



# Manufactured Housing Association for Regulatory Reform

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

March 13, 2015

VIA ELECTRONIC SUBMISSION

Ms. Brenda Edwards  
U.S. Department of Energy  
Building Technologies Program  
Mailstop EE-5B  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585-0121

Re: Request for Information  
Energy Efficiency Standards for Manufactured Housing  
Docket No. EERE-2009-BT-BC-0021 – RIN 1904-AC11

Dear Ms. Edwards:

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 association 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 (42 U.S.C. 5401, et seq.) as amended by the Manufactured Housing Improvement Act of 2000.

On February 11, 2015, the U.S. Department of Energy (DOE) published a Request for Information (RFI) in the Federal Register (80 Federal Register No. 28 at pp. 7550-7553) incident to its development of manufactured housing energy standards pursuant to the Energy Independence and Security Act of 2007 (EISA). The RFI sets forth DOE's analysis of Solar Heat Gain Coefficient (SHGC) values for potential inclusion in any such standard and seeks comment on: (1) DOE's conclusion that "an SHGC requirement of 0.30 would lead to the most cost-effective manufactured home for both climate zones 1B and 2," and (2) "whether to include an SHGC requirement of 0.30 for climate zones 1B and 2 in the development of the proposed rule." In seeking public comment, DOE notes that this particular issue was left to DOE for "additional analysis" by the manufactured housing "Working Group" established by DOE in July 2014 pursuant to the Negotiated Rulemaking Act (5 U.S.C. 561, et seq.).

For the reasons summarized in MHARR's attached communication of November 25, 2014 to DOE Secretary, Dr. Ernest Moniz, the entire DOE rulemaking process to date concerning EISA manufactured housing standards has been fatally and irretrievably tainted, and should be terminated completely – including any consideration of SHGC values arising from that process. The three month-long “Working Group” process established by DOE – which, among other things, did not consider or evaluate key elements of any rule, including the cost of testing, enforcement and regulatory compliance – did not cure the selective DOE leak of a draft proposed rule to parties in interest and manifestly did not comply with the subsequent directive of the Office of Management and Budget (OMB) to begin the entire rulemaking process “anew.”

Instead, this entire proceeding, including its “Working Group” phase, has been characterized by impermissible disclosures, improper contacts with supporters of costly EISA-based regulation, and deceptive, non-transparent DOE procedures and actions, including but not limited to the following:

1. The "impermissible distribution," as described (on the record) by DOE's Office of General Counsel (OGC), of the DOE draft manufactured housing energy standards rule to selected parties in interest;
2. DOE's failure to admit or acknowledge the "impermissible distribution" of the draft rule to selected parties in interest, including Working Group member organizations, until after the DOE Appliance Standards and Regulation Advisory Committee (ASRAC) authorized negotiated rulemaking and creation of the manufactured housing Working Group;
3. Apparent undisclosed and/or unreported DOE contacts with such select recipients of the "impermissibly distributed" draft rule;
4. Failure to identify all recipients of the selectively disclosed draft rule, although DOE-OGC stated at the August 5, 2014 Working Group meeting that they included "many people in this room" (i.e., the Working Group meeting room);
5. Failure to disclose any responsive information, materials, comments, statements or input (either written or verbal) received by DOE from these unidentified select recipients of the draft rule;
6. Failure to disclose in advance that March 14, 2014 and May 28, 2014 written communications from certain parties in interest, which formed the basis for ASRAC approval of negotiated rulemaking and creation of the Working Group, were submitted either wholly or in substantial part by select recipients of the "impermissibly distributed" draft rule;
7. Failure to disclose in advance the appointment of recipients (or parties affiliated with recipients) of the "impermissibly distributed" draft rule as voting members of the Working Group;

8. Failure to disclose interlocking control and/or affiliations and/or financial conflicts among multiple Working Group members;
9. Failure to disclose OMB's rejection of the DOE draft rule and directive to DOE to "begin the [rulemaking] process anew" (as described by DOE-OGC) until after ASRAC authorization of negotiated rulemaking and formation of the Working Group;
10. Failure to disclose the specific basis for OMB's rejection of the draft rule and directive to start over;
11. Failure to disclose the draft rule itself;
12. Failure to disclose or explain how a negotiated rulemaking process with "a minimum of meetings" as requested in the March 14 and May 28, 2014 triggering communications from parties in interest could be consistent with OMB's "start over" directive in relation to a rule that had been under development at DOE since 2007; and
13. DOE's contention, in response to a Freedom of Information Act (FOIA) request by MHARR, that there were "no" responsive documents pertaining to the draft rule and its selective leak.

The entire record of this proceeding shows it to be illegitimate, improper, non-credible and in violation of the OMB mandate to "start-over." As such, it should be terminated without promulgation of a proposed rule and returned to Congress (together with complete disclosure of the DOE draft proposed rule and all related documents and communications) for further hearings and investigation based on testimony and input from all interested parties and stakeholders.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Weiss', with a long horizontal stroke extending to the right.

Mark Weiss  
President and CEO

cc: MHARR Manufacturers

Attachment





# 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

November 25, 2014

VIA FEDERAL EXPRESS

Hon. Ernest Moniz  
Secretary  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Re: Energy Efficiency Standards for Manufactured Housing

Dear Secretary Moniz:

I am writing 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 mostly smaller and medium-sized producers of manufactured housing subject to comprehensive federal regulation by the U.S. Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 (Act), as amended by the Manufactured Housing Improvement Act of 2000 (2000 reform law).

On October 31, 2014, a manufactured housing energy conservation standards “Working Group” (MHWG) operating under the auspices of the Department of Energy’s (DOE) Appliance Standards and Rulemaking Advisory Committee (ASRAC) submitted recommendations to ASRAC for manufactured home energy conservation standards pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA) in the form of a “Term Sheet.” ASRAC is scheduled to meet via telephone conference call on December 1, 2014 to consider that Term Sheet and whether it should be forwarded to you as the basis for proposed and final energy conservation standards for HUD-regulated manufactured homes.

MHARR participated as a member of the MHWG, where it voted against adoption of the Term Sheet -- for reasons fully documented in the MHWG record -- and now respectfully calls on you to reject those proposals, which will undermine the affordability of manufactured housing in violation of federal law and housing policy while providing no meaningful benefits to manufactured housing consumers, and halt any further DOE activity on this matter. By copy of this letter we are also advising the Secretary of HUD of our opposition to any proposed or final

standards based on the MHWG Term Sheet and our call for their rejection by HUD as well pursuant to the DOE-HUD “consultation” mandated by EISA.

The MHWG Term Sheet is the product of a flawed, discriminatory statute and an irretrievably tainted regulatory process at DOE.

The EISA manufactured housing provision would undermine the affordability of manufactured housing enshrined in federal law and federal housing policy under the Act and the 2000 reform law. Census Bureau data from the 2011 American Housing Survey shows that median energy operating costs for manufactured homes are already lower than those for other types of residential construction. EISA – and the specific recommendations of the MHWG -- would result in purchase price increases for manufactured homes that would exclude millions of mostly lower and moderate-income consumers from the manufactured housing market and the housing market altogether. Such devastating impacts are entirely unnecessary, as manufactured home builders already offer multiple enhanced energy packages, on an optional basis, as a matter of consumer choice. EISA, moreover, specifically discriminates against manufactured homebuyers by subjecting manufactured homes to the “most recent” -- and, therefore, most stringent and costly -- version of the International Energy Conservation Code (IECC), while site-built, modular and other types of more expensive homes, that are not specifically designated and protected under federal law as affordable housing, are regulated at the state and local level under earlier, less costly versions of the IECC (indeed, 35 states have not yet adopted even the 2012 IECC).

Furthermore, the DOE regulatory process in this matter is fundamentally flawed and cannot be rehabilitated or remedied by the MHWG or its recommendations. As is demonstrated by documents and testimony included in the MHWG record by MHARR, it is evident that the DOE conventional rulemaking initiated by an Advance Notice of Proposed Rulemaking on February 10, 2010 was irretrievably tainted by the selective leak of a “draft” proposed rule – and selective DOE interaction with – certain parties in interest. This “impermissible” activity led the Office of Management and Budget (OMB), as confirmed by the DOE Office of General Counsel (OGC), to reject the DOE draft rule and instruct DOE to “begin the [rulemaking] process anew.” Instead of starting over, however, ASRAC, acting pursuant to March 14, 2014 and May 28, 2014 requests for “negotiated rulemaking” from recipients of the selectively-leaked “draft” rule rejected by OMB, simply devised a process to allow DOE to circumvent OMB’s directive through an intentionally truncated process that was totally insufficient for the development of a major, complex rule and was designed -- like DOE’s June 25, 2013 “Request for Information” -- to validate the pre-conceived results of the original, “impermissibly” disclosed draft proposed rule.

The Term Sheet recommendations resulting from that truncated process, based on non-public, unverified and unverifiable data provided by a party in interest, would increase the consumer purchase price of a single-section manufactured home by an average of \$2,170.00 -- as calculated by the MHWG -- with cost recovery times for some measures ranging from 12-88 years. Even this large increase, however, significantly understates the true consumer-level cost impact of the MHWG proposal, as the MHWG cost information does not include testing, enforcement and regulatory compliance costs – insofar as ASRAC arbitrarily excluded

enforcement and compliance issues from the MHWG charter – and does not reflect supply costs across the full spectrum of the industry, especially for smaller manufacturers that do not receive high-volume discounts for materials and components comparable to larger manufacturers. Indeed, a more realistic assessment of compliance costs shows that the MHWG Term Sheet would require significant design and structural changes in manufactured homes, especially in northern areas, with correspondingly significant price increases. Thus, according to information provided to MHARR, in current HUD thermal Zone 3, the retail-level price increase to transition from the most basic, affordable, single-section current HUD Code home, to a level approximating 2015 IECC thermal zones 4 and 5, would be approximately \$4,700.00 for a single-section home and up to \$6,200.00 for a double-section home.

Based on all of these defects – as fully documented and addressed in the record of the MHWG – the MHWG-proposed Term Sheet for manufactured home energy conservation standards should be withdrawn from any further consideration. We also respectfully request that EISA section 413 be returned to Congress for re-evaluation, reconsideration, hearings and necessary reforms based on full and proper input from all stakeholders, including consumers of affordable housing, the states and the manufactured housing industry. We hope that you will seriously consider these requests to prevent this matter from being tied-up in litigation for years to come.

We will contact your office soon to schedule a meeting to address this crucial matter in much greater detail, with additional information.

Sincerely,



Mark Weiss  
President-Elect

cc: Hon. Julian Castro, Secretary, Department of Housing and Urban Development  
Hon. Shaun Donovan, Director, Office of Management and Budget  
Chairman and Ranking Member, Senate Energy and Natural Resources Committee  
Chairman and Ranking Member, House Natural Resources Committee  
DOE Appliance Standards and Rulemaking Advisory Committee  
HUD Code Industry Members