



February 22, 2024

The Honorable Jennifer M. Granholm
Secretary
U.S. Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

RE: Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement
10 C.F.R. § 460
[EERE-2009-BT-BC-0021]

Dear Secretary Granholm,

The Tennessee Housing Association (THA) is pleased to provide comments to the notice of proposed rulemaking titled: “Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Enforcement” (the Enforcement Rule NOPR).

THA is the trade association which represents every segment of the factory-built housing industry in Tennessee. Our members include home builders, suppliers, retail sellers, lenders, insurance providers, installers, transporters, community owners, community operators, and others who serve the industry.

Tennessee is home to the largest manufacturer of homes in the nation and the largest financier of manufactured homes in the nation. Our state is the location of ten (10) factories, which create an estimated 3,350 manufacturing jobs within the state, and are growing. These factories provide homes for over 251,000 families, representing approximately 9.1% of Tennessee’s occupied housing units. For these reasons, our members and the consumers we represent are critically focused on the impact this Enforcement Rule will have on future homeowners.

The Enforcement Rule would perpetuate the significant problems that already exist with the 2022 Department of Energy (DOE) energy standards for new manufactured homes. The DOE standards would cause harm to manufactured home affordability by significantly raising the cost of a new home, in a manner that does not comply with the underlying statute’s cost efficiency requirement.

In contrast, energy standards developed by Department of Housing and Urban Development Manufactured Housing Consensus Committee (MHCC) would accomplish almost all the energy efficiency of the DOE standards, but without the significant harm to housing affordability. Additionally, HUD already has a proven enforcement program, while DOE is proposing to create one in this rule out of whole cloth.

For these reasons, the Tennessee Housing Association asks that DOE withdraw this Enforcement Rule NOPR and the Energy Rule, consult with HUD and its MHCC regarding ways to incorporate balanced energy efficiency standards into the HUD Code under HUD's rulemaking process, and create a uniform enforcement scheme under HUD's existing enforcement program at 24 C.F.R. § 3282.

This NOPR and the underlying DOE energy standards have numerous significant flaws. The NOPR fails to provide any workable standards from which compliance with DOE's Energy Efficiency Standards for Manufactured Housing (the Energy Rule) can be measured. The NOPR also exposes manufacturers to excessive civil penalties that cannot reasonably be calculated.

The NOPR creates a scheme whereby manufacturers will certify compliance with DOE's Energy Rule through documents required to be maintained under HUD's Manufacturing Housing Construction Safety Standards (MHCSS). However, MHCSS records do not demonstrate compliance with the Energy Rule that is not the same as the MHCSS. 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.

For these records to serve as evidence of compliance with the Energy Rule, they must be changed to include designs, inspections, and testing unique to the Energy Rule. Thereafter, numerous third-party agencies and entities must approve the changes and factory personnel must be retrained to the new designs, manuals, and programs. This will result in substantial expense to manufacturers that must be passed on to consumers.

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 based on MHCSS records. Therefore, manufacturers will have to guess at how DOE will determine compliance with the Energy Rule based on submission of MHCSS documents.

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” that is not a term of art in the manufactured housing industry. Therefore, manufacturers will not be able to anticipate what amount of civil penalty may be imposed for a purported violation of the Energy Rule. Under the Enforcement Rule NOPR, these civil penalties can be multiplied by “each day” of noncompliance. However, the Enforcement Rule NOPR does not identify the date on which the “noncompliance” would begin – the date of manufacture, the date of purchase, the date of installation, the date of noncompliance determination, or some other date. Taken to its logical conclusion, the Enforcement Rule NOPR could result in a civil penalty for a single home many times the cost to manufacture the home before a manufacturer is made aware of the purported violation. The economic impact of civil penalties under the Enforcement Rule NOPR could substantially increase the cost of manufactured housing and lead to closure of manufacturing facilities.

In sum, the Enforcement Rule NOPR simultaneously increases costs and uncertainty regarding compliance with the Energy Rule. To ensure workable and uniform standards and enforcement for energy efficiency in manufactured housing, DOE should withdraw the Enforcement Rule NOPR and the Energy Rule, consult with HUD and the MHCC regarding ways to incorporate increased but workable energy efficiency standards into the HUD Code under HUD’s rulemaking process, and create a uniform enforcement scheme under HUD’s existing enforcement program at 24 C.F.R. § 3282.

Sincerely,

Marla Y. McAfee

Marla Y. McAfee
Executive Director
Tennessee Housing Association