundamentally incomplete in that it fails to specify or address multiple enforcement-related issues, including but not limited to: (1) what standard or quantum of evidence must be met to initiate an investigation (i.e., what threshold level of evidence is required to initiate a DOE compliance investigation)? (2) what is the standard of proof for determining a noncompliance? (3) which party bears the burden of proof with respect to an alleged noncompliance? (4) what is/would be the standard of proof and/or review before an administrative law judge or reviewing court? All of these issues are pertinent to the regulatory compliance burdens – and, therefore, costs that would be borne by manufacturers (and ultimately lower and moderate-income consumers), but are not specifically addressed by the December 26, 2023 NPR.

And while DOE, in regard to some of these issues, refers interested parties to its Procedures for Administrative Adjudication of Civil Penalty Actions,[19](Administrative Procedures Guidelines) a review of that document indicates that it was developed and adopted as a civil penalty guide for actions under the Energy Policy and Conservation Act of 1975 (EPCA), pursuant to authority conferred by EPCA.[20] But, as DOE has itself pointed out, in response to comments filed by MHARR in DOE's 2020 EPCA reform and modernization rulemaking, EPCA and EISA are separate, unrelated statutes with separate unrelated and different grants of authority, which are not interchangeable.[21] Accordingly, by DOE's own precedent, EPCA-based procedures pertaining to "consumer products" and "commercial equipment"[22] are not relevant or applicable to actions under authority of EISA. Thus, the referenced guidelines are inapposite to the enforcement system proposed by DOE and cannot be used to fill procedural and/or substantive gaps in the proposed enforcement system.[23] And without valid and legitimate answers to the foregoing gaps and

---

[19] See e.g., 88 Federal Register, supra at p. 88853, col. 2.

[20] See e.g., Administrative Procedure Guidelines, supra at p. 1: "The U.S. Department of Energy (DOE or the Department) issues this policy statement regarding civil penalties for violations of energy and water conservation standards and requirements under the Energy Policy and Conservation Act, as amended."

[21] See, 85 Federal Register, No. 31 (February 14, 2020), "Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/industrial Equipment," p. 8626, at p.8676, col.1: "With respect to MHARR's suggestion to apply the Process Rule's provisions to the separate rulemaking on manufactured housing that is currently underway, while DOE appreciates this suggestion, we note that the statutory authorities for manufactured housing and the appliance standards that are addressed by this final rule are in separate chapters within Title 42 of the U.S. Code and have no relationship with each other—aside from applying generally to DOE. Consequently, DOE is declining to adopt this suggestion." (Emphasis added).

[22] See, Administrative Procedure Guidelines, supra at p. 1.

[23] Even beyond this fatal disconnect in statutory authority, the Administrative Procedure Guidelines, by their own terms are not binding on DOE, which can change and alter those "guidelines" at any time. See, Administrative Procedure Guidelines at p. 1, n.1: "The procedures set forth in this document are intended solely as guidance. They are not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party. The Department reserves its right to act at variance with this guidance and to change it at any time without public notice." As a result, the "guidelines" are meaningless in terms of protecting the due process rights of manufacturers and establishing a clear and consistent process for enforcement actions under the proposed DOE regulatory compliance regulations.

deficiencies in the DOE proposed enforcement system, that system violates, inter alia, the due process rights of HUD Code manufacturers and must be withdrawn.

B. THE PROPOSED REGULATIONS MIRROR AND EXPAND THE MOST ONEROUS AND COSTLY ASPECTS OF HUD SUBPART I

The enforcement regulations proposed by DOE will also have a significant cost impact insofar as they will effectively expand and exacerbate the most costly element of the existing HUD Part 3282 manufactured housing enforcement system – i.e., Subpart I.[24] Under Subpart I, manufacturers must investigate alleged violations of the FMHCSS standards and provide notification and correction of certain types serious defects and imminent safety hazards. Given the extremely broad scope of Subpart I and its lack of any time limitation (in the nature of a statute of limitations), the cost burdens imposed on manufacturers and consumers by Subpart I – as demonstrated by MHARR in written and verbal testimony on multiple occasions[25] – are significant and represent a major (albeit needlessly complex and costly) component of the cost of regulatory compliance under the HUD standards. The de facto addition of the DOE standards to this regime, however, would effectively expand Subpart I and significantly inflate manufacturers' regulatory compliance costs. Again, therefore, DOE's claim that the proposed enforcement standards would result in zero or "minimal" costs, is absurd.

Specifically, proposed section 460.306(a)(3) would require a HUD Code manufacturer to "provide [DOE] information and records relevant to determining compliance with any standard or requirement[26]under this part, including … records relating 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 C.F.R. 3282.417." Since, however, the HUD FMHCSS standards codified at 24 C.F.R. 3280 do not currently include the DOE manufactured housing energy conservation standards and may not – and may never – include the May 31, 2022 DOE standards as promulgated by DOE, and exist and are established under a separate grant of statutory authority, there is, ab initio, no legitimate basis for DOE to seek and be provided with Subpart I records, as those records would not relate to compliance or noncompliance with the DOE energy standards. That is, unless DOE, through this provision, is surreptitiously seeking to incorporate the May 31, 2022 energy standards into Subpart I by fiat.

Any such action (or construction of that provision) by DOE would exponentially increase the cost impact of its proposed enforcement system. As noted previously, Subpart I is one of the most costly, labor-intensive elements of the HUD FMHCSS enforcement system and has been the focus of extreme regulatory abuse for decades. Expanding that system through the inclusion of

---

[24] See, 24 C.F.R. 3282.401, et seq.

[25] See e.g., February 1, 2012 testimony of MHARR submitted to the U.S. House of Representatives Subcommittee on Insurance, Housing and Community Opportunity at a hearing on "Implementation of the Manufactured Housing Improvement Act of 2000."

[26] MHARR strenuously objects to any reference to compliance with "requirements" as distinct from duly promulgated standards and regulations. Use of the word "requirements" implies that there could be mandates imposed by DOE on manufacturers other than those set forth in the standards and regulations promulgated pursuant to EISA and the APA. As MHARR has consistently maintained in the context of the existing HUD manufactured housing program, any such extraneous mandates would be invalid, void and non-binding in accordance with applicable law.

DOE energy standards that are not currently a component of Part 3280 would only serve to drastically increase those costs.[27]

Even worse, though, the enforcement regulations proposed by DOE would sidestep or vitiate newer provisions in Subpart I which were recommended by the MHCC and adopted by HUD to better protect the due process rights of regulated parties, eliminate baseless or frivolous claims and/or "investigations" and, at the same time, ensure the cost-effective protection of consumers.[28] Thus, while the proposed DOE enforcement regulations specifically address certain stages and aspects of DOE's anticipated enforcement and regulatory compliance process, they do not, by their own terms, incorporate crucial safeguards from the post-2013 reformed HUD Subpart I system including, but not limited to:

> (1) a specific threshold standard for inquiry and investigation (e.g., 24 C.F.R. 3282.403 (a), (b)(1) – regarding information that "likely" indicates the existence of a noncompliance or defect);
> (2) a "good faith" defense or safe haven for manufacturers (e.g., 24 C.F.R. 403(c)); or
> (3) a finding that a noncompliance or defect "exists or likely exists" as a threshold for any further action beyond an initial investigation (e.g., 24 C.F.R. 3282.405(b)(3).

In the absence of these safeguards, a DOE investigation and resultant manufacturer compliance burdens could be triggered by any single piece of information, regardless of its legitimacy or veracity, with manufacturers then forced into an investigatory regime with no fixed standards or burdens of proof (see, discussion above), where DOE can demand and subpoena[29] any documents that it wishes, virtually without limitation,[30]while pursuing claims that a manufacturer would apparently have the burden to disprove. Under this regime, manufacturers would (and will) be forced to conduct multiple overlapping investigations and respond to multiple overlapping document requests, at significant cost, without regard to the legitimacy, veracity or actionability of the allegations underlying any such demand for investigation or documents.

In summary, then, DOE's proposed enforcement regulations would establish an energy enforcement 'star chamber" with few or no limits on DOE's power to investigate manufacturers, demand documents and records, make findings related to compliance, and impose penalties, all

---

[27] The DOE proposed regulations also – at a minimum – raise serious questions regarding the inter-relationship of section 460.306(a)(1)-(3), manufacturers must provide DOE with records already provided to HUD Design Approval Primary Inspection Agencies (DAPIAs) and Production Inspection Primary Inspection Agencies (IPIAs). Doe this mean that DOE will be second-guessing and, potentially, reversing DAPIA and/or IPIA determinations? Does it mean that DOE will sit as a "super" DAPIA or IPIA with respect to energy-related issues? And what degree of relation to the energy standards would need to exist for DOE to intervene or act as a "super" DAPIA/IPIA. Again, these are only some of the significant, cost-relevant questions posed by DOE's proposed enforcement regimen.

[28] See, 78 Federal Register, No. 190 (October 1, 2013) "Manufactured Housing: Revision of Notification, Correction and Procedural Regulations" at p. 60193, et seq.

[29] DOE, in its December 26, 2023 NPR, implicitly acknowledges its lack of direct subpoena authority under EISA: "DOE is … evaluating and considering its subpoena authority under EISA." See, 88 Federal Register, supra at p. 88846, col. 3.

[30] See, proposed section 460.306(c) and discussion supra related thereto.

without any fixed standards or procedures,[31] with the burden on manufacturers to prove compliance. Notwithstanding DOE's bald and baseless assertions that these procedures will have little or no cost to be netted against the alleged benefits of the May 31, 2022 standards, it is evident that the cost to manufacturers to comply with this system (and particularly to vindicate their rights in subsequent and ancillary proceedings) will significantly increase and expand the regulatory compliance burdens borne by manufacturers and the regulatory compliance costs ultimately paid by consumers.

The fact that DOE does not wish to go to the trouble to model and account for these additional costs, choosing instead to just fall back on the conclusory pre-hoc cost assertions contained in its May 31, 2022 "final rule" Federal Register notice,[32] is both telling and fully consistent with the pattern of deceit and duplicity that has characterized this rulemaking from the outset.

The reality is that DOE's proposed enforcement system will impose significant additional compliance costs on manufacturers and ultimately consumers -- in a market serving lower and moderate-income consumers -- millions of whom will be totally excluded from homeownership and all of its attendant benefits, contrary to the longstanding public policy of multiple administrations of both parties.

Furthermore, DOE's proposed civil penalty methodology is excessive, oppressive and beyond the means of many, if not most, smaller independent HUD Code producers.[33] Moreover, DOE neither shows nor provides any statutory grounds for levelling such penalties on a per diem basis, which would inevitably lead to extremely high penalties with correspondingly discriminatory impacts.[34]

III. CONCLUSION

For all of the foregoing reasons, as well as those set forth in prior MHARR comments regarding the DOE manufactured housing energy standards and their proposed enforcement, DOE's entire manufactured housing energy standards regime is fatally flawed, and should be withdrawn. This follows, in part, from the fact that DOE never troubled itself to fully understand the unique nature of comprehensively federally-regulated manufactured homes and the

---

[31] Which DOE reserves the right to change without rulemaking in the Administrative Procedure Guidelines.

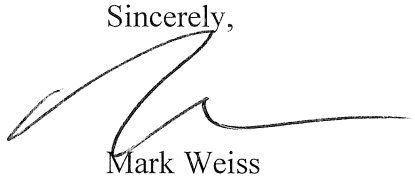
[32] See, 88 Federal Register, supra at p. 88849, col. 1: "... DOE tentatively concludes additional costs imposed by this proposed rule would be minimal. For this reason, the adoption of the enforcement procedures proposed in this document would not alter DOE's assessment in the May 2022 Final Rule of the costs resulting from the adoption of DOE'S energy conservation standards." (Emphasis added).

[33] See e.g., Id. at p. 88846, col. 2-3: "For example, if a manufactured home fails to comply with three standards in Part 460, the manufacturer has sold, imported or distributed in commerce 100 units of that model, and the retail list price of that model is $200,000, then the manufacturer will be subject to a civil penalty of up to $600,000 ($200,000 retail list price X 1% X 3 violation X 100 units).

[34] Proposed section 460.304(c) states: "For violations of section 460.302(a)(1), each day of noncompliance shall constitute a separate violation." There is, however, no section 460.302(a)(1) contained in the proposed rule. MHARR assumes that DOE meant to refer to section 460.304 (a)(1) (retention and access to manufacturer records). Regardless, though, this provision is baseless and unduly and disproportionately punitive.

manufactured housing program itself. Consequently, DOE should – and must – go back to very start, in full and proper coordination with HUD and the statutory federal regulator of manufactured housing construction and safety – and the statutory Manufactured Housing Consensus Committee to develop appropriate, cost-effective standards in full compliance with all relevant legislation for such homes and the millions of lower and moderate-income Americans who depend on manufactured homes for affordable, non-subsidized homeownership.

Sincerely,



Mark Weiss
President and CEO

cc: Hon. Marcia Fudge
Hon. Shalanda Young (OMB)
Hon. Tim Scott
Hon. Sherrod Brown
Hon. Patrick McHenry
Hon. Maxine Waters
HUD Code Industry Manufacturers, Retailers, Communities and State Associations

1.888.602.4663 | MHCC@HUD.GOV | MHCC@HOMEINNOVATION.COM

Appendix C: Working Document from February 15-16, 2024 MHCC Teleconferences

February 15-16, 2024
MHCC Meetings

1.888.602.4663 | MHCC@HOMEINNOVATION.COM

MHCC Comments on the DOE Proposed Rule: Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement

Docket Number: EERE-2009-BT-BC-0021
RIN: 1904-AF53

On February 15-16, 2024, HUD's Manufactured Housing Consensus Committee (MHCC) met via teleconference to review the *DOE Proposed Rule: Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement*. As a result of their review and deliberations, the following comments on the Proposed Rule were developed and are being submitted to HUD on behalf of the MHCC.

The MHCC rejects the Proposed Rule as written and would reject a final rule that is based upon the Proposed Rule.

- The DOE Proposed Rule fails to identify how compliance is achieved and implementing a separate compliance path would be devastating to the industry as the Manufactured Housing Program, 24 CFR parts 3280 and 3282, establishes procedures for compliance.
- The MHCC previously recommended that DOE include the substantial cost of testing, enforcement, and regulatory compliance in its costing analysis. The Proposed Rule claims a minimal cost increase, which is not accurate. The MHCC believes that the actual cost, which would be substantial and burdensome for third party inspection agencies, SAAs, manufacturers, HUD, and the end consumer, must be included in the life cycle analysis.
    - The current documentation listed by DOE, in §460.306, will not substantiate compliance with the DOE Energy Rule.
    - The DOE Energy Rule calls out certain ambiguous threshold requirements not commonly referenced in the manufactured housing industry thus potentially requiring the creation of new and very costly compliance verification processes.
- As written in the Proposed Rule, an additional governmental body would now be enforcing compliance, which could lead to confusion or potential conflicts.
- The civil penalties listed are arbitrary and based upon a "manufacturer's retail list price" which is not defined in the Proposed Rule, or a term used in the manufactured housing industry.
    - It is unclear how multiple instances of the same noncompliance would be handled on a singular unit.

- The rule states the following:

  "(c) For violations of § 460.302(a)(1), each day of noncompliance shall constitute a separate violation."

  It is unclear what date would be considered the initial violation. The civil penalty could quickly add up to more than 100% of the cost of the home, and if a mistake is carried over to multiple homes, the civil penalty could compound quickly. This has the potential to jeopardize the solvency of a manufacturing facility.

- This rule serves to undermine HUD's effective longstanding enforcement authority and can negatively impact HUD's federal preemption.
- In §460.306, DOE attempts to request designs approved by the DAPIA. Under the DAPIA's current regulatory obligation and limitations, these designs will only address construction standards adopted under 24 CFR 3280, the DOE standards will not be evaluated by a DAPIA as DOE lacks authority under 24 CFR Part 3282. Under DOE's current proposal, this will lead to unjust enforcement on manufacturers.
- The approval of new rules or future versions of current rules from multiple agencies could lead to inconsistencies in content or timing between rules.
- It is unclear as to the frequency of DOE investigations for compliance and the burden this will place on manufacturers, SAAs, IPIAs, DAPIAs, HUD, and other stakeholders that have obligations under current regulatory requirements.

HUD, by statute, is the body responsible for the development and enforcement of manufactured housing standards. Therefore, the MHCC recommends the following:

- DOE should withdraw the proposed Enforcement and Energy rule.
- HUD should remain the sole enforcement agency for manufactured housing built under the MHCSS.
- With implementation of the MHCC Working Document from October 18-20, 2022 and November 15-17, 2022 MHCC Meetings, showing changes made to the MHCSS based on Department of Energy's (DOE) Energy Conservation Program: Energy Conservation Standards for Manufactured Housing, allow for testing, enforcement, and regulatory compliance within HUD's existing framework which helps minimize costs to manufacturers and ultimately consumers.
  - Once implemented, there will be no need for DOE enforcement.
  - The MHCSS already contains enforcement provisions, established for over five decades, as part of 24 CFR 3282, which helps minimize costs to manufacturers and ultimately consumers.
- DOE abide by the 2007 EISA which requires direct consultation through HUD and the MHCC and submit this and any future proposed rules to HUD through HUD's established rulemaking procedures for manufactured housing for review and incorporation into the MHCSS.

Based on the current DOE enforcement proposal, DOE appears to have chosen to circumvent current federal code development processes despite previous MHCC communications, and/or has failed to understand the Manufactured Housing processes and the program that has made it the well-established affordable housing industry.