Manufactured Housing Association for Regulatory Reform

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August 8, 2016

VIA FEDERAL EXPRESS AND ELECTRONIC SUBMISSION

Mr. Joseph Hagerman
U.S. Department of Energy
Building Technologies Office
Mailstop EE-5B
1000 Independence Avenue, S.W.
Washington, D.C. 20585-0121

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

Dear Mr. Hagerman:

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.) (1974 Act) as amended by the Manufactured Housing Improvement Act of 2000 (2000 Reform Law). MHARR was founded in 1985. Its members include independent manufactured housing producers from all regions of the United States.[1]

I. INTRODUCTION

On June 17, 2016, the U.S. Department of Energy (DOE) published a proposed rule in the Federal Register to establish "Energy Conservation Standards for Manufactured Housing," pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA). (See, 81 Federal Register, No. 117 at p. 39756, et seq.). EISA section 413 -- in derogation of the comprehensive federal regulatory jurisdiction over manufactured housing[2] construction and safety

[1] All of MHARR's member manufacturers are "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.).

[2] The 1974 Act defines a "manufactured home" as "a structure, transportable in one or more sections, which, in traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a

delegated to HUD under the National Manufactured Housing Construction and Safety Standards Act of 1974 (as amended)[3] -- directs DOE to establish "energy efficiency" standards for manufactured housing "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 the total life-cycle construction and operating costs." (Emphasis added). EISA further directs DOE to establish those standards pursuant to: (1) public notice and comment; and (2) "consultation with the Secretary of Housing and Urban Development, who may seek further counsel from the Manufactured Housing Consensus Committee" (MHCC) established pursuant to the Manufactured Housing Improvement Act of 2000.

For the reasons set forth below, MHARR strenuously opposes the proposed rule as an unjustified, destructive and ultimately useless burden on both consumers and the industry including, most particularly, its smaller businesses.

The June 17, 2016 proposed rule is the product of a tainted, non-transparent and fatally defective DOE rulemaking process[4] that will needlessly undermine the availability of affordable manufactured housing contrary to existing law, exclude millions of lower and moderate-income Americans from homeownership altogether, and stifle free-market competition within the manufactured housing industry -- to the detriment of those same consumers -- by disproportionately harming smaller industry businesses. Insofar as the proposed rule is premised on a factually worthless, incomplete and affirmatively misleading "cost-benefit analysis," a sham standards-development process, non-transparent information inputs on key issues, and violations of the EISA section 413 "consultation" mandate (by both DOE and HUD), any final rule implementing (or derived from) the June 17, 2016 DOE proposed rule would: (1) violate the 1974 Act (as amended); (2) violate the "arbitrary, capricious [or] abuse of discretion" standard of the Administrative Procedure Act ("APA") (5 U.S.C. 706(2)(A)); (3) violate the Negotiated Rulemaking Act (5 U.S.C. 561, et seq.); (4) violate the EISA statute itself; and (5) violate other applicable requirements of law. MHARR, accordingly, seeks the withdrawal of the June 17, 2016 proposed rule and the commencement of an entirely new, legitimate rulemaking process for appropriate manufactured housing energy standards. Absent such action by DOE, MHARR will pursue all available legal remedies to enjoin and/or invalidate any resulting final rule.

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dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein...."

[3] HUD's comprehensive federal regulatory jurisdiction over manufactured housing construction and safety already includes -- and has included at all times relevant to this matter -- energy standards as codified in Subpart F ("Thermal Protection") of the HUD Manufactured Housing Construction and Safety Standards (24 C.F.R. 3280.501, et seq.)

[4] MHARR hereby incorporates by reference herein: (1) its March 5, 2010 comments in response to DOE's February 22, 2010 Advance Notice of Proposed Rulemaking in this docket (see, 75 Federal Register, No. 34 at p. 7556, et seq.) (Attachment 1, hereto); (2) its July 24, 2013 comments in response to DOE's June 25, 2013 Request for Information in this docket (see, 78 Federal Register, No. 122 at p. 37995, et seq.) (2013 RFI) (Attachment 2, hereto); and (3) its March 13, 2015 comments in response to DOE's February 11, 2015 Request for Information in this docket (see, 80 Federal Register, No. 28 at p.7550, et seq.) (Attachment 3, hereto).

II. BACKGROUND AND PROCEDURAL HISTORY

With public opinion surveys showing public trust in the federal government at an all-time low,[5] the June 17, 2016 DOE proposed rule is a textbook illustration of why a majority of Americans have lost faith and confidence in the federal government generally and in federal agencies, such as DOE and HUD, specifically. Purporting to address a "problem" that does not exist,[6] the DOE proposed rule is a paradigm of over-reaching, oppressive and costly "big government" regulation, that will disproportionately harm lower-income Americans (contrary to stated Obama Administration policy) and crush smaller industry businesses, leading to a further decrease in homeownership (already at record low levels),[7] higher levels of homelessness,[8] and an emasculation of free-market competition -- with corresponding retail price increases -- in an industry already verging on de facto monopolization.[9] Not one of these consumer, industry and societal costs, however – or a multitude of other relevant and significant cost factors – are addressed in DOE's fatally defective and deceptive "cost-benefit analysis," in direct violation of an integral, substantive requirement of EISA section 413.[10]

Significantly, DOE's June 17, 2016 Notice of Proposed Rulemaking (NOPR), by ignoring, disregarding and omitting key facts and material information, continues an Agency whitewash of a tortured, corrupted and irretrievably tainted standards-development process for the June 17, 2016 proposed rule. Those key omitted facts – with citations to supporting documents and information -- are set forth below.

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[5] See, e.g., Gallup, Inc., "Trust in Government" (September 2015) at p.2, showing 61% of respondents having little or no trust or confidence in federal government handling of "domestic issues," the highest such figure since polling began in 1972. See also, Gallup, Inc., "Americans Losing Confidence in All Branches of U.S. Government," (June 30, 2014) showing confidence ratings "for all three branches" of the federal government "are at or near their lowest points to date."

[6] See, detailed discussion at section III A, pp. 22-24, infra, regarding U.S. Census Bureau data showing – contrary to claims by DOE -- that current-production manufactured homes are already energy-efficient, with median monthly energy costs for fuel oil and natural gas lower than the monthly median for site-built homes and electricity costs closely comparable to the median monthly electricity cost for a site-built home.

[7] See, e.g., Money Magazine, "Homeownership Hits Another Record Low," (June 24, 2015).

[8] Ironically, publication of the DOE proposed rule -- which, if adopted as a final rule, will exclude millions of lower and moderate income Americans from the benefits and advantages of home ownership (see, detailed discussion and supporting data at sections III B, pp. 25-26 and III C 2, pp. 28-31, infra) – corresponds with HUD's declaration of June 2016 as "National Homeownership Month." In a June 1, 2016 press release, HUD states: "This week, the U.S. Department of Housing and Urban Development kicks off National Homeownership Month by recognizing how homeownership enhances lives and contributes to thriving communities ... [and] that owning a home remains one of the cornerstones of the American Dream." (Emphasis added). For millions of Americans, however, the DOE rule, if adopted, will mean exclusion from homeownership and the American Dream and, potentially, homelessness, for no valid, legitimate or necessary reason.

[9] See, e.g., American Banker, "Time to End the Monopoly Over Manufactured Housing" (February 23, 2016) referring to "an uncompetitive market, dominated by Clayton Homes, [Inc.] [Clayton]." Clayton could control 50% or more of the national manufactured housing market in 2016, based on 2015 HUD production statistics and subsequent acquisitions of competing manufacturers in 2016.

[10] Pursuant to the express mandate of EISA section 413(b)(1), the Secretary of DOE is required to make a separate, affirmative finding that each element of the manufactured housing energy standards adopted under section 413(a) is "cost-effective."

A. Initial Development and Selective Leak of the DOE Manufactured Housing Rule

Following the enactment of EISA, DOE initiated a conventional rulemaking proceeding to develop energy standards for manufactured homes. On February 10, 2010, DOE published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register (see, 75 Federal Register, No. 34 at pp. 7556-7557) seeking public comment on thirteen general issues. MHARR submitted written ANPR comments to DOE on March 10, 2010.

In its ANPR comments, MHARR urged DOE, in light of the drastic decline of the manufactured housing market to historically low production levels after the enactment of EISA,[11] to "delay the development, implementation and enforcement of any new manufactured home energy conservation standards that are not identical to the existing HUD Code energy standards until such time as industry production levels and the availability of affordable, non-subsidized manufactured housing for lower and moderate-income consumers return to pre-2007 levels." In addition, MHARR raised three separate issues related to the substance of any DOE manufactured housing energy standards that could further undermine the affordability and availability of manufactured homes, with little or no corresponding benefit to consumers. In relevant part, MHARR stated:

(1) "...manufactured homes are already subject to HUD energy conservation standards that result in a relatively tight thermal envelope, consistent with overall affordability and are carefully balanced against concerns related to air exchange and condensation within the home living space. Any change to the standards could upset that balance with ... negative consequences."

(2) "With ... manufactured housing consumers unable to obtain or qualify for financing now, matters would be much worse if the purchase price of manufactured homes were unnecessarily increased ... due to DOE energy regulations."

(3) "...the federal government should not impose costly new energy mandates combined with a totally new DOE enforcement system that would parallel the existing HUD system." "...HUD ... is best suited to fully assess and ensure the affordability aspects of energy regulation within the context of the HUD Code and maintain the delicate balance between regulation and affordability that is embedded in relevant federal law."

Subsequent to publication of the ANPR – and without addressing or resolving any of the substantive issues identified by MHARR -- DOE developed a "draft proposed rule" for manufactured housing energy standards (2011 draft proposed rule). That "draft proposed rule" was then selectively leaked to interested parties, including the Manufactured Housing Institute (MHI) -- a Washington, D.C. organization representing the manufactured housing industry's largest businesses (and later a participant in the DOE "negotiated rulemaking" Manufactured Housing

[11] After reaching a modern production record of 374,143 homes in 1998, total industry production of HUD-regulated manufactured homes (as calculated and reported by HUD) fell to a record low of 49,683 homes in 2009, following the enactment of EISA, and has only recovered at a modest pace since that time, reaching 70,544 homes in 2015.

Working Group) -- as indicated by published May 29, 2012 correspondence from MHI to DOE referring to specific requirements and provisions of a "draft proposed DOE rule" and "draft DOE standards" that were not included in the 2010 ANPR, had not been published as a proposed rule, and had not otherwise been made public.[12]

In a July 20, 2012 communication to DOE, MHARR called for a DOE/HUD investigation of the selective leak of the 2011 "draft proposed" DOE energy rule to MHI and other parties in interest, to determine, among other things: (1) how the proposed rule was selectively leaked; (2) who was responsible for that selective leak; and (3) what other parties in interest, if any, were provided inside information concerning this significant rulemaking.[13] MHARR was subsequently contacted by a DOE official, Michael Erbesfeld,[14] who verbally denied any leak.

Subsequent admissions by DOE, however, as well as documents produced by DOE pursuant to MHARR Freedom of Information Act (FOIA) requests, show: (1) that this official denial by DOE was false; (2) that a selective leak of a "draft proposed" DOE manufactured housing energy rule to interested parties did, in fact, occur;[15] and (3) that selective leaks of that "draft proposed rule" were made to multiple subsequent members of the DOE "negotiated rulemaking" Manufactured Housing Working Group (MHWG)[16] which – together with other continuing, undisclosed contacts and coordination between such recipients and DOE[17] – fundamentally tainted that entire process.

B. OMB/OIRA Rejection of DOE "Draft Proposed Rule" and "Start Over" Directive

On June 25, 2013, DOE abruptly published a Request for Information (2013 RFI) concerning manufactured housing energy standards, focusing specifically on the three issues (above) that MHARR had identified in its ANPR comments (i.e., air exchange and condensation, the availability of consumer financing and the enforcement structure and authority for the rule). (See, 78 Federal Register, No. 122 at p. 37995, et seq.). MHARR, in its RFI comments, stressed that the 2013 RFI – seeking information on key aspects of any manufactured housing energy rule – had obviously been prepared and issued after the development of the 2011 "draft proposed rule." As a result, MHARR asserted that the 2011 DOE "draft proposed rule" had necessarily been developed without full and complete information as required by the APA and EISA section 413, itself, and amounted to a predetermined regulatory fait accompli, based on undisclosed

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[12] See, Attachment 4, hereto. That MHI correspondence states, in part, that "the draft DOE standards requires (sic) homes to be tested in the factory" and that "separate testing is required for to measure duct leakage, whole house (building shell) tightness and air infiltration rates for each window." No such details were included in the 2010 ANPR or otherwise published or disclosed to the public. Similarly, the May 29, 2012 MHI correspondence refers to a DOE estimate of a "total cost burden to the industry [of] $4.5 million over four years." Again, no such information was provided in the 2010 ANPR or otherwise disclosed to the public. Indeed, the 2010 ANPR specifically acknowledged that it contained no regulatory impact analysis (RIA), stating: "DOE intends to develop a regulatory impact analysis ... as this rulemaking process proceeds."

[13] See, Attachment 5, hereto.

[14] See, Attachment 6, hereto, produced by DOE pursuant to a May 5, 2015 MHARR FOIA request, indicating that as of August 24, 2011, Mr. Erbesfeld was the "new project manager on (sic) the DOE manufactured housing standards."

[15] See, discussion at section II C, p. 10, infra.

[16] Id.

[17] See, detailed discussion at section II C, pp. 8-14, infra.

communications and input from select, "insider" parties in interest, including MHI and the industry's largest corporate conglomerates, among others.[18] MHARR's comments thus concluded: (1) that the entire manufactured housing rulemaking had been irretrievably tainted by the selective leak of the 2011 DOE "draft proposed rule" to parties in interest; (2) that DOE, therefore, was required to "discard" that "draft proposed rule" in its entirety; and (3) that DOE had to "begin anew its entire process for the development" of that rule. In part, MHARR stated:

> "Now, after the preparation and selective disclosure of a 'draft proposed rule,' complete with a regulatory (cost) impact analysis, DOE, through its June 25, 2013 'Request for Information,' is seeking information concerning the three issues initially raised by MHARR in 2010.... While MHARR commends [DOE] for finally seeking information and data concerning these crucial issues for both the industry and consumers, [DOE's] request for such information after the preparation of a draft proposed rule turns the regulatory process on its head and raises serious issues regarding the legitimacy and integrity of this entire proceeding.... Accordingly, DOE ... should ... begin anew its entire process for the development of this rule from the start, based, this time, on a proper review and consideration of all ... relevant information.[19]

(Emphasis added and in original).

Unbeknownst to MHARR at the time of the 2013 RFI and its comments calling for the DOE rulemaking process to be started "anew" – and not publicly disclosed by DOE until after the inception of its sham "negotiated rulemaking" process -- the DOE 2011 "draft proposed rule" had been forwarded to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) on October 14, 2011 for review pursuant to Executive Order 12866,[20] and had been rejected by OMB/OIRA with specific instructions to DOE to "begin the [rulemaking] process anew," as had been sought by MHARR in its 2013 RFI comments.[21]

Contemporaneously -- and consistent with its pervasive pattern of obfuscation and deception concerning this rulemaking -- DOE first attempted to obstruct and then falsely denied the existence of documents responsive to an October 22, 2013 MHARR Freedom of Information Act request seeking, among other things, the production of "any and all correspondence or other communications received by DOE regarding [the 2011 manufactured housing] 'proposed rule' including, but not limited to, communications from any party to whom the said 'draft proposed rule' had been provided."[22] After initially quoting a clearly excessive fee to process MHARR's request (in order to discourage MHARR from proceeding), DOE, on February 18, 2014, denied that it possessed any "responsive" materials.[23] DOE, however, responding to MHARR FOIA

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[18] See, section II D, pp. 14-18, infra, regarding DOE's manipulation of supposed "research" contracts to, among other things, "partner" with the manufactured housing industry's largest manufacturers – characterized as "progressive plants" -- to "drive the adoption" of extreme, unnecessary and costly DOE standards.

[19] See, Attachment 2, hereto at pp. 3-4.

[20] See, Attachment 7, hereto, produced by DOE pursuant to MHARR's May 5, 2015 FOIA request, confirming submission of the "draft proposed" manufactured housing energy rule to OIRA on October 14, 2011.

[21] See, detailed discussion at section II C, pp. 10-11, infra and Attachment 16, infra.

[22] See, Attachment 8, hereto.

[23] See, Attachment 9, hereto, at p. 2.

requests filed after the conclusion of its sham "negotiated rulemaking" process, has produced multiple documents that would have been responsive to this request including, but not limited to, an email communication dated March 14, 2012 from MHI's Vice President for Regulatory Affairs (and a subsequent MHWG member), to DOE attorneys referencing a "meeting with OMB last week" on the DOE 2011 "draft proposed" manufactured housing rule and a follow-up ex parte DOE tour of an MHI-member manufacturing facility,[24] as well as an email communication from subsequent MHWG member Michael Lubliner to DOE stating, in part, "I have attached a document from MHI to DOE. Does MHI have access to draft rules (maybe from OMB) that many other stakeholders have not seen?" (Emphasis added).[25]

The proper and timely disclosure of these documents – and others -- prior to the inception of "negotiated rulemaking," would have: (1) confirmed the selective leak of the 2011 DOE "draft proposed rule" during the 2011-2012 timeframe; (2) exposed ongoing insider contacts between MHI (and other parties in interest) and DOE officials regarding the 2011 DOE "draft proposed rule;" and (3) would have ultimately alerted MHARR (and others) to DOE-"insider" coordination regarding the referral of this matter to "negotiated rulemaking" in sufficient time to object to – and seek to enjoin – any such referral or continuation of the pending manufactured housing rulemaking process. DOE's false denial of the selective leak of the 2011 "draft proposed rule" and MHARR's July 20, 2012 request for a DOE investigation, and its February 18, 2014 denial of the existence of responsive documents pursuant to MHARR's October 22, 2013 FOIA request, have materially prejudiced MHARR's rights -- and the rights of other opponents of the June 17, 2016 proposed rule -- in ways that, in and of themselves, would warrant judicial relief in the event that DOE proceeds with a final rule based on that proposal.

More importantly, though, the selective leak of the 2011 DOE "draft proposed rule" to MHI and others has irretrievably tainted this rulemaking, insofar as it: (1) provided the industry's largest corporate conglomerates – interested parties in this rulemaking – with "insider" information not available to other stakeholders regarding the approach, the substance, the expected enforcement mechanisms and the expected costs of DOE standards for manufactured housing pursuant to EISA section 413,[26] with no evidence whatsoever, to show that the 2011 DOE "draft proposed rule" differs materially from the 2016 proposed rule; and (2) even more significantly, provided the select recipients of that "impermissibly disclosed" draft proposed rule with a fundamentally biased and discriminatory opportunity – not offered to other affected stakeholders – to provide input to DOE and to influence and impact the content of that rule with, again, no

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[24] See, Attachment 10, hereto.

[25] See, Attachment 11, hereto, at p. 2.

[26] Attachment 4, hereto, supra, makes it clear that MHI had been provided access to cost-benefit calculations for the 2011 DOE "draft proposed rule." Moreover, a copy of the table of contents for the DOE 2011 "draft proposed rule" (see, Attachment 12 hereto) -- provided to MHARR in 2012 by an MHI-affiliated recipient of the selectively leaked draft proposed rule -- includes "Compliance and Enforcement" provisions ("Subpart E"), the substance of which was obviously disclosed to the select recipients of that draft rule. Because DOE has yet to publicly propose compliance and enforcement regulations in connection with its 2016 proposed rule, and specifically excluded compliance and enforcement from the "negotiated rulemaking" conducted through the MHWG, it is entirely conceivable that there will be no difference between the 2011 compliance and enforcement provisions and the compliance and enforcement provisions ultimately proposed for the 2016 rule, exposing again, the insidious, discriminatory and unlawful continuing advantage conferred by DOE on the select recipients of the "impermissibly disclosed 2011 "draft proposed rule" at the expense of all other interested parties in this rulemaking. See also, note 31, infra.

evidence whatsoever, to show that the 2011 DOE "draft proposed standard" differs from the 2016 proposed rule in any material respect. The full extent of this illegitimate, biased and discriminatory activity, moreover – and its impact on the current pending DOE manufactured housing energy standards rule – remains the subject of an ongoing cover-up by DOE, which has refused to release either the text of the 2011 "draft proposed rule," or cost-benefit analyses of that rule provided to the select leak recipients and OMB/OIRA.[27]

C. Referral to Sham "Negotiated Rulemaking"

No subsequent public activity on the DOE manufactured housing rule occurred until June 6, 2014, when DOE's obscure Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) voted – with no advance public explanation -- to establish a "negotiated rulemaking" process with interested parties (i.e., the "Manufactured Housing Working Group") to develop EISA section 413 manufactured housing standards under a two-month completion deadline that was clearly inadequate to achieve the "fresh start" directed by OMB/OIRA on a complex, "significant" federal regulation.[28] The OMB/OIRA "fresh start" directive, however, had not been publicly disclosed by DOE prior to – or at the time of – the ASRAC vote to impose this truncated, impossibly brief deadline.

Multiple documents produced by DOE after-the-fact, however (as well as subsequent DOE admissions), prove that this seemingly random, "out-of-the-blue" ASRAC action resulted from specific non-transparent ex parte coordination between DOE, MHI and other "insider" recipients of the selectively leaked 2011 DOE "draft proposed rule:" (1) to effectively circumvent and negate OMB/OIRA's directive to DOE to start-over the manufactured housing rulemaking process from the beginning; (2) to establish a sham "negotiated rulemaking" process dominated by DOE-favored "insider" recipients of the selectively leaked 2011 "draft proposed rule;" and (3) to produce a pre-ordained regulatory result.

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[27] See, text at pp. 11-12, infra, regarding DOE's refusal to release the 2011 "draft proposed rule" during the MHWG "negotiated rulemaking" process. DOE has also refused to produce either the 2011 "draft proposed rule," or cost-benefit information developed for that rule in response to multiple MHARR FOIA requests, asserting that those documents are "pre-decisional" in their entirety and, therefore, exempt from disclosure under FOIA. DOE, moreover, has refused to exercise its discretion to waive that privilege, notwithstanding direct guidance from the Attorney General "strongly encourag[ing] agencies to make discretionary disclosures of [otherwise exempt] information," i.e., to voluntarily waive otherwise applicable FOIA exemptions. See, Department of Justice Guide to the Freedom of Information Act – Discretionary Disclosure and Waiver at p. 685, note 2.

[28] Pursuant to Executive Order 12866, OIRA is responsible for determining which agency regulatory actions are "significant." Significant regulatory actions are defined in the Executive Order as those that, inter alia, "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities...." OIRA would not have reviewed the 2011 DOE "draft proposed" manufactured housing rule, had it not found that rule to be a "significant" rule.

Specifically, a February 17, 2014 email to Roland Risser, Director of the Building Technologies Office (BTO)[29] in DOE's Office of Energy Efficiency and Renewable Energy (EERE) -- the DOE office with responsibility for this rulemaking – from Robin Roy, Director of the Natural Resources Defense Council's (NRDC) Building Energy Efficiency and Clean Energy Strategy Program[30] (and subsequent MHWG member) on behalf of the aforesaid "insiders," demonstrates the coordination between DOE officials and those same "insiders" to use a truncated, tightly-controlled and pre-scripted ASRAC/MHWG process to effectively validate and legitimize the OMB/OIRA-rejected 2011 "draft proposed rule." In relevant part, that previously undisclosed, ex parte email states:

> "Hi Roland,
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> After talking to several interested parties including other efficiency advocates and industry leaders, I find general support and no opposition to using ASRAC to inform the manufactured housing standards process under conditions like these:
>
> - DOE uses the process for effective communication and data gathering, rather than for seeking unanimous consent…;
>
> - DOE commits to a tight schedule (e.g., 2 2-day meetings within 4 months of ASRAC authorization, and perhaps tables the draft NOPR and TSD[31] for initial discussion at the first meeting, possibly with some redaction of elements they consider grossly inadequate or distracting);
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> - Any additional meetings would only be proposed with the approval of ASRAC…."

(Emphasis added).

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[29] See, section II D, infra, at pp. 14-18, detailing BTO's manipulation and abuse of DOE "research" contracts to improperly influence the ASRAC manufactured housing "negotiated rulemaking" process through a financial conflict of interest.

[30] The selection of Robin Roy to coordinate with DOE on behalf of the DOE-favored "insiders" was not coincidental. Robin Roy, at all times relevant to this proceeding, was the husband of Ms. Cathy Zoi (Zoi), the Assistant Secretary for Energy Efficiency and Renewable Energy at DOE until March 10, 2011. See, "Obama Official Leaves Energy Department for Soros-Backed Cleantech Fund," CNBC (February 24, 2011) ("Zoi, who joined the Obama Administration in 2009, became controversial during early 2010, after it was realized she had a financial interest in two companies that were poised to profit from government spending that promoted energy efficiency.") Following completion of the DOE "negotiated rulemaking" process, in January 2015, Mr. Roy -- with no other apparent background related to manufactured housing -- was appointed by HUD to the Manufactured Housing Consensus Committee notwithstanding the mandate of section 604(a)(3)(B)(i) of the 2000 reform law, that MHCC appointees be "qualified by background and experience to participate in the work of the consensus committee." See, 42 U.S.C. 5403(a)(3)(B)(i). Under EISA section 413, DOE is required to "consult" with the Secretary of HUD regarding manufactured housing standards and the Secretary of HUD, in turn, is authorized to "seek further counsel" from the MHCC.

[31] The existence of a Technical Support Document (TSD) for the 2011 DOE "draft proposed rule" is not mentioned in any other document provided to MHARR. The reference to a TSD in this ex parte, "insider" communication is thus a further indication of undisclosed coordination between DOE and the DOE-favored "insider" group.

This exchange demonstrates: (1) communication and coordination between DOE officials and the DOE-favored "insider" group on a non-transparent, ex parte basis; (2) to create the structure for a sham "negotiated rulemaking" through ASRAC; (3) that was designed to be controlled by DOE and those same DOE-favored "insiders;" (4) that was designed to suppress the effective participation of non-"insiders;" (5) within a clearly inadequate time-frame for a fresh start as mandated by OMB/OIRA; (6) using the 2011 DOE "draft proposed rule" (i.e., "NOPR") and undisclosed Technical Support Document (i.e., "TSD") for that 2011 "draft proposed rule" as the undisclosed basis for the activity of the "working group;"[32] (7) subject to undisclosed "redactions" by DOE.

The same type of ex parte coordination between DOE and the DOE-favored "insider" group to establish a severely-truncated MHWG timeframe and schedule clearly inadequate to legitimately achieve the "fresh start" mandated by OMB/OIRA for a "significant" rule, is reflected in a previously undisclosed May 21, 2014 email exchange between Robin Roy and John Cymbalski, the DOE Designated Federal Official (DFO) for ASRAC:

> "[Roy]: Hi John. In your role as ASRAC DFO, can I send you a letter … in support of an ASRAC working group on manufactured housing, with diverse signers from our regular MH discussion group…?
>
> [Cymbalski]: That would be great to have sooner than later.
>
> [Roy]: Super, I've asked my group to sign on by COB Tuesday, so aim to send on Wednesday, May 28 [2014].
>
> [Cymbalski]: How much time do you anticipate asking for in terms of negotiating a NOPR [i.e., Notice of Proposed Rulemaking]?
>
> [Roy]: Short. 2 meetings would be great. But we won't be specific in the letter."

(Emphasis added).[33]

Subsequently, and in accordance with the February 17, 2014 and May 21, 2014 email exchanges above, MHI, NRDC and other interested parties later appointed by DOE as voting members of the "negotiated rulemaking" MHWG, submitted a joint written request to ASRAC on May 28, 2014 for "negotiated rulemaking" on manufactured housing energy standards utilizing a working group under ASRAC-auspices, to be held "to a tight meeting schedule with a minimum number of meetings, e.g., 2 two-day meetings to be concluded by September [2014]" – i.e., within less than two months of the first meeting of the MHWG on August 5, 2014. (Emphasis added).[34]

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[32] Absent full and complete disclosure by DOE – which, as demonstrated infra, did not occur -- only insiders would know if any document or proposal presented to the MHWG was, either in whole or in part, the 2011 DOE "draft proposed rule."

[33] See, Attachment 13, hereto, produced by DOE pursuant to MHARR's May 5, 2015 FOIA request.

[34] See, Attachment 14, hereto, produced by DOE pursuant to MHARR's May 5, 2015 FOIA request. MHI also submitted a separate request to DOE for "negotiated rulemaking" through ASRAC on March 14, 2014. This separate request incorporates the same restrictive elements as the Robin Roy Communication with Roland Risser and the

With this clearly inadequate timeframe and sham structure/process established, DOE proceeded to appoint a "Working Group" dominated by the same DOE-favored insiders that – with the exception of MHARR -- had been recipients of the selectively leaked 2011 "draft proposed rule" and had coordinated internally and with DOE to seek and advance the sham, truncated, "negotiated rulemaking." The MHWG thus included five representatives of energy special interest groups and nine MHI officers, member companies and/or affiliates (including representatives of two of the industry's three largest manufacturers) out of 20 non-DOE/non-ASRAC appointees.[35]

At the initial meeting of the manufactured housing negotiated rulemaking "Working Group" (August 5, 2014), MHARR requested full disclosure of the selectively leaked DOE 2011 "draft proposed" manufactured housing energy standards rule, as well as any factual analyses related to that "draft proposed" rule, to determine whether the MHWG, working under an impossibly constrained timeframe was, in fact, "starting over" as mandated by OMB/OIRA, or was established instead to circumvent that directive and function as a fig leaf to re-process and legitimize the substance of the selectively leaked DOE 2011 "draft proposed rule."[36] Once again, consistent with DOE's overall pattern of obfuscation and non-transparency concerning this rulemaking, that request was denied by DOE as reflected by the meeting transcript:[37]

> "Mr. Weiss [MHARR]: What I'm referring to is … the draft proposed [2011] rule developed by DOE and –
>
> Mr. Cymbalski [DOE]: Yeah, we are not going to hand out anything.
>
> Mr. Weiss [MHARR]: And any – well, let me just finish – any related analysis.
>
> Mr. Cymbalski [DOE]: Right, we're not going to -- we're not – we've moved past that, right, so we're going to have all new data, all new numbers, and we will provide that as a basis to talk about.
>
> ***
>
> Mr. Weiss [MHARR]: Well … [y]ou say its history and that's fine, but I don't know if its history or not, okay, I don't know – I don't know what it was and how it might relate to where we start from here. So I understand you're saying its history but I don't know one way or the other. And I think to have a clear record in this

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subsequent May 28, 2014 joint request letter, including "a tight time schedule with a minimum of meetings." See, Attachment 15, hereto.

[35] See, "Notice of Membership of the Working Group for Manufactured Housing," 79 Federal Register, No. 136 (July 16, 2014) at p. 41457, col. 1. The only "no" vote against the MHWG "Term Sheet" underlying the proposed rule was cast by MHARR's representative.

[36] A copy of the table of contents for the DOE 2011 "draft proposed rule" (see, Attachment 12 hereto, supra), when compared to the table of contents for the June 17, 2016 DOE proposed rule, shows that eight of ten substantive headings (not including enforcement and compliance-related headings in the 2011 "draft proposed rule," insofar as enforcement and compliance matters have been excluded from the June 17, 2016 NOPR by DOE fiat) are either identical or nearly identical. Such direct overlaps include, "climate zones;" "building thermal envelope requirements," "building thermal envelope air leakage," "duct systems," service water heating" and "ventilation," among others.

[37] See, Attachment 16, hereto, MHWG August 5, 2014 meeting partial transcript.

> proceeding, given the fact that DOE spent some time working on this prior to this proceeding and then we're only talking about two months here potentially, I think we need to see where you were before and where we're going in relation to that.

(Emphasis added).

An attorney from DOE's Office of General Counsel (OGC) subsequently made key admissions concerning previously undisclosed information relating to the selective leak of the DOE 2011 "draft proposed rule," OMB/OIRA's "start over" directive, and the subsequent referral of this matter to "negotiated rulemaking:"

> Mr. Jensen [DOE]: [T]his is Mike Jensen from DOE GC [Office of General Counsel]. *** As far as we're concerned, the document that was sent to OIRA in October 2011 is still a pre-decisional document. I understand that it was impermissibly distributed to many people in this [MHWG] room. But as far as we're concerned, that that's history. We're starting – we're hitting the reset button and we're beginning negotiations again today. That information, the proposed rule and the accompanying documents are still pre-decisional at this point, will not be distributed outside of DOE.[38]
>
> ***
>
> Mr. Jensen [DOE]: In October of 2011, DOE transmitted our pre-decisional draft of the rulemaking at that time to the Office of Management and Budget. There's a section in OMB, the Office of Information and Regulatory Affairs, which is OIRA. That document was never intended to be released to the public and was for OMB's review. That document has since been kicked back to DOE to – with the instructions to begin the process anew, so that's why we're here today."

(Emphasis added).

These admissions, and the attachments hereto, establish the following – none of which is reflected in the DOE June 17, 2016 NOPR:

> 1. The unlawful, biased and discriminatory "impermissible distribution" of the 2011 DOE "draft proposed" manufactured housing energy standards rule to selected parties in interest;
>
> 2. DOE's false denial of that "impermissible distribution" and disclosure to select "insiders" in response to MHARR's July 20, 2012 inquiry to DOE and call for an investigation;
>
> 3. DOE's false denial that it possessed documents responsive to MHARR's October 22, 2013 FOIA request;

[38] DOE, accordingly, has refused to release publicly – or to parties with a specific interest in the credibility and legitimacy this matter, such as MHARR – a critical document that was selectively and by DOE's own admission, "impermissibly" disclosed previously to DOE-favored "insiders."

4. DOE's deceitful failure to admit or acknowledge the "impermissible distribution" of the draft rule to selected parties in interest, including MHWG member organizations, until after ASRAC authorization of negotiated rulemaking and creation of the Working Group;

5. Undisclosed, non-transparent ex parte DOE contacts with select recipients of the "impermissibly distributed" 2011 DOE "draft proposed rule" regarding negotiated rulemaking and the parameters of negotiated rulemaking regarding a manufactured housing energy standards rule;

6. Failure to specifically identify recipients of the 2011 DOE "draft proposed rule;"

7. Failure to disclose any information, materials, comments or input (either written or verbal) received by DOE from these unidentified recipients of the DOE 2011 "draft proposed rule;"

6. Failure to disclose until after ASRAC authorization of negotiated rulemaking and creation of the MHWG, that the May 28, 2014 communication which triggered ASRAC consideration and approval of negotiated rulemaking and creation of the Working Group – and related communications -- was submitted either wholly or in substantial part by select recipients of the "impermissibly distributed" 2011 DOE "draft proposed rule;"

7. Failure to disclose in advance the appointment of recipients (or parties affiliated with recipients) of the "impermissibly distributed" 2011 DOE draft rule as voting members of the MHWG;

8. Failure to disclose OMB/OIRA's rejection of the DOE draft rule and directive to DOE to "begin the [rulemaking] process anew" until after ASRAC authorization of negotiated rulemaking and formation of the MHWG under a two-month deadline;

9. Failure to disclose the specific basis for OMB/OIRA's rejection of the draft rule and directive to start over;

10. DOE's continuing failure to disclose the DOE 2011 "draft proposed rule" itself and related cost information; and

11. DOE's failure to disclose or explain how a negotiated rulemaking process with "2" meetings -- as coordinated by DOE and parties in interest in undisclosed, ex parte communications -- could be consistent with OMB/OIRA's "start over" directive regarding a rule that had been under development at DOE for seven years --

--among other things.

Indeed, despite repeated FOIA requests by MHARR, DOE has failed to disclose the specific content of multiple ex parte communications that it clearly had with MHI and other select

recipients of the "impermissibly disclosed" 2011 DOE "draft proposed rule" regarding the substance of that proposal, or any input or information that it received from or on behalf of those same parties regarding the draft proposed rule. Thus, while the underlying selective leak of the 2011 DOE "draft proposed rule" has been documented and confirmed, together with the coordinated and contrived nature of the referral of this matter to a sham "negotiated rulemaking" process dominated by the same DOE-favored "insiders" in order to circumvent OMB/OIRA's "start over" directive and railroad a manufactured housing standard through a DOE "appliance" standards committee, DOE has never disclosed – and continues to cover-up: (1) when the "proposed draft rule" was selectively leaked to MHI and other parties in interest; (2) if the 2011 "proposed draft rule" was developed in the first instance based on undisclosed input from selective leak recipients; (3) whether the 2011 "proposed draft rule" was revised after DOE receipt of undisclosed input from selective leak recipients – and, if so, how; (4) what the substance of that input was; (5) the specific provisions and text of the 2011 "draft proposed rule;" and (6) how those provisions (and the TSD and cost-benefit analysis for that "draft proposed rule") relate to or correspond with the June 17, 2016 DOE proposed rule.

In each such instance – and cumulatively – DOE's failure to disclose relevant facts concerning this proceeding, ultimately leading to the June 17, 2016 DOE proposed rule, has materially prejudiced the rights of MHARR, its members, other manufactured housing industry members and consumers, and other actual and potential opponents of DOE manufactured housing energy regulation, to object and seek judicial relief regarding a contrived, manipulated and scandalous standards development process. At the same time, ex parte contacts, communications and coordination between DOE, MHI and other select DOE-favored "insiders" – including the manufactured housing industry's largest corporate conglomerates – have given those parties an improper advantage, undue influence, and an "inside track" regarding the development of the June 17, 2016 proposed rule. This fundamentally tainted process – cited, in part, by MHARR's MHWG representative in casting the lone "no" vote against the MHWG Term Sheet -- necessarily invalidates this proceeding.

D. MHWG Financial Conflicts of Interest – DOE Contract Manipulation

In conjunction with DOE's referral of this matter to a contrived, sham "negotiated rulemaking" process – with an ongoing DOE cover-up of the selectively leaked 2011 rule and related cost-benefit analysis – DOE also coordinated, via supposed "research" contracts with MHI-affiliated and/or linked organizations, to covertly influence the MHWG "negotiated rulemaking" process. These contracts, which were never disclosed by DOE to non-"insider" MHWG participants or other stakeholders in the DOE manufactured housing energy rulemaking, have produced a financial conflict of interest that fatally infects the entire "negotiated rulemaking" process and, as a result, all aspects of this rulemaking.

The June 17, 2016 NOPR expressly states that the DOE proposed rule is "based on the negotiated consensus recommendations of the [MHWG]."[39]Those recommendations, however, and the MHWG "Term Sheet" that became the basis for the June 17, 2016 proposed rule, resulted from specific technical and "cost" inputs provided by the Systems Building Research Alliance

[39] See, 81 Federal Register, No. 117 at p. 39756, col. 1.

(SBRA) – an MHI "research" affiliate and MHWG member. SBRA, however, at all times relevant to this rulemaking, shared an interlocking employee/corporate officer structure with "The Levy Partnership" (TLP), a paid DOE subcontractor[40]and grant beneficiary.[41]

As an initial matter, the cost data underlying the MHWG "Term Sheet" and the June 17, 2016 proposed rule – provided to the MHWG by SBRA and MHI during the supposed "negotiated rulemaking" process, has been – and remains, an entirely non-transparent critical data input in this rulemaking. Specifically, the source(s) of the cost data offered by SBRA and MHI – involving alleged costs to manufacturers to implement energy efficiency measures mandated by the MHWG Term Sheet recommendations – has never been disclosed. Disclosure of the source(s) of that "data," as requested by MHARR during the MHWG process, was refused and has never been provided to date – either directly by SBRA/MHI or by DOE. This critical non-transparent data input raises two related issues.

First, given the direct and ongoing financial conflict of interest between DOE and TLP/SBRA, the credibility of any such data – at a minimum – is open to question. Second, even if that data exists and has not been altered or modified in some manner, it has never been tested or verified by any other interested or independent party, or – based on the June 17, 2016 NOPR -- by DOE, to determine its accuracy, veracity, and/or relevance, i.e., whether it reflects representative costs for all manufacturers, regardless of size and production, or whether it represents primarily – or only – costs relevant to larger manufacturers (represented by MHI) which pay lower supply costs based on volume discounts and superior bargaining strength within the supply market. Indeed, significantly higher cost impacts as calculated by MHARR,[42] would indicate that those alleged costs are, at best, materially skewed and cannot provide a reliable, legitimate and lawful basis for any of DOE's cost calculations that are necessary to fully comply with EISA section 413[43] and the APA. But full and complete disclosure regarding those key information inputs has never been provided by either DOE, MHI, or SBRA, and is not contained in the June 17, 2016 NOPR.

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[40] The Levy Partnership, Inc. is a California corporation, established in 1983. The Executive Director of SBRA is simultaneously publicly identified as President of TLP. Similarly, the publicly-identified Vice President of TLP is simultaneously identified as a "Senior Project Coordinator" for SBRA. (See, Attachment 17, hereto). MHARR research has disclosed at least three DOE-TLP subcontracts funneled through DOE's National Renewable Energy Laboratory (NREL), designated KNDJ-0-40347-00, KNDJ-0-40347-03 and KNDJ-0-40347-05. See also, note 45, infra.

[41] In addition to the contracts/subcontracts cited herein, TLP was also awarded part of a $4 million DOE grant announced on May 5, 2015 to "develop and demonstrate new energy efficient solutions for the nation's homes." See, DOE News Release, "Energy Department Invests $4 million to Strengthen Building America Industry Partnerships for High Performance Housing Innovation (May 5, 2015). Consequently, after coordinating with DOE to develop and advance extreme, high-cost energy mandates on the manufactured housing industry, SBRA's alter ego, TLP (with overlapping employees and corporate officials), was rewarded by DOE with a "research" grant to develop the systems and methodologies to comply with those (and similar) mandates. (MHARR also notes with interest that a portion of the same grant was awarded to Home Innovation Research Labs, Inc. (HIRL), the supposedly "independent" Administering Organization (AO) of the HUD Manufactured Housing Consensus Committee (MHCC)).

[42] See, Attachment 18, hereto, an MHARR calculation of basic retail-level manufactured housing price increases attributable to specific elements of the June 17, 2016 DOE proposed rule, showing a cost increase of $5,825.17 for a multi-section manufactured home and $4,601.94 for a single-section home.

[43] See, note 10, supra.

More importantly, a 2015 document issued through DOE's Office of Energy Efficiency and Renewable Energy (EERE) provides direct evidence of DOE's manipulation of supposed energy "research" awards, grants, contracts and other taxpayer-funded activities to "drive the adoption" of its extreme, unnecessary and ruinously costly proposed manufactured housing standards, and simultaneously undermine industry opposition to any such standards. That document, entitled "High Performance Factory Built Housing – 2015 Building Technologies Office Peer Review,"[44] details a complex DOE strategy to use paid manufactured housing energy "research" activities as a pretext to simultaneously drive and support the adoption of baseless, high-cost DOE manufactured housing energy standards through a process of "integration and collaboration" with the industry's largest businesses and MHI.[45]

Detailing just one DOE "research" contract (or subcontract) with The Levy Partnership, awarded since 2010,[46] the 2015 report documents nearly $2 million in actual and projected funds paid by DOE to TLP, to conduct manufactured housing energy "research" on behalf of EERE's Building Technologies Office (BTO)[47] and to "partner" with "progressive" manufactured housing "plants," "responsible for 80%+ of all new" manufactured homes – i.e., large manufacturers -- in order to:

- "Develop and implement [new DOE energy] codes and standards;"[48]
- "Participate in the ongoing [DOE] MH standards development process – informed by [contract] R&D work."[49]

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[44] See, Attachment 19, hereto. The author of this report, detailing DOE misuse of paid contracts to influence the ASRAC manufactured housing "negotiated rulemaking," acted simultaneously as Vice President of TLP and "Senior Project Coordinator" for SBRA.

[45] "Project Integration and Collaboration," as detailed in the 2015 report, including a targeted communications strategy within the manufactured housing industry that specifically identified "MHI Meetings," the MHI "Congress and Expo" and the MHI "MH NewsWire" publication as venues and devices for promoting DOE manufactured housing regulation. In apparent execution of this DOE-funded strategy, a presentation at the April 2015 MHI Congress and Expo by – among others – the TLP President/SBRA Executive Director and Robin Roy (NRDC) – touted the supposed benefits of MHWG-based DOE energy regulation for manufactured homes, while simultaneously promoting compliance technologies and methodologies developed by TLP/SBRA and its large manufacturer "partners" under DOE contracts/subcontracts. See, Attachment 20, hereto. Indeed, as recently as a July 27, 2016 email from MHI's Vice President for Regulatory Affairs to manufactured housing industry state association executives and others, MHI once again confirmed the existence and impact of the financial conflict of interest between DOE and TLP/SBRA stating: "MHI has been working with SBRA on a number of cost effective building methods to address the anticipated new standards, including new roof truss designs and building envelope techniques." See, Attachment 21, hereto. The email fails to mention or disclose that these methods and techniques to "address the anticipated new [DOE] standards," were developed by TLP/SBRA under DOE subcontracts, including DOE/NREL subcontract no. KNDJ-0-40347-05 "Field Evaluation of Four Novel Roof Designs for Energy Efficient Manufactured Homes" (December 15, 2015); DOE/NREL subcontract no. KNDJ-0-40347-00 "Expert Meeting Report: Advanced Envelope Research for Factory Built Housing" (April 2012); and DOE/NREL subcontract no. KNDJ-0-40347-04 "Advanced Envelope Research for Factory Built Housing Phase 3 – Whole House Prototyping" (April 2014).

[46] Coincidentally, 2010 is the same year that the manufactured housing energy rule ANPR was published by DOE.

[47] See, notes 29 and 30 and related text regarding "insider" coordination with Roland Risser, Director of BTO, to establish the sham MHWG "negotiated rulemaking" process.

[48] See, Attachment 19, hereto at p.3.

[49] Id.

- "Dovetail with the [DOE manufactured housing] code update process – hand-in-glove;"[50]
- "Drive the adoption" of new DOE energy standards, while "SBRA helps facilitate [their] adoption;"[51] and
- "Shift" an "industry mindset focused on 1st cost" (i.e., purchase price of a home to the consumer) -- seen by DOE as a "barrier" to its regulatory objectives -- to a focus on "total ownership costs,"[52] in order to achieve "market transformation."[53]

Based on these BTO "objectives," the 2015 report states that paid activity by TLP/SBRA under the contract had already "impacted the ASRAC process" for new manufactured housing energy standards -- referring directly to the sham MHWG "negotiated rulemaking" leading to the June 17, 2016 DOE proposed rule.[54]

Among the various TLP/SBRA contract "partners" in promoting DOE manufactured housing regulation -- listed in the 2015 EERE/BTO report -- are SBRA itself and four members of the SBRA Board of Directors, representing the industry's largest manufacturers.[55] SBRA's Board, in turn, includes six members of the DOE "negotiated rulemaking" MHWG, all of whom voted to support the excessive, unnecessary and unduly costly standards set forth in the June 17, 2016 DOE proposed rule.

The inherent and material financial conflict of interest created by SBRA and multiple SBRA Board members serving as voting MHWG members, as part of a supposedly arms-length "negotiated rulemaking," at the same time that TLP -- with an interlocking personnel relationship with SBRA -- was a paid DOE subcontractor tasked with: (1) supporting, advancing and promoting DOE manufactured housing energy regulation and regulatory objectives; while (2) conducting research to develop ostensible means and measures to comply with those standards (among other things), again, fundamentally and irretrievably taints this entire rulemaking and violates section 563(a)(3)(B) of the Negotiated Rulemaking Act, requiring the appointment of committee members "willing to negotiate in good faith." Further, DOE's failure to fully disclose this ongoing contractual relationship with TLP/SBRA -- with TLP/SBRA effectively functioning as DOE's paid agent (in cooperation with MHI and the industry's largest manufacturers) to improperly influence an MHWG "negotiated rulemaking" already dominated by DOE-favored "insiders" -- has materially prejudiced the rights of MHARR, its members, other manufactured housing industry members and consumers, and other actual and potential opponents of DOE manufactured housing energy regulation, to object to and seek judicial relief from a contrived, manipulated and corrupted standards development process at a meaningful stage of this proceeding.

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[50] Id. at p. 13.
[51] Id. at p. 7
[52] Id. at p. 4.
[53] Id. at p. 10.
[54] Id. at p. 26. All of this, moreover, is consistent with TLP's self-described role as "providing services to public agencies interested in developing" – i.e., mandating – "new technologies for housing and accelerating their adoption by industry." See, Attachment 17, supra, at p. 1. (Emphasis added).
[55] See, Attachment 22, hereto, from the SBRA internet website, listing members of SBRA's Board of Directors.

E. Sham "Consultation" with HUD and the MHCC

Congress, being aware: (1) that EISA section 413 fundamentally conflicts with the purposes, objectives and specific terms of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000; (2) that HUD (and the MHCC), under those laws is required, among other things, to "protect ... the affordability of manufactured homes" and "facilitate the availability of affordable manufactured homes and ... increase homeownership for all Americans; and (3) that the MHCC represents a legitimate, statutorily-balanced consensus forum for the consideration and recommendation of manufactured housing standards and regulations (among other functions) -- specifically provided in section 413(a)(2)(B) that DOE manufactured housing energy standards could be established only "after consultation with the Secretary of Housing and Urban Development," who, in turn, was authorized to "seek further counsel from the Manufactured Housing Consensus Committee." (Emphasis added). By the plain wording of this subsection, and for this consultation directive to have any meaning or positive effect, the required consultation would have had to occur during the formulation of the DOE standards – when it could have some conceivable impact – and not after the development and publication of a proposed rule, near the end of the rulemaking process, when it would be a meaningless afterthought.[56] Indeed, to construe section 413(a)(3)(B) to provide for or permit the required "consultation" after the issuance of the NOPR for this rule -- during and as part of the public comment period, when any member of the public can review and comment of the already-developed proposed rule – would effectively render that section meaningless, contrary to the established cannons of statutory construction.

While DOE claims in its June 17, 2016 NOPR that it "has consulted with HUD,"[57] it has never disclosed either the content of those alleged "consultations," the parties to the alleged "consultations," or when in the rulemaking process those alleged "consultations" occurred. Meanwhile, at the August 2015 and January 2016 MHCC meetings, the HUD manufactured housing program Administrator refused to disclose any information or documents regarding the occurrence, timing or content of any such "consultations." Accordingly, there is no independent evidence or verification of any such consultations with HUD, their substance, or whether they occurred at a meaningful stage in the development of the June 17, 2016 proposed rule, despite the fact that under EISA section 413, DOE bears the burden of establishing that the required consultations occurred as mandated by Congress. Furthermore, even if – and to the extent that – documents reflecting any such alleged "consultations" might nominally exempt from public disclosure, any such exemption could be waived by DOE and/or HUD, but has not.[58]

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[56] See, e.g., Rural Cellular Association v. Federal Communications Commission, 588 F.3d 1095, 1101 (D.C. Cir. 2009) (opportunity for comment must be a meaningful opportunity). See also, C. Coglianese, "Transparency and Public Participation in the Rulemaking Process," University of Pennsylvania School of Law (July 2008) at p. 6: "By the time that the Notice of Proposed Rulemaking (NPRM) is published and the comment period begins, the agency is highly unlikely to alter its policy significantly. Many internal deliberations and policy discussions occur before an agency issues its NPRM.... If public participation does not affect an agency's actual decision making process because it occurs after rules are already formulated, it is hard to see how it can significantly enhance either the quality or legitimacy of rulemaking." (Emphasis added).

[57] See, 81 Federal Register, No. 117, supra at pp. 39762-39763.

[58] See, note 27, supra.

DOE similarly maintains in its June 17, 2016 NOPR that it "attended three MHCC meetings where [it] gathered information from MHCC members." (Emphasis added). MHARR, however, having attended every MHCC meeting since its inception, is aware only of one-sided, summary DOE presentations to the MHCC regarding the manufactured housing rule that DOE has had under development for nine years, and no occasion, whatsoever, where the MHCC, having been provided information on the development and substance of a DOE manufactured housing – in advance – had an opportunity to provide either DOE or HUD with substantive consensus input regarding any aspect of the proposed rule that DOE has now committed-to and published.[59]

Indeed, rather than providing the MHCC with an opportunity to offer independent input on its unduly costly, extreme and unnecessary manufactured housing energy standards at a meaningful point, based on a statutorily-balanced membership and legitimate consensus of manufactured housing program stakeholders, DOE (facilitated by HUD) instead – and as explained above -- chose to "rig" this rulemaking, railroading it through a sham "negotiated rulemaking" conducted through an MHWG dominated and controlled by DOE and its supporters. DOE now touts this phony process and its outcome as a "consensus" result, while it has acted consistently – with the cooperation and assistance of HUD and the HUD manufactured housing program Administrator – to prevent any legitimate consensus consideration and input from the MHCC at a point when it would have mattered.

Indeed, HUD, apparently recognizing its failure to comply with the EISA section 413, on July 25, 2016 – more than four weeks after publication of the June 17, 2016 DOE proposed rule -- published notice in the Federal Register of an August 9, 2016 MHCC telephone conference meeting to "review" a "summary" of the DOE proposed rule and, according to the meeting agenda, consider "Committee recommendations on [the] proposed rule."[60]

Published at the very last minute – in fact, arguably after the last minute allowed by applicable Federal Advisory Committee Act (FACA) regulations requiring published notice "at least 15 calendar days prior to an advisory committee meeting" (emphasis added)[61] -- and scheduled for just days prior to the August 16, 2016 DOE comment deadline, this HUD action appears to be little more than window dressing to whitewash yet another violation of applicable law in a rulemaking process that has been "rigged" from the start. The MHCC, provided an impossibly brief and truncated timeframe to digest a complex, OMB/OIRA-designated "significant rule" (much like the MHWG), will apparently be asked if it wishes to provide comments to DOE that would need to be drafted and approved within less than one week, in order to be submitted prior to the August 16, 2016 public comment deadline. This not only violates the implicit command of section 413 that "consultation" occur at a meaningful time, but is a direct and flagrant insult to the MHCC (and the stakeholders that it represents), offering the Committee a nominal opportunity to "review" a rule that DOE – and HUD – have already committed-to, while

[59] To the extent, however, that DOE may have solicited or obtained otherwise undisclosed "information," input or comments from any individual MHCC member(s) regarding its manufactured housing energy rule, any such interaction, outside of the MHCC consensus procedures established by the Committee and HUD pursuant to the Manufactured Housing Improvement Act of 2000, would be invalid, illegitimate and not a lawful action of the MHCC.

[60] See, 81 Federal Register, No. 142 at pp.48442-48443.

[61] The scheduled MHCC meeting date falls on the 15th calendar day after the July 25, 2016 meeting notice publication date. The notice, accordingly, does not provide "at least 15" calendar days' notice "prior" to the meeting, as required.

effectively negating any real impact from that review. Again, though, this cynical manipulation of the rulemaking process is entirely consistent with DOE's pervasive pattern of obfuscation and deception concerning this rulemaking.

F. Procedural Summary

As the foregoing recitation of relevant facts selectively omitted from the DOE June 17, 2016 NOPR demonstrates, the DOE proposed rule -- separate and apart from its fatal substantive defects detailed below – is the product of a fundamentally tainted process that was fatally flawed from its earliest phase and has remained fatally flawed throughout, including, but not limited to:

- The selective, "impermissible" leak of the 2011 DOE "draft proposed" manufactured housing energy rule (DPR) to parties in interest, including the industry's largest manufacturers;
- Failure to disclose the existence or substance of ex parte input from recipients of the selectively leaked 2011 DOE draft proposed rule in either the development and/or modification of the 2011 DOE DPR or the DOE 2016 proposed rule;
- Development of the 2011 DPR without necessary and essential information, leading to the 2013 RFI, surreptitiously seeking such information after-the-fact without disclosing the previous development and existence of the 2011 DOE DPR or its rejection by OMB/OIRA;
- False denial of the selective leak of the 2011 DOE-DPR;
- Refusal to conduct an investigation or otherwise provide relevant details concerning the 2011 DOE-DPR selective leak;
- Failure to disclose responsive documents addressing these matters pursuant to MHARR FOIA requests;
- Failure to disclose the OMB/OIRA start-over directive;
- Failure to disclose ex parte coordination with selective leak recipients regarding the referral of manufactured home energy standards to "negotiated rulemaking;"
- Failure to disclose ex parte coordination with selective leak recipients to establish the parameters of that "negotiated rulemaking;"
- Ex parte coordination with selective leak recipients to establish an inadequate and unnecessarily truncated time-frame, schedule and deadline for the completion of that "negotiated rulemaking;"
- Ex parte coordination with selective leak recipients to establish a "negotiated rulemaking" MHWG dominated and controlled by "insider" selective leak recipients;
- Non-transparent and unverified data inputs to the MHWG on crucial rulemaking issues, including cost-benefit;
- Undisclosed MHWG conflicts of interest precluding "good faith" negotiation as required by applicable law;
- DOE manipulation of alleged "research" contracts to steer funds to one or more "insiders" (and MHWG members) to influence the "negotiated rulemaking" process;
- Refusal to disclose the 2011 DOE DPR for comparison to the 2016 DOE proposed rule;

- Refusal to disclose the 2011 DOE "draft" NOPR, TSD and cost-benefit analysis for comparison to the corresponding 2016 DOE rulemaking documents;
- Failure to provide evidence of "consultation" with HUD as required by EISA section 413, the time of that consultation (if any), the substance of any input received from HUD (if any), and any changes made to the June 17, 2016 proposed rule or NOPR as a result; and
- Failure to consult with the MHCC in a timely and legitimate manner as provided by EISA section 413.

In its entirety, this sham process has seriously prejudiced both the procedural and substantive rights of MHARR, its members and other affected stakeholders that were not party to – or part of – a consistent pattern of coordinated activity to benefit certain favored "insiders" at the expense of consumers, smaller industry businesses and other non-"insider" stakeholders. Those specific actions by DOE (and HUD) produced a phony "negotiated rulemaking" process, a phony MHWG, a phony alleged MHWG "consensus" and, ultimately, an illegitimate MHWG Term Sheet and illegitimate proposed rule. For these reasons alone, the DOE proposed rule should either be withdrawn, or – if implemented by DOE as a final rule – vacated upon judicial review. As is demonstrated below, however, the June 17, 2016 DOE proposed rule – beyond this fundamentally corrupted procedure -- is unsupported by factual cost-benefit data as required by EISA section 413 and is otherwise an agency action that is "arbitrary, capricious, or an abuse of discretion" in violation of the Administrative Procedure Act.

III. COMMENTS

The manufactured housing energy standards proposed by DOE in this rulemaking are an appalling and indefensible exercise in federal government overreach and destructive, excessively costly regulatory intervention in the free market to the ultimate and profound detriment of the very consumers that the government -- and particularly the current Administration -- putatively seek to "protect." Even though manufactured homes – after reaching historic-low production levels in 2009 – represent only 7.4% of all housing placements[62] and only 5.9% of all occupied housing units,[63] DOE seeks to impose harsh, needless, discriminatory, excessive and unreasonably costly standards on the nation's most affordable housing and the mostly lower and moderate-income Americans who rely on that affordability to be homeowners instead of renters, government subsidized renters, or homeless altogether. These standards, if adopted, would far exceed in cost and substantive mandates, any requirements currently imposed on the more than 90% of other types of homes in the housing market, including even multi-million dollar site-built homes with far more affluent owners.[64] Instead of allowing consumers to exercise free-choice within a free-market, where HUD Code manufacturers already offer consumers an energy-efficient home and a wide range of enhanced energy features as purchase options, the proposed DOE rule would instead

[62] See, "Manufactured Homes: A Shrinking Source of Low Cost Housing," Fannie Mae Economic and Strategic Research (June 27, 2013). Reflecting 2012 data, down from 20.2% in 1998.

[63] Id. Reflecting 2011 data, down from 7.0% in 2000.

[64] As of May 2016, the International Code Council (ICC) reported that only six states had adopted the 2015 IECC – the basis for DOE's June 17, 2016 proposed standard. See, Attachment 23 hereto, "International Codes-Adoption by State," International Code Council (ICC) (May 2016).

force consumers to pay for energy features that they cannot afford or would not otherwise want through a one-size-fits-all big government mandate. To impose what is – at best – a regressive, de facto tax on American families already struggling to be and become homeowners, while excluding millions of others from the benefits of homeownership entirely, in order to advance an unrelated, controversial and unproven agenda, constitutes an abuse of power and an abuse of the public trust.

A. HUD-Regulated Manufactured Homes are Already Energy-Efficient In a Manner Consistent with Law and Genuine Affordability

While totally ignored amidst the nearly-impenetrable jargon and disputed junk science that are the hallmark of DOE's June 17, 2016 NOPR, the fact is that HUD-regulated manufactured homes, as a result of the national housing policies and regulatory system established by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, are already energy efficient -- in a manner consistent with the over-riding purposes and objectives of those laws.

Unlike the "consumer products" (e.g., home appliances) that DOE regulates under the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291, et seq.),[65] manufactured housing – as a product and as an industry -- is unique, as recognized by Congress and as enshrined in federal law long before the adoption of EISA in 2007. As the nation's most affordable source of non-subsidized housing and homeownership -- as determined by HUD[66] and established by U.S. Census Bureau data[67]-- manufactured homes play a vital role in the American housing market and in American society, providing homeownership opportunities (and all of the attendant benefits of homeownership) for Americans, and particularly lower and moderate-income American families, that might not otherwise be able to afford a home of their own.

As a result, Congress made the continuing (purchase price) affordability of HUD-regulated manufactured homes a central objective of the National Manufactured Housing Construction and Safety Standards Act of 1974. Indeed, the purchase price affordability of manufactured homes is crucial to ensuring that the largest number of Americans possible – at every rung of the economic ladder -- can access and enjoy home ownership and all of its benefits. Congress, moreover, reaffirmed and expanded the law's emphasis on affordability when it amended the 1974 Act with the Manufactured Housing Improvement Act of 2000. The law as amended, therefore, addresses the need to preserve the inherent (purchase price) affordability of manufactured homes in at least four of its eight express "purposes," i.e.: "(1) to protect the quality, durability, safety and

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[65] See, e.g., DOE proposed rules for "residential conventional ovens," published at 80 Federal Register, No. 111 (June 10, 2015) at p. 33030, et seq.

[66] See, U.S. Department of Housing and Urban Development, "Is Manufactured Housing a Good Alternative for Low-Income Families? Evidence from the American Housing Survey" (December 2004). This HUD-sponsored study determined that, over an eight-year sample period, the mean monthly housing cost of consumer-owned manufactured homes was consistently and substantially less than the cost of ownership for other types of homes or even the cost of renting a home.

[67] See, U.S. Census Bureau, "Cost and Size Comparison: New Manufactured Homes and Single-Family Site Built Homes (2007-2014)," showing an average structural price of $65,300 ($45.41 per square foot) for HUD-regulated manufactured homes as compared with an average structural cost (i.e., excluding land) of $261,172 ($97.10 per square foot) for a site-built home.

affordability of manufactured homes; (2) to facilitate the availability of affordable manufactured homes and to increase homeownership for all Americans; *** (4) to encourage innovative and cost-effective construction techniques for manufactured homes; *** and (8) to ensure that the public interest in, and need for, affordable manufactured housing is duly considered in all determinations relating to the federal standards and their enforcement." (See, 42 U.S.C. 5401(b)). In addition, the Act requires that HUD (and the MHCC) "in establishing standards or regulations, or issuing interpretations" under the Act, "consider the probable effect of [that] standard on the cost of the manufactured home to the public...." (See, 42 U.S.C. 5403(e)(4)).

Thanks to this specific national housing policy that recognizes and seeks to preserve the purchase-price affordability of HUD Code manufactured homes, manufactured homes in 2011, according to U.S. Census Bureau data, accounted for 71% of all new homes sold for under $125,000, 50% of all new homes sold for under $150,000 and 30% of all new homes sold for under $200,000.

Manufactured homes, moreover, were already subject to HUD Code energy efficiency standards when EISA was enacted. Under those standards[68]developed and promulgated in accordance with the strict balance of consumer protection and purchase-price affordability mandated by the 1974 Act as amended, HUD Code homes were – and are[69] – required to meet criteria governing condensation control, air infiltration, thermal insulation, heat loss and heat gain and related certifications for heating and "comfort cooling." The HUD standards -- in accordance with the fundamental policy of the 1974 Act, as amended, to "establish," to "the maximum extent possible ... performance requirements,"[70]is designed to achieve certain specified Uo (coefficient of heat transmission) values within three defined geographical zones across the United States.

As a consequence of those pre-existing HUD energy standards, manufactured homes, as established by U.S. Census Bureau data, are already energy efficient, without regressive, high-cost DOE "energy" mandates. Specifically, data from the 2013 American Housing Survey shows that the median monthly housing cost for fuel oil was $92.00 for manufactured homes as compared to $267.00 for other types of housing. The median monthly cost for piped natural gas was $34.00 for manufactured homes as compared to $38.00 for other types of housing, and the median monthly cost for electricity was only slightly higher for manufactured homes (at $119.00) than other types of homes (at $105.00)[71] -- a difference of only $168.00 per year.

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[68] See, 24 C.F.R. 3280.501, et seq.

[69] Nothing in EISA section 413, or in EISA generally, would automatically invalidate or negate the existing HUD energy conservation standards upon the promulgation of any final DOE energy rule. Indeed, EISA section 3, "Relationship to Other Law," states: "Except to the extent expressly provided in this Act or an amendment made by this Act, nothing in this Act supersedes, limits the authority provided or responsibility conferred by, or authorizes any violation of any provision of law (including a regulation)...." (Emphasis added). Accordingly, as DOE concedes, any conflict between existing HUD energy standards and any final DOE standard would leave producers subject to potential enforcement activity by HUD, DOE, or both.

[70] See, 24 C.F.R. 3280.1 – "This standard seeks to the maximum extent possible to establish performance requirements." It is this performance-based nature of the HUD standards, together with their uniform application and enforcement, and effective federal preemption that ensure the fundamental (and unequalled) affordability of HUD Code manufactured homes.

[71] See, Attachment 24 hereto, U.S. Census Bureau, 2013 American Housing Survey, Table C-10AO (National), Housing Costs – All Occupied Units, at p.2.

Because of its broader, inherent and more consistent affordability, however, over a complete range of operating metrics, this minor additional energy cost for electricity is more than subsumed within the expansive operating efficiencies of HUD Code manufactured homes. Thus, U.S. Census Bureau data shows that the median total monthly operating cost for a current-day HUD Code manufactured home is $501.00 per month, as contrasted with $1,322.00 for other new residential structures -- a 164% cost advantage for manufactured home owners under the current HUD standards.[72] Moreover, manufactured housing producers already provide a wide range of enhanced energy packages (including EnergyStar packages), tailored to the specific needs and wants of consumers, on an optional basis. Thus, manufactured homebuyers currently have the freedom to choose whatever type of energy package they wish to purchase and have the financial ability to purchase, while those who wish to spend their money in other ways – or not at all – are free to do so. All this would change, however, under the regressive DOE standards, which would force those remaining in the market to spend money for energy features – without proven returns[73] -- that they otherwise would not purchase.

These indisputable facts, in conjunction with established law, have three major inter-related consequences for this rulemaking.[74] First, the cost-benefit language of EISA section 413, requiring that DOE manufactured housing standards be based on the most recent version of the International Energy Conservation Code, "except in cases in which the Secretary finds that the code (sic) is not cost-effective" (emphasis added), must be construed and applied consistently with the purposes, objectives and mandates of existing law – in this case, the 1974 Act as amended by the 2000 reform law.[75] Therefore, the "cost-effective" proviso of EISA section 413 must be construed and applied -- consistently with the 1974 Act, as amended -- to ensure that non-life-safety energy standards do not result in purchase price increases to manufactured homes that would significantly impair their affordability, availability and accessibility to all Americans, or otherwise decrease homeownership. (See, 42 U.S.C. 5401).

Second – and consistent with Black Letter cannons of statutory construction requiring that statutes be construed consistently to give meaning to all of their provisions -- the cost-benefit analysis required by EISA section 413 is an integral, substantive element of that law. Consequently, a valid, credible and legitimate cost-benefit analysis is a necessary predicate to the proposal and adoption of any standard under EISA section 413. Third – and consistent with all of the foregoing – that cost benefit analysis must definitively establish that the proposed standards do not violate section 413 (construed in accordance with the 1974 Act, as amended), by significantly impairing the purchase price affordability, availability and accessibility of manufactured homes "for all Americans." (See, 42 U.S.C. 5401(b)(2)).

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[72] Id. at p. 1.

[73] See, Section III C, pp. 26-33, infra, regarding DOE's wholly-deficient cost-benefit "analysis."

[74] This data demonstrates, moreover, that EISA section 413 proceeds from a fundamentally false premise and assumption, rooted in decades of official federal government discrimination against HUD-regulated manufactured housing – i.e., that manufactured homes are somehow "deficient" and in need of "improvement." Indeed, the "improvement" of manufactured housing was an initial statutory objective and purpose of the original 1974 federal manufactured housing Act, but was repealed by Congress through the 2000 reform law, in recognition of the equality of HUD-regulated manufactured with all other types of housing for all purposes.

[75] See e.g., "Statutory Interpretation, General Principles and Recent Trends," Congressional Research Service, (December 19, 2011) at p. 29. A court "must read two statutes to give effect to each if it can do so." Citing Watt v. Alaska, 451 U.S. 259 (1981).

As is demonstrated below, however, the cost-benefit analysis offered by DOE in its June 17, 2016 NOPR and related "Technical Support Document" (TSD), is wholly and fatally deficient, and cannot – and does not – support the adoption of the proposed June 17, 2016 DOE standards or their compliance with the "cost-effective" directive of EISA section 413. Insofar as DOE has the "affirmative burden of promulgating and explaining a non-arbitrary, non-capricious rule," see, e.g., Small Refiner Lead Phase-Down Task Force v. U.S. Environmental Protection Agency, 705 F.2d 506, 534-535 (D.C. Cir. 1983), its failure to properly consider all applicable and relevant aspects of the cost-benefit impact of the June 17, 2016 proposed rule necessarily means that the proposed rule fails to meet the applicable legal standards and cannot go forward.

B. The Proposed Standards will Exclude Millions of Americans From Manufactured Housing and Home Ownership Entirely

DOE maintains in the June 17, 2016 NOPR that its proposed standards would add up to $2,422 to the retail price of a single-section manufactured home (with a national average of $2,226) and up to $3,748 to the cost of a new multi-section manufactured home (with a national average of $3,109) – for non-"life-safety" energy measures that are already available to homebuyers who want them as optional features.[76] These figures – as acknowledged by DOE[77] -- are based upon the non-transparent purchase price impact information provided to the "negotiated rulemaking" MHWG by SBRA and MHI.

Even if it were assumed that these amounts reflected the full and true final cost of the DOE proposed rule to consumers – which they do not -- they would have a disastrous impact on the affordability, availability and accessibility of manufactured housing for American families already facing unprecedented difficulty in obtaining consumer financing to purchase a manufactured home. According to a 2014 study by the National Association of Home Builders (NAHB), presented to the MHWG at its initial meeting (the only independent market-impact information or testimony presented to the MHWG as part of DOE's supposed "negotiated rulemaking"), a $1,000.00 increase in the purchase price of a new manufactured home excludes 347,901 households from the market for a single-section home, while the same $1,000.00 increase excludes 315,385 households from the market for a double-section home.[78] Extrapolating this data to the price increases projected by the NOPR shows that the pending DOE standards would exclude more than 1.1 million households from the single-section manufactured housing market and just over 1 million households from the double/multi-section market – extreme numbers considering that the entire industry, since 2006 has been producing fewer than 100,000 new homes a year.

Given the established status of manufactured homes as the nation's most affordable type of housing and homeownership, the exclusion of millions of Americans from the manufactured housing market would effectively mean the exclusion of millions of Americans from

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[76] See, 81 Federal Register, No. 117, supra at p. 39757.

[77] Id. at p. 39783: "These costs are based on estimates for the increased costs associated with more energy efficient components, as provided by the MH working group." The NOPR, moreover, provides no indication that DOE either developed or sought to develop its own independent cost information to compare with these critical unverified, unvetted and totally non-transparent cost inputs. See, discussion in section II D, supra, at pp. 15-16.

[78] See, public testimony of Donald Surrena, Program Manager, Energy Efficiency, NAHB.

homeownership altogether, in violation of the 1974 Act, as amended, and contrary to national housing policy to encourage and support homeownership.[79]

Significantly, though, the cost-benefit "analysis" presented in both the June 17, 2016 NOPR and TSD fails to reflect the full and true cost of the proposed rule. This means that the resulting exclusion of homebuyers from the manufactured housing market will be even greater than the figures extrapolated above and that the numbers of Americans excluded from homeownership altogether will be greater, yielding major individual and societal costs that are not reflected at all in the DOE cost-benefit "analysis." These and other material flaws in the cost-benefit "analysis, as detailed below, make it so deficient as to be worthless for regulatory purposes.

C. DOE's Cost-Benefit "Analysis" is Necessarily Incomplete and Fails to Reflect the True or Complete Costs of the Proposed Rule

DOE's cost-benefit analysis for the June 17, 2016 proposed rule – a necessary and essential predicate for any proposed rule pursuant to EISA section 413, as demonstrated above – is fundamentally incomplete, arbitrary and fatally deficient, in that it does not include or otherwise fails to quantify and/or consider key cost impacts of the proposed standards.[80] This failure to adduce or properly consider all applicable cost elements and impacts of the proposed standards results in cost-benefit and "life-cycle cost" calculations that are factually baseless and therefore, "arbitrary and capricious" per se, in violation of EISA section 413 and the Administrative Procedure Act. (See, 5 U.S.C. 706).[81]

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[79] This regulatory-driven exclusion of millions of lower and moderate-income consumers from the housing market, moreover, would take place in the context of homeownership rates that have already fallen to their lowest levels in more than 50 years. See, e.g., Attachment 25, hereto, "Homeownership Rate in the U.S. Drops to Lowest Since 1965," Bloomberg News (July 28, 2016). Declining homeownership has particularly impacted minority communities according to a 2015 study by the Harvard University Joint Center for Housing Studies ("State of the Nation's Housing") noting that "African Americans [now] have the lowest rate of homeownership [at] 43.8%"

[80] Such defective cost-benefit analyses, moreover, are hardly unprecedented for DOE. In written comments filed on April 3, 2015, in connection with a DOE rulemaking to establish "Energy Conservation Standards for Hearth Products," the Mercatus Center of The George Mason University condemned DOE's supposed cost-benefit "analysis" for failing to include and consider significant cost factors. Among other things, the Center noted that DOE did "not measure the welfare loss from shutting down small businesses and the negative impact on a portion of the population working in this area who this regulation affects. *** This results in additional losses that DOE does not take into account. *** It seems the losers in this regulation lose more than the winners gain, meaning that there is a loss in social welfare that the net standard benefit calculation provided by DOE fails to take into account." The same type of serious, significant and highly relevant analytical defects characterize the supposed cost-benefit "analysis" in this rulemaking as well.

[81] See, e.g., Soler v. G&U, Inc., 833 F.2d 1104 (2d Cir. 1987) (Successful challenge to an agency's decision under the arbitrary and capricious standard must clearly demonstrate that the agency "relied on factors which Congress did not intend it to consider, entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency....") (Emphasis added).

1. DOE's Cost-Benefit "Analysis" is Fatally Defective in that it Fails To Quantify or Consider Testing, Enforcement and Regulatory Costs

DOE's June 17, 2016 NOPR states, in part: "DOE estimates that benefits to manufactured homeowners in terms of lifecycle cost (LCC) savings and energy cost savings under the proposed rule would outweigh the potential increase in purchase price for manufactured homes."[82] This claim, however, is necessarily false and the findings of DOE's lifecycle cost analysis are necessarily flawed, skewed and materially inaccurate, in that they do not reflect, consider or account for key cost information. As a result, the claimed benefits of the proposed rule are netted against incomplete and/or inaccurate cost data, thereby yielding alleged "payback" amounts and timeframes that are distorted and biased in favor of the proposed rule. This distortion includes several aspects, which are addressed in this and subsequent sections, below.

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 new manufactured homes – for: (1) testing, certification, inspections and other related activities to ensure compliance with any new DOE standards (including new testing requirements not currently included in the HUD Code that could be particularly costly and onerous); (2) enforcement compliance and activity; and (3) ongoing regulatory compliance. Although such expenses are – and 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 LCC analyses in this rulemaking. Those analyses, as a result, are skewed toward greater alleged benefits from the proposed rule and shorter consumer LCC "payback" times than would be the case if all applicable costs were included and considered. Indeed, as it stands now, under DOE's fundamentally flawed and incomplete LCC analysis, the projected consumer "payback" period – i.e. 7.1 years for a single-section home and 6.9 years for a multi-section home -- is already longer than many consumers will live in a new manufactured home. The addition of testing, enforcement and regulatory compliance costs (and other additional un-captured costs set forth below), would extend that payback period even longer, meaning that even fewer homebuyers will ever recapture purchase price increases attributable to the proposed rule.[83]

This deceitful bifurcation of direct standards-generated costs on the one hand and testing, enforcement and regulatory compliance costs on the other – notwithstanding the fact that all such costs, as well as additional costs for compliance with existing HUD Procedural and Enforcement Regulations,[84] will represent additional consumer-level costs under any final DOE rule – began

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[82] See, 81 Federal Register, No. 117, supra at p. 39757.

[83] See, "2012 Mobile Home Market Facts," Foremost Insurance Group, at p. 8, showing that 39% of survey respondents had purchased their manufactured home within the past six years (i.e., 2006-2012). See also, "Is Manufactured Housing a Good Alternative for Low Income Families?" U.S. Department of Housing and Urban Development (December 2004), at p. 44 (55.4% of manufactured home residents moved within 10-year study period, with a mean duration of 2.57 years).

[84] See, 24 C.F.R. 3282.1, et seq. describing HUD's manufactured housing inspection, monitoring and enforcement program. Regardless of whether energy standards developed by DOE pursuant to EISA section 413 are enforced by DOE or HUD, or some combination of both, the changes to HUD-regulated homes that will be required by the proposed DOE standards will result in separate and additional compliance costs under the Part 3282 regulations. These inevitable additional costs will include, but will not be limited to, costs for the re-design of homes; costs for the approval and certification of such new or modified designs; costs for new or additional materials needed to support

with the sham MHWG "negotiated rulemaking" process, where DOE, via its "Designated Federal Official," barred discussion or consideration of any aspect of enforcement or regulatory compliance, or their associated costs. The absurd and misleading bifurcation is continued in the June 17, 2016 DOE NOPR, which states: "DOE is not considering compliance and enforcement in this proposed rule.... As a result, the costs ... resulting from any compliance and enforcement mechanism are not included in the economic impact analysis that is included in this rulemaking."[85]This represents an admission by DOE that its cost-benefit analysis and LCC "calculations" are necessarily inaccurate, incomplete and not reflective of the true and complete costs of the proposed rule.

DOE's consumer-level cost-benefit analysis, therefore, compares "apples to oranges," netting out all conceivable "savings" against only part of the costs that will be added to the price of the home. As a result, there is no basis, whatsoever, for DOE to conclude – in connection with this rule -- that consumer benefits exceed costs, because the full costs of the proposed standards are not known and cannot be known until DOE, at a minimum, settles on a compliance and enforcement system, which – it admits – has not occurred. Nor can a cost-recovery period be accurately calculated because costs -- again – are not known and not fully quantified as of now, and cannot even be accurately estimated with so many unknowns. Indeed, the attempt to pass this off as any kind of legitimate cost-benefit analysis is itself disingenuous. Therefore, DOE's analyses are neither credible nor legitimate and, per se, cannot be – and are not – sufficient to satisfy the substantive cost-benefit directive of EISA section 413 or the "arbitrary, capricious or abuse of discretion" standard of the APA.

2. DOE's Cost-Benefit "Analysis" is Fatally Defective In that it Fails To Quantify or Consider the Cost of Exclusion From Homeownership As a Result of the Rule

In addition to its fatal failure to address or consider testing, enforcement and regulatory compliance cost-impacts at the consumer level, DOE's cost-benefit and LCC analyses are necessarily incomplete, defective and insufficient to meet the requirements of either EISA section 413 or the APA because they totally fail to consider the individual (and societal) cost impacts that will result from the exclusion of millions of Americans from attaining homeownership. This fundamental omission – while evident from the June 17, 2016 NOPR and related TSD – was confirmed by DOE (and its cost-benefit analysis contractor) at the July 13, 2016 DOE public meeting concerning the instant rulemaking.

Using DOE's own fundamentally understated consumer-level cost figures, the 2014 NAHB cost study, cited above, indicates that June 17, 2016 DOE proposed standard would result in the exclusion of more than 1.1 million households from the single-section manufactured housing

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the inclusion of energy efficiency measures required by the proposed rule; and costs related to the certification and approval of such materials, among others. Nor does DOE's analysis consider the cost impact of compliance with HUD's lifetime home recall provisions – Part 3282, Subpart I -- which would be significant, if HUD adopts the DOE standards as part of the HUD Code.

[85] See, 81 Federal Register, No. 117, supra at p. 39783.

market and just over 1 million households from the double/multi-section market[86]and, with that, exclusion from homeownership entirely. This market and homeownership exclusion, moreover, as a direct consequence of the non-life-safety DOE standards, would most severely and harshly impact lower-income purchasers, who comprise the vast majority of current manufactured home purchasers.[87]

For the millions of Americans who would be excluded from homeownership as a direct consequence of the significantly higher manufactured home purchase prices that will be driven by the proposed rule – if adopted – the DOE rule will have no consumer-level benefits. For those consumers, the rule will have only costs.[88] While those costs, axiomatically, will not be the specific "costs" of the rule itself – insofar as they will be excluded from the market – those consumers will nevertheless incur costs as a result of the rule, i.e., the cost of exclusion from homeownership and, in some cases, the cost of homelessness. The consumer-level DOE cost-benefit analysis, however, fails to quantify or account for these costs. Not are these costs reflected in DOE's "national" cost-benefit analysis.

By failing to reflect the impact of the proposed rule on millions of American consumers who would be excluded from the manufactured housing market and homeownership entirely – for whom there would be no "benefits," only "costs," the consumer and national-level DOE cost-benefit analyses are materially skewed, biased and not reflective of the full and true cost of the proposed rule.

Nor can DOE legitimately claim that consumer and national-level costs resulting from homeownership exclusion under the proposed rule are somehow difficult or "impossible" to quantify. If DOE can claim "benefits" for the proposed rule resulting from allegedly reduced carbon emissions, quantified via its "social cost of carbon methodology"[89] -- a global[90]calculation (in violation of OMB Circular A-4, Regulatory Analysis") based on Integrated Assessment Models

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[86] Using the higher cost figures derived by MHARR -- reflecting additional costs over and above costs for a current base-level HUD Code home (see, Attachment 8, supra) -- the number of households excluded from the manufactured housing market – and homeownership – approaches nearly 2 million (i.e., 1.6 million excluded from the single-section market and 1.83 million excluded from the double-section market). These exclusions, with the addition of other costs not captured by DOE's cost-benefit analysis, would easily exceed 2 million.

[87] According to U.S. Census Bureau data, the median household income for all occupied manufactured homes is $28,400. See, U.S. Census Bureau, 2013 American Housing Survey, Table C-09-AO (National), Income Characteristics – All Occupied Units, at p.1. See also, "2012 Mobile Home Market Facts," Foremost Insurance Group, at p. 2, 5 ("55% of [manufactured] home owners reported an annual household income [of] less than $30,000, representing a 16% increase from 2008"). Household income for manufactured housing residents, accordingly, is declining. This income level is only slightly higher than the current federal poverty level – i.e., $24, 250 – for a family of four. As a result, purchase price increases driven by the unnecessary energy efficiency measures of the DOE proposed rule will have a devastating impact on the lower and moderate-income consumers who rely on manufactured housing the most. It should also be noted that market exclusion resulting from the DOE rule would not only impact "homeownership," per se. Significant increases in the purchase price of manufactured homes acquired by manufactured housing communities for rent to lessees would also be passed through to occupants in the form of higher rent payments. Those higher rental payments, in turn, would result in the exclusion of additional households from the manufactured housing market.

[88] Put differently, for consumers excluded from manufactured home ownership by purchase prices driven to levels they simply cannot afford, there is no "life-cycle" – and therefore no possibility whatsoever of "life-cycle savings."

[89] See, 81 Federal Register, No. 117, supra at p. 39791.

[90] See, detailed discussion at section III C 5, pp. 32-33, infra,

incorporating "crucial flaws that make them close to useless as tools for policy analysis,"[91] then there is no reason that DOE cannot quantify and properly consider the costs of market exclusion and homelessness resulting from its proposed rule that will significantly increase the cost of the nation's most affordable housing. It could begin that analysis with the assertion of former HUD Secretary Shaun Donovan, that it costs taxpayers $40,000 per year for each homeless person in the United States.[92]

The proposed rule, accordingly, is, in reality, a tax -- a regressive, discriminatory tax on America's manufactured housing consumers that will fall the hardest on those at the lower end of the economic spectrum who rely on the affordability of manufactured housing the most, while forcing those remaining in the market to spend thousands of dollars for energy conservation features they would not otherwise purchase in a free market, as shown by decades of industry experience with optional enhanced energy packages.

3. DOE's Cost-Benefit "Analysis" is Fatally Defective in that it Fails To Quantify or Consider Larger Cost Impacts on Smaller Producers

The non-transparent "cost" figures provided to the MHWG by MHI/SBRA – upon which the MHWG "Term Sheet," the proposed rule and the DOE cost-benefit analysis are premised – undoubtedly were obtained primarily from larger manufacturers that MHI represents and that participated in the MHWG.[93] Based on calculations derived by MHARR, however, those figures significantly understate the cost of the proposed rule based on the supply costs paid by smaller independent manufacturers which still represent approximately 30% of the total domestic manufactured housing market.[94]

Based on those higher supply costs, MHARR calculations reflect price increases of up to $4,600.00 above current HUD Code performance standards for a single-section manufactured home and up to $5,825.00 for a double-section home.[95] These calculations were provided to DOE by MHARR in March 2015, but have not been included or otherwise addressed or accounted-for in the June 17, 2016 NOPR cost-benefit analysis.

Insofar as these higher supply costs, which will impact a significant portion of the manufactured housing market are not subsumed or reflected in the DOE cost-benefit analysis, that analysis, again: (1) is based on non-transparent, un-vetted crucial information inputs; (2) significantly understates costs attributable to the proposed rule; and (3) is wholly insufficient and inadequate to meet the substantive cost-benefit mandate of EISA section 413 and the "arbitrary, capricious, or abuse of discretion standard of the APA.

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[91] See, "Obama's Climate Action Plan Means Higher Electricity Prices for Business, Consumers," Washington Examiner (January 16, 2014) quoting Professor Robert Pindyck, Massachusetts Institute of Technology.

[92] See, "HUD Secretary Says a Homeless Person Costs Taxpayers $40,000 a Year," PolitiFact (March 12, 2012).

[93] This again demonstrates the material prejudice to MHARR and other stakeholders resulting from the sham DOE "negotiated rulemaking" process.

[94] See, note 107, infra.

[95] See, Attachment 18, hereto, supra

4. DOE's Cost-Benefit "Analysis" is Fatally Defective in that it Fails To Quantify or Consider the Cost Impact of Regular IECC Changes

Further, by requiring DOE to constantly update manufactured housing standards to keep pace with the "latest version" of the IECC – which is revised every two years without regard to cost-benefit, unlike the HUD Code standards -- EISA not only discriminates against manufactured homebuyers vis-à-vis other types of homes regulated under earlier, less stringent and less costly versions of the IECC,[96] but adds an element of ongoing regulatory uncertainty that will further increase manufacturer compliance costs and the cost of manufactured homes to potential consumers that are not captured within DOE's NOPR cost-benefit analysis.

The significant negative impact of ongoing regulatory uncertainty within regulated industries – and, in particular, on regulated industry participants, such as manufactured housing producers – has been addressed extensively by economists, with studies showing that regulatory uncertainty has a pronounced negative impact on investment, growth, and competitiveness, resulting in both consumer, industry and national-level costs that are not addressed, considered or reflected in DOE's cost-benefit analysis.[97]

These negative impacts, that are not addressed, considered, or accounted-for in the June 17, 2016 NOPR cost-benefit analysis, will not only increase the cost of manufactured housing beyond the amounts projected in the NOPR – thereby extending already lengthy LCC cost-payback timeframes that already exceed the period that significant numbers of manufactured homeowners will remain in their homes – they will also: (1) increase the numbers of lower and moderate-income Americans excluded from the manufactured housing market and homeownership altogether; and (2) reduce the availability of affordable manufactured housing, contrary to the mandate, purposes and objectives of existing federal manufactured housing law.

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[96] See, Attachment 23, supra. Two states have adopted the 2006 IECC on a statewide, unmodified basis, sixteen have adopted the unmodified 2009 IECC statewide, eleven have adopted the 2012 IECC, and just six have adopted the 2015 IECC on an unmodified statewide basis. Two states have not adopted any version of the IECC. The largest number of states that have adopted the IECC, therefore, are still enforcing codes dating back at least seven years.

[97] See, e.g., "The Impact of Regulation on Investment and the U.S. Economy," The Mercatus Center, The George Mason University, at pp. 3-4. ("[I]nvestment may be temporarily withheld when there is uncertainty about the size and scope of new regulatory initiatives. This is particularly true for investments that cannot be easily reversed -- i.e., reselling capital for its purchase price. Investment in new capital is inevitably accompanied by the hiring of new labor. For firms that must rely on a constant source of financial capital -- i.e., smaller firms, one current source of uncertainty is how the new financial rules will affect their abilities to borrow. About 1/3 of small firms rely on regular borrowing to finance capital. *** Two types of uncertainty can affect decisions by firms to invest: (a) uncertainty about demand for their products demand uncertainty and (b) uncertainty about factor costs -- labor and capital – [i.e.,] factor uncertainty. Major regulations—such as those recently authorized regarding financial services, health care, or greenhouse gas rules—can affect both demand and factor uncertainty. *** [O]ne key type of factor uncertainty is whether firms will have access to credit in the future. Uncertainty about access to credit has a greater impact on firms, small firms in particular, that need continuous access to credit in order to finance investments.")

5. DOE's Cost-Benefit "Analysis" is Fatally Defective in that Nets Global "Benefits" Against only Partial Domestic "Costs"

DOE's claim, moreover, that the proposed standards would result in "a net benefit to the nation as a whole,"[98] is riddled with even more gaping analytical flaws. DOE cites "environmental benefits" flowing from its proposed rule as a result of "reduced emissions of air pollutants and greenhouse gasses associated with electricity production."[99] As with all of DOE's "climate change" rules, however, that claim relies on a non-transparent pseudo-science/economic "model" developed behind closed doors by a federal "Interagency Working Group." This model, dubbed "SCC," or the "Social Costs of Carbon," purports to estimate the global "monetized damages associated with an incremental increase in carbon emissions within a given year," accounting, among other things, for "changes in net agricultural productivity, human health, property damages from increased flood risk and the value of ecosystem services."

Even assuming that this model were correct and accurate in identifying and quantifying alleged monetary benefits resulting from supposed reductions in carbon emissions properly attributable to a rule affecting less than 10% of the nation's housing, the model is methodologically and statistically invalid in that it compares "apples to oranges," netting the supposedly "global" benefits of the proposed rule against purely domestic costs concentrated (in this case) within a small market and small industry. And even this baseless calculation is further skewed by the fact that only an artificially limited and constrained portion of the total domestic costs of the proposed rule – not reflecting the full market costs detailed above -- is netted against supposedly "global" benefits. This conflation of supposed "global benefits" being netted against only partial domestic costs attributable to the proposed rule, is not only arbitrary and capricious and in violation of EISA section 413, but also violates the directive of OMB Circular A-4, "Regulatory Analysis," which provides that regulatory "analysis should focus on benefits and costs that accrue to citizens and residents of the United States," in that it gives short shrift to domestic costs – excluding significant cost factors – while netting those partial domestic costs against alleged worldwide benefits.[100]

Just as importantly, though, DOE admits that alleged SCC benefits are "uncertain" and "should be treated as revisable."[101] Thus DOE attributes "benefits" to the proposed rule based on metrics acknowledged to be "uncertain," while it totally ignores predictable consumer, industry and national level costs of the proposed rule, which it totally ignores, thus over-inflating the alleged benefits of the proposed rule with junk science while significantly understating its costs. Indeed, while DOE exhibits great concern over the global "social costs" of carbon, it apparently could care less about the domestic social cost of millions of Americans who would be excluded from the benefits of homeownership under its rule, as it makes no effort whatsoever to quantify or consider those costs, which would be enormous.

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[98] See, 81 Federal Register, No. 117, supra, at p. 39758.

[99] Id. at p. 39759.

[100] OMB Circular A-4 expressly states that if "a regulation ... is likely to have effects beyond the borders of the United States," those "effects should be reported separately," not netted against purely (and partial) domestic costs. (Emphasis added).)

[101] See, 81 Federal Register, No. 117, supra at p. 39791.

Beyond the DOE-acknowledged "uncertainty" of the SCC model, however, and the failure of the DOE cost-benefit analysis to correctly, validly and lawfully net costs versus benefits attributable to the proposed rule, independent analysis demonstrates that the SCC model is scientifically and economically invalid. For example, a 2014 report by the Institute for Energy Research states, in relevant part: "[T]he use of the SCC as an input into federal regulatory actions is totally inappropriate. *** [T]he SCC is an arbitrary output from very speculative computer models. *** [T]he SCC as implemented by federal agencies is completely arbitrary and without theoretical or experimental support, not to mention a lack of data supporting the [SCC] calculation." (Emphasis added).[102] Indeed, the most recent independent analysis of the SCC, issued in June 2016, indicates that not only does SCC modelling produce a social cost of carbon that is overstated, but that based on observed temperature changes – and not just climate models – the SCC may actually be negative (i.e., that alleged carbon reduction yields no benefits and in fact, results in societal costs).[103]

Given each of these fatal defects in the utilization of arbitrary and speculative SCC values – and the other fundamental analytical and data failures of the June 17, 2016 DOE cost-benefit analysis, that "analysis" is factually worthless and insufficient to meet the substantive requirements of EISA section 413 and the APA.

D. The DOE Cost-Benefit Analysis Fails to Properly Consider The Impact of the Proposed Rule on Smaller Industry Businesses

While DOE acknowledges that its June 17, 2016 proposed rule would have a significant negative impact on the manufactured housing industry – an industry that has seen production contract by more than 81% since 1998, with corresponding reductions in the number of producers – its cost-benefit analysis fails to fully or properly quantify the likely anti-competitive effects of its proposed rule and the resulting highly-negative impacts on industry small businesses and consumers.

DOE admits in the June 17, 2016 NOPR that its proposed rule would result in a decline in "industry net present value" of $3.1 million to $36.8 million. (See, 81 Federal Register, No. 117, supra at p. 39788). This calculation, however, was derived in significant part from information contained in 10-K filings with the U.S. Securities and Exchange Commission (SEC) (Id. at pp. 39787, 39794) which undoubtedly were filed by the larger industry corporate conglomerates. By contrast, DOE interviewed just "two small manufacturers" regarding expected industry/manufacturer impacts of the proposed rule. As a result of this failure to fully and properly quantify the expected impacts of the proposed rule on smaller businesses, DOE, in its NOPR, concedes that, under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) "since the proposed standards could cause competitive concerns for small manufacturers, DOE cannot certify that the proposed standards would not have a significant impact on a substantial number of small businesses." (Id. at p. 39794) (Emphasis added).

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[102] See, "Comment on Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order No. 12866," Institute for Energy Research (February 24, 2014).

[103] See, "Empirically-Constrained Climate Sensitivity and the Social Cost of Carbon," Heritage Foundation (2016).

Insofar as DOE has the "affirmative burden of promulgating and explaining a non-arbitrary, non-capricious rule," see, Small Refiner Lead Phase-Down Task Force v. U.S. Environmental Protection Agency, supra – DOE's failure to fully quantify and certify the effect of its proposed rule on small industry manufacturers is, per se, a fatal defect that should invalidate the June 17, 2016 proposed rule.

And while it is not the burden of public commenters or stakeholders to quantify, justify, or disprove any proposed agency action or standard, the proposed rule would have a disproportionately and profoundly negative impact on smaller manufacturers and smaller industry businesses. As has been documented by the U.S. Small Business Administration (SBA), federal regulation generally has a disproportionately negative impact on smaller businesses in any industry.[104] As a matter of basic business economics, larger businesses can amortize regulation-driven price increases over a broader base of production than smaller businesses, resulting in a diminished overall and per-unit impact. Further, and more importantly, the industry's largest corporate conglomerate[105] with nearly 50% of the domestic HUD Code market, has already demonstrated that it has the resources and ability to offset – for its customers – purchase price increases of the magnitude that will be caused by the DOE proposed rule. Specifically, in June 2015, Clayton Homes, Inc. (Clayton) offered purchasers of upgraded "Energy Smart" Clayton homes a rebate of up to $3,000.00 on energy utility bills during the first year after purchase of the home.[106] Not coincidentally, this amount approximates the average retail manufactured home price increase information provided to the MHWG and DOE, and incorporated in the DOE June 17, 2016 NOPR. Consequently, there is already significant evidence that Clayton – having supported the DOE-proposed standard during the MHWG "negotiated rulemaking" process – will use its superior resources and market strength to cushion or offset DOE standards-driven purchase price increases for its customers, drawing potential homebuyers away from smaller producers.

Over time, this phenomenon will result in further consolidation within an industry that has already seen a substantial reduction in the number of producing companies and the emerging domination of the industry by three large corporate conglomerates[107]with a corresponding reduction in competition and – ultimately – higher prices and fewer choices for consumers.

Again, though, DOE's cost-benefit analysis fails to address, consider or account-for these negative impacts – and their related costs -- on consumers, the industry and the nation as a whole.

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[104] See, "The Impact of Regulatory Costs on Small Firms," U.S. Small Business Administration (September 2010).

[105] I.e., Clayton Homes, Inc., a corporate subsidiary of Berkshire Hathaway, Inc.

[106] See, Attachment 26, hereto.

[107] See, "2015 Home Buyers' Outlook," The Grissim Guides to Manufactured Homes and Land ("[T]the MH industry contraction during the recession brought with it a lot of bankruptcies, closures, mergers and acquisitions. As a consequence the industry landscape today is markedly different than it was as recently as January 2008 when more than 60 companies nationally were building homes in 195 production facilities around the country. Currently, only 46 active corporations remain, and the number of factory production lines has dropped to 125 (a loss of 70). One upshot of this shake-out is that roughly 68% of the MH industry is now dominated by three major producers and their subsidiaries: Clayton Homes, Inc. (with a market share of 41%), Champion Home Builders, Inc. (15%) and Cavco Industries (12%). Of these three ... Clayton Homes, Inc. is far and away the dominant player. Not only is its market share way more than its two nearest competitors combined, but the company also owns two major banks–Vanderbilt Mortgage and 21st. Century–that specialize in retail MH loans which together account for 35% of all MH home loans. In fact, annual combined profit from the two banks significantly exceeds that from the sale of homes from Clayton and its many subsidiary builders."

This type of extreme negative economic and societal impact was correctly explained in the DOE "hearth products" rule comments submitted by the Mercatus Center of The George Mason University: "[T]his regulation will disproportionately burden small businesses and benefit large manufacturers. This regulation will become an income transfer scheme as small businesses go out of business competing with large manufacturers, giving large manufacturers access to a larger consumer base and increasing their income. This is an income transfer scheme that will produce unintended consequences, including causing an industry to be dominated by a few large firms." Id. at p. 5.

Insofar as none of these significant cost impacts and factors are considered by DOE in its cost-benefit analysis for the June 17, 2016 proposed rule, that rule is fatally deficient, unsupported by proper and sufficient evidence and legally unsustainable.

IV. CONCLUSION

From the start, this rulemaking has been fundamentally and irretrievably tainted. The entire process utilized by DOE to produce the current proposed standards has been ill-conceived, deceptive, non-transparent, biased and, ultimately, unlawful. Instead of engaging in a legitimate rulemaking process, designed to elicit relevant facts and considerations, and then proceed to a well-reasoned proposal, this process has been one of a costly, disruptive and draconian pre-ordained result seeking "cover" from self-interested and special interest supporters participating in a coordinated, sham proceeding. That phony proceeding has now led to a proposed rule based on a deceitful and fatally defective cost-benefit analysis that nets all conceivable (and entirely speculative) alleged benefits, on a "global" scale, against a blatantly incomplete and deficient assessment and analysis of corresponding consumer, industry and national costs.

For all of the foregoing reasons, as detailed herein, MHARR strenuously opposes the June 17, 2016 proposed rule both procedurally and substantively and calls on DOE: (1) to withdraw that proposed rule; (2) to establish a credible, legitimate and untainted rulemaking process to develop appropriate standards consistent with EISA section 413 and existing federal manufactured housing law from a "fresh start" as originally directed by OMB/OIRA; and (3) to develop credible, reasonable and cost-effective standards consistent with EISA section 413 that will not result in the exclusion of millions of lower and moderate-income Americans from the manufactured housing market or homeownership entirely.

Very truly yours,

Mark Weiss
President and CEO

cc: Hon. Ernest Moniz
Hon. Julian Castro
Chairman and Ranking Member, Senate Energy and Natural Resources Committee
Chairman and Ranking Member, House Energy and Commerce Committee
Chairman and Ranking Member, Senate Banking Housing and Urban Affairs Committee
Chairman and Ranking Member, House Financial Services Committee
Office of Advocacy, U.S. Small Business Administration

ATTACHMENTS

1 - 12

Manufactured Housing Association for Regulatory Reform

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March 5, 2010

VIA ELECTRONIC FILING

Ms. Brenda Edwards
U.S. Department of Energy
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950 L'Enfant Plaza, S.W.
Washington, D.C. 20024

Re: Energy Efficiency Standards for Manufactured Housing
Docket No. EERE-2009-BT-BC-0021

Dear Ms. Edwards:

The following comments are submitted on behalf of the Manufactured Housing Association for Regulatory Reform (MHARR). MHARR is a national trade association representing the views and interests of producers of manufactured housing regulated by the Department of Housing and Urban Development (HUD) pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401, et seq. (Act).

I. INTRODUCTION

On February 22, 2010, the Department of Energy (DOE) published an Advance Notice of Proposed Rulemaking (ANPR) seeking public comments relevant to the development, by DOE, of energy efficiency standards for manufactured homes. Although the construction and safety of manufactured housing, since 1976, has been comprehensively regulated by HUD pursuant to federal standards that include energy conservation and efficiency criteria (see, e.g., 24 C.F.R. 3280.501, et seq.), DOE, pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA), was directed by Congress to establish separate energy efficiency standards for manufactured housing within four years of the date of enactment of EISA. For the

reasons set forth below, DOE should not proceed with the promulgation or implementation of any standards that are not identical to the existing HUD energy conservation standards until the production and availability of affordable, non-subsidized HUD Code manufactured housing for lower and moderate-income consumers recovers to levels at least comparable to those that existed prior to the enactment of EISA in 2007.

II. COMMENTS

When Congress adopted EISA in 2007, it did not foresee the collapse of the HUD Code manufactured housing market that has occurred since that time and that continues today. Prior to EISA, in 2006, the HUD Code manufactured housing industry, which primarily serves lower and moderate-income American families, produced 117,373 homes. This figure represented a significant decline from 2001 production of 193,120 homes and an even greater decrease from 1998 production levels that approached 400,000 units, but was consistent with previous cyclical industry declines. Since 2007, however, manufactured housing production and sales have fallen dramatically, as a result of the near unavailability of either public or private consumer financing for manufactured home purchases, as well as the failure of the HUD manufactured housing program to fully implement reforms mandated by Congress in the Manufactured Housing Improvement Act of 2000.

During 2009, the condition of the manufactured housing industry continued to deteriorate, as production and sales of new HUD Code manufactured homes fell to 49,683 homes, the lowest production level in the industry's history. This represents a nearly 90% decline in production over a period of ten years and reflects a catastrophic loss of affordable, non-subsidized housing opportunities for American consumers. It also reflects the closure of production facilities -- from approximately 420 in 1998 to 120 today -- with the resultant loss of thousands of manufacturing jobs and thousands more jobs lost in other sectors of the industry, including component suppliers, home installers, home transporters, retailers, manufactured housing communities, and finance and insurance providers.

In light of this unprecedented decline and the extreme hardship that it entails for both the industry and consumers, the federal government should not -- at this time -- impose costly new energy conservation mandates combined with a totally new DOE enforcement system that would parallel the existing HUD enforcement system. Such mandates would inevitably result in substantial increases in the purchase cost of manufactured housing for hard-pressed consumers who cannot obtain purchase financing now. This will exclude even more Americans from the dream of home ownership, in an economy where private mortgage insurance is currently not available for manufactured home transactions and many, if not most manufactured housing consumers, already cannot afford the minimum 20% down payment required by lenders and the Government Sponsored Enterprises (i.e., Fannie Mae and Freddie Mac) which securitize home loans.

Moreover, manufactured homes are already subject to HUD energy conservation standards that result in a relatively tight thermal envelope, consistent with overall

affordability, and are carefully balanced against concerns related to air exchange and condensation within the home living space. Any change to the standards could potentially upset that balance, with unforeseen and unintended negative consequences given the unique environment and construction of manufactured homes.

Consequently, for all of these reasons and because Congress, in 2007, could not have foreseen the unprecedented decline of the manufactured housing market and resulting hardships for consumers and the industry, MHARR urges DOE to delay the development, implementation and enforcement of any new manufactured home energy conservation standards, that are not identical to the existing HUD Code energy standards, until such time as industry production levels and the availability of affordable, non-subsidized manufactured housing for lower and moderate-income consumers return to pre-2007 levels. Such a delay would also benefit consumers by allowing additional time for the implementation of mandates in other laws -- such as the "duty to serve underserved markets" and FHA Title I manufactured housing program improvements mandated by the Housing and Economic Recovery Act of 2008 (HERA) -- that are designed to restore and expand the availability of consumer financing for manufactured homes.

Sincerely,

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July 24, 2013

VIA ELECTRONIC FILING AND U.S. MAIL

Ms. Brenda Edwards
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Re: 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 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 (Act).

1. INTRODUCTION AND PROCEDURAL HISTORY

On June 25, 2013, the Department of Energy (DOE) published a Request for Information (RFI) in the Federal Register (78 Federal Register, No. 122 at pp. 37995-37997) seeking additional information and comments from interested parties in connection with its development of energy efficiency standards for manufactured homes pursuant to the Energy Security and Independence Act of 2007 (EISA). EISA section 413 requires DOE to institute such standards "not later than four years after the date of enactment" of that Title (i.e., not later than December 19, 2011), pursuant to: (1) public notice and comment; and (2) "consultation with the Secretary of Housing and Urban Development, who may seek further counsel from the Manufactured Housing Consensus Committee" (MHCC) established by the Manufactured Housing Improvement Act of 2000 (2000 Law). Mandatory consultation with HUD is predicated on pre-

existing comprehensive HUD regulation of the construction and safety of manufactured homes pursuant to the Act, as amended, including energy-related thermal insulation, condensation control and air infiltration standards that have been in effect (and updated as appropriate) since 1975, as well as established HUD mechanisms for standards compliance and enforcement. The statutory consultation mandate also represents de facto recognition by Congress of the integral role of both HUD and the MHCC in protecting the unique balance of protection and affordability expressly prescribed for federal manufactured housing standards by both the original 1974 Act and the 2000 Law as a matter of national housing policy, and their unique expertise in technical matters relating to the construction and safety of manufactured homes.

Pursuant to the EISA section 413 directive, DOE, on February 10, 2010, published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register (see, 75 Federal Register, No. 34 at pp. 7556-7557) seeking information and comments on thirteen general issues pertaining to the development of EISA-compliant standards. MHARR submitted written ANPR comments to DOE on March 10, 2010, as well as a companion letter to then-DOE Secretary Steven Chu on July 16, 2010. Both of those documents -- included in the ANPR docket as confirmed by DOE correspondence dated August 6, 2010 -- are incorporated herein in their entirety by reference.

In its ANPR comments and letter to Secretary Chu, MHARR urged DOE, in light of the decline of the manufactured housing market to historically low production levels after the enactment of EISA in 2007, to "delay the development, implementation and enforcement of any new manufactured home energy conservation standards that are not identical to the existing HUD Code energy standards until such time as industry production levels and the availability of affordable, non-subsidized manufactured housing for lower and moderate-income consumers return to pre-2007 levels." In support of this request, MHARR cited – in addition to data detailing the unprecedented post-EISA decline of the industry – three issues that could further undermine the affordability and availability of manufactured homes, with little or no corresponding benefit for consumers, as a consequence of untimely or misdirected action by DOE. In relevant part, MHARR stated:

(1) "...manufactured homes are already subject to HUD energy conservation standards that result in a relatively tight thermal envelope, consistent with overall affordability and are carefully balanced against concerns related to air exchange and condensation within the home living space. Any change to the standards could upset that balance with ... negative consequences."

(2) "With ... manufactured housing consumers unable to obtain or qualify for financing now, matters would be much worse if the purchase price of manufactured homes were unnecessarily increased ... due to DOE energy regulations."

(3) "...the federal government should not impose costly new energy mandates combined with a totally new DOE enforcement system that would parallel the existing HUD system." "...HUD ... is best suited to fully assess and ensure the affordability aspects of energy regulation within the context of the HUD

Code and maintain the delicate balance between regulation and affordability that is embedded in relevant federal law."

Subsequent to the ANPR – and without resolving the foregoing substantive issues identified by MHARR -- DOE developed a draft proposed rule for EISA-compliant manufactured housing energy standards. That draft rule, in turn, was selectively disclosed by either DOE or HUD to one or more parties (including a representative of the largest industry interests) as indicated by published May 29, 2012 correspondence to DOE from one such party, which refers to specific requirements and provisions of a "draft proposed DOE rule" and "draft DOE standards" that were not included in the 2010 ANPR, have not been published as a proposed rule, and have not otherwise been made public or provided to other interested parties. Thus, the May 29, 2012 correspondence states, in part, that "the draft DOE standards requires (sic) homes to be tested in the factory" and that "separate testing is required for to measure duct leakage, whole house (building shell) tightness and air infiltration rates for each window." No such details were included in the 2010 ANPR or otherwise published or disclosed to the public. Similarly, the May 29, 2012 correspondence refers to a DOE estimate of a "total cost burden to the industry [of] $4.5 million over four years." Again, no such information was provided in the 2010 ANPR or otherwise published or disclosed to the public. Indeed, the 2010 ANPR specifically acknowledges that it contains no such regulatory impact analysis (RIA), stating: "DOE intends to develop a regulatory impact analysis ... as this rulemaking process proceeds."

In July 20, 2012 correspondence to DOE (attaching a copy of the above-described May 29, 2012 communication), MHARR requested a DOE/HUD investigation of the process leading to the selective disclosure of the draft proposed DOE energy rule, including, (1) how the draft rule was selectively released to a party in interest; (2) who was responsible for that disclosure; and (3) what other parties in interest, if any, were provided inside information concerning this significant rulemaking. Other than a perfunctory DOE verbal denial of an unauthorized disclosure, MHARR is not aware of any investigation of this matter by either DOE or HUD.

Now, after the preparation and selective disclosure of a "draft proposed rule," complete with a regulatory (cost) impact analysis, DOE, through its June 25, 2013 "Request for Information," is seeking information concerning the three issues initially raised by MHARR in 2010, i.e., (1) the inter-relationship between more stringent air infiltration or air exchange rate standards and indoor air quality (AQL) within manufactured homes; (2) the impact of more stringent and costly energy mandates on the availability and cost of already-scarce financing for manufactured home purchasers; and (3) the ultimate nature of the enforcement mechanism for any such standards given the already-existing HUD Code enforcement system.

While MHARR commends EPA for finally seeking information and data concerning these crucial issues for both the industry and consumers, its request for such information after the preparation of a draft proposed rule turns the regulatory process on its head and raises serious issues regarding the legitimacy and integrity of this entire proceeding, as explained in greater detail below. Accordingly, DOE, instead of providing interested parties with a mere 30 days to supply any such available information -- i.e., from the June 25, 2013 RFI publication date to the July 25, 2013 response deadline -- should allow a reasonable time to gather and/or develop and

assess such information, and begin anew its entire process for the development of this rule from the start, based, this time, on a proper review and consideration of all the relevant information.

II. COMMENTS

1. The Development of a Draft Proposed Rule Prior to DOE Consideration and Evaluation of a Complete Factual Record Taints This – and any Future -- Proceeding

DOE, in its June 25, 2013 RFI, states, in part, "DOE now believes it is important to allow interested parties an additional opportunity to provide information they feel will assist DOE in developing the proposed standards. This initial request for input will be followed by a notice of proposed rulemaking, based on the information received as a result of this notice and other data and information gathered by DOE" (see, 78 Federal Register, No. 122 at p. 37996, col. 3, emphasis added). The difficulty for DOE and all parties in interest is that the "proposed standards," as amply demonstrated by the above-described May 29, 2012 communication, have already been developed by DOE without the information being sought now by the agency after-the-fact. This raises three distinct issues that undermine the legitimacy of the pending proceedings, show them to be fundamentally unfair to interested parties as they have evolved, and could constitute the basis for a challenge to the validity of any resulting final rule.

First, the development of a proposed rule prior to the receipt of relevant information and the development of a complete factual record turns the administrative process on its head. Courts have consistently stated that "it is not consonant with the purpose of a rulemaking proceeding to promulgate rules on the basis of inadequate data." See e.g., Portland Cement Association v. Ruckelshaus, 486 F.2d 375, 393 (D.C. Cir. 1973). The DOE June 25, 2013 request for additional data, per se demonstrates that the draft proposed rule previously disclosed to at least one interested party, was not based on "adequate data."

Second, section 553 of the Administrative Procedure Act (APA), governing agency rulemaking, requires that "interested persons" be provided an opportunity by the agency to "participate in the rulemaking through submission of written data, views, or arguments." Courts applying this mandate have made it clear that the opportunity for interested persons to participate must come at a time when their comments could have a meaningful impact in the formulation of the agency action in question. The "opportunity for comment must be a meaningful opportunity," see, e.g., Rural Cellular Association v. Federal Communications Commission, 588 F.3d 1095, 1101 (D.C. Cir. 2009), not after-the-fact, when de facto agency decisions have already been made. See also, C. Coglianese, et al., "Transparency and Public Participation in the Rulemaking Process," University of Pennsylvania School of Law (July 2008) at p. 6 ("[B]y the time that the notice of proposed rulemaking (NPRM) is published and the comment period begins, the agency is highly unlikely to alter its policy significantly. Many internal deliberations and policy discussions occur before an agency issues its NPRM, during a part of the process that is least open and transparent. *** If public participation does not affect an agency's actual decision making process because it occurs after rules are already formulated, it is hard to see how it can significantly enhance either the quality or legitimacy of rulemaking.") (Emphasis added; footnotes omitted).

In this case, DOE has already developed a draft proposed rule, meaning that both the Request for Information and any information received pursuant to the RFI are an afterthought to the agency's rule development process and that any information so obtained will not and cannot come at a "meaningful" stage in the proceedings where it will be properly considered by the agency. The development of a proposed rule first -- and solicitation of relevant facts and data afterward -- necessarily deprives interested parties of the opportunity to participate in a meaningful manner and at a meaningful time, and would likely result in the agency either ignoring information inconsistent with its own preconceptions as reflected in the draft proposed rule, or "cherry-picking" any new data to support its preconceived conclusions. See, Solite Corp. v. EPA, 952 F.2d 473, 500 (D.C. Cir. 1991) ("There is no APA precedent allowing an agency to cherry-pick a study on which it has chosen to rely in part.")

Third, interested parties responding to the Request for Information, including MHARR and others, do not know what information, if any, has already been provided to DOE by those to whom the draft proposed rule has already been selectively leaked. Those stakeholders, by virtue of their access to the specific provisions of the draft proposed rule and related agency explanation of the policy decisions manifested by those provisions, have had an opportunity superior to that of other parties relying solely on the more general information provided in the RFI, to provide DOE with information and responses. Consequently, other interested parties responding to the RFI are necessarily prejudiced in that they: (1) do not know what off-the-record information concerning the draft proposed rule has already been provided to DOE; (2) do not know the source of that information; (3) do not know what – if any – impact that such off-record information may have already had – or will have on DOE and/or the draft proposed rule; and (4) have had no opportunity to assess the validity or potential impact of that information on the information they themselves may choose to provide DOE – if any.

Put differently, the potential receipt and/or consideration of undisclosed information by DOE prior to the formulation of the RFI and with unknown potential impact on the draft proposed rule – together with the other two issues explained above -- casts doubt on the legitimacy of this entire process. C.F., United States v. Nova Scotia Food Products Corp., 568 F.2d 240 (2d Cir. 1977) ("If the failure to notify interested persons of the scientific research upon which the agency was relying prevented the presentation of relevant comment, the agency may be held not to have considered all 'the relevant factors.'") Accordingly, the draft proposed rule already prepared by DOE should be abandoned and this entire process re-started (consistent with the concerns previously expressed by MHARR) based on full information, a transparent record and proper review and synthesis of that information by DOE in full accordance with the APA.

2. Applicable Law Requires DOE to Affirmatively Develop Information Concerning Potential Negative Consequences and Consumer Cost Impacts of any Proposed Rule

EISA directs DOE to establish manufactured housing energy standards (with an unclear relationship to the pre-existing manufactured housing energy standards established by HUD pursuant to the 1974 Act) "based on the most recent version of the International Energy Conservation Code ... except in cases in which the Secretary finds that the code is not 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." This standard is similar, but not identical to the 1974 Act, as amended, which directs HUD and the MHCC, in the development or amendment of the Federal Manufactured Housing Construction and Safety Standards (FMHCSS), to balance considerations of protection with the "probable effect of such standard on the cost of the manufactured home to the public," (42 U.S.C. 5403(e)(4)) based on the statutorily-recognized status of manufactured housing as "a significant resource for affordable homeownership." (42 U.S.C. 5401(a)(2)).

Despite EISA's recognition of "life-cycle construction and operating costs," the reality, as recognized by Congress in both the 1974 Act and the 2000 Law -- and as expressed consistently by MHARR -- is that many of the predominately lower and moderate-income consumers served by manufactured housing are already marginally-qualified for the extremely limited purchase financing available for manufactured homes to begin with. Indeed, a 2012 study of manufactured housing residents by the Foremost Insurance Company, shows that 55% of manufactured homeowner respondents had an annual household income below $30,000 – an increase of 16% over the 39% of households below $30,000 as disclosed by the last such study in 2008 – thus manifesting a trend toward even lower-income purchasers.

For such consumers, who either are -- or could be -- priced out of the housing market altogether by higher, more costly energy standards, there is no "life-cycle," no "long-term" ownership period to recoup higher "up-front" regulatory costs, and no offsetting savings. Consequently, even though EISA refers to "total life-cycle costs," DOE must consider and evaluate: (1) the immediate, "up-front" cost of any proposed standard; (2) the impact of such additional costs on the ability of consumers to afford new manufactured homes based on the income demographics of manufactured home purchasers; (3) the numbers of potential purchasers who would or could be excluded from the housing market by such additional acquisition costs; and (4) the economic impact on consumers, the industry and the public of the exclusion of such consumers from the housing market. Moreover, in the event that such specific data is not available from pre-existing sources, that information must be developed (and publicly disclosed) by DOE in order to comply with EISA (and the 1974 Act, as amended).

Responding to the substance of the RFI, MHARR is not aware of studies or research that analyze, in toto, the specific relationships and potential impacts -- or quantify the precise consumer cost implications -- of the three matters particularly identified by the RFI (although there is public domain literature that MHARR has not evaluated for accuracy or legitimacy concerning discrete aspects of the first RFI issue pertaining indoor air quality).

Regarding RFI issue 1, indoor air quality and specifically "the relationship between potential reductions in levels of natural air infiltration and both indoor air quality and occupant health," the Centers for Disease Control and Prevention (CDC) in a 2011 report entitled "Safety and Health in Manufactured Structures," concluded that "no comprehensive data are available on the quality of air in manufactured structures." Id. at p. 25. CDC did note, however, that "the tight building envelopes and relatively low air exchange rates in some manufactured structures combined with formaldehyde off-gassing can cause indoor levels to rise. This effect has been recognized for decades." Id. at p. 26 (citations omitted). From this, it can reasonably be inferred that even tighter building envelopes and further reductions in levels of natural air infiltration

pursuant to new DOE energy standards could cause even higher concentrations of such compounds. Increasing air exchange rates, however, via mechanical ventilation or other methods, increases the risk of moisture infiltration into the home – particularly in humid climates – that can lead to mold growth and associated impacts on indoor air quality. In this regard, the CDC report states: "Moisture can also enter buildings through operation of mechanical ventilation systems during humid weather conditions. *** Without proper dehumidification, ventilation requirements (24 CFR 3280.103) intended to improve indoor air quality and remove moisture during cool dry periods can have the opposite effect during warm humid weather, with a resulting increase in humidity in the home and increased likelihood of mold growth." Id. at p. 18 (citations omitted).

Other studies addressing manufactured home ventilation and air infiltration either do not address indoor air quality, see, e.g., "A Modeling Study of Ventilation in Manufactured Houses," February 2000, National Institute of Standards and Technology (NIST) ("While there are a number of indoor air quality issues of interest in manufactured housing such as moisture and formaldehyde levels, contaminant analysis is beyond the scope of this project"), or simply recommend further study, see, e.g., "Whole House Ventilation Strategies," January 2003, U.S. Department of Housing and Urban Development.

Accordingly, information and analyses concerning these relationships will need to be developed by DOE as an essential aspect of – and precursor to – any rulemaking. The best and most efficient resource available to DOE to develop and assess such necessary information – with consensus-based legitimacy – is the MHCC. Therefore, DOE, as part of its mandatory consultation with HUD, should refer both this issue and the interrelationship of the DOE and HUD standards to the MHCC for review, development of pertinent information, analysis and appropriate recommendations.

Regarding RFI issue 2, the availability of manufactured home financing, the extremely limited availability of manufactured home consumer financing – and particularly manufactured home personal property financing – has previously been addressed in detail by MHARR in communications and public record filings with multiple federal agencies. The failure of the existing Government Sponsored Enterprises (GSEs) to provide private market support for manufactured housing loans – and the resultant debilitating unavailability of private market financing for both consumers and the industry – is addressed in a June 1, 2012 MHARR letter to the Federal Housing Finance Agency (FHFA), attached hereto as Attachment 1 and incorporated herein by reference. (See also, MHARR July 12, 2012 comments in FHFA rulemaking docket RIN 2590–AA49, "2012-2014 Enterprise Affordable Housing Goals.") Similarly, the failure of the Federal Housing Administration (FHA) to provide public financing support (insurance) for manufactured home loans – and the resulting debilitating unavailability of publicly-supported manufactured home loans – is addressed in a December 16, 2011 MHARR letter to the Government National Mortgage Association, attached hereto as Attachment 2 and incorporated herein by reference.

The specific impact of additional and more costly manufactured home energy standards within this already highly circumscribed market is not difficult to anticipate, although it is not the subject of any particular study of which MHARR is aware. In a market where the household

income of 55% of purchasers, as noted above, is less than $30,000 and where 41% of all manufactured homes were purchased for less than $20,000 (see, 2012 Foremost Insurance Company study at p.2), virtually any increase in acquisition cost will exclude significant numbers of purchasers from the market. For this reason, combined with: (1) the potential adverse impacts of tightened thermal characteristics on indoor air and moisture control; (2) existing HUD energy/thermal/ventilation regulation; and (3) existing multi-level energy efficiency option packages offered by manufacturers which provide consumers with maximum freedom of choice to tailor the energy profile of their home to climate conditions where they live and their financial resources -- DOE should refrain from adopting any new standards that would increase the purchase cost of manufactured homes and exclude new purchasers from the market without significant corresponding consumer benefits – which to date have not been identified or quantified.

Regarding RFI issue 3, "suggested characteristics in developing a model system of enforcement for DOE's energy efficiency standards," MHARR would simply reiterate that there should be a single, unitary enforcement system for any such standards, incorporated within the existing HUD enforcement structure. As noted by MHARR in its July 16, 2010 letter to former Secretary Chu, "HUD ... is fully conversant with the intricacies of [the] comprehensive regulation [of manufactured housing] and is best able, working in conjunction with DOE, to fully evaluate and address the interaction and potential conflicts between energy standards and other aspects of the HUD Code. HUD moreover, is best suited to fully assess and ensure the affordability aspects of energy regulation within the context of the HUD Code and maintain the delicate balance between regulation and affordability that is embedded in relevant federal law." DOE, consequently, should not only consult with HUD regarding the development and enforcement of any such standards, as mandated by EISA, but should also provide for the enforcement of any such standards within the existing HUD structure in order to preserve consistency between such standards and the existing HUD Code standards and maintain the affordability of manufactured homes to the maximum degree possible.

1. CONCLUSION

For all the foregoing reasons, DOE should:

(A) Discard its selectively disclosed "draft proposed rule;"

(B) Allow sufficient time for the development, analysis and evaluation of information concerning potential adverse impacts and the cost implications of any new energy conservation standards;

(C) In addition to mandatory "consultation" with HUD, include the Manufactured Housing Consensus Committee in the development and analysis of any such information and the development of any proposed rule as contemplated by Congress;

(D) Given the selective leak of a draft proposed rule to one or more interested parties, provide a complete list of any and all parties who received that document (and any related materials) from either DOE or HUD; and

(E) Defer any final rule pending a recovery of the manufactured housing market to production levels exceeding 100,000 homes.

Sincerely,

Mark Weiss
Senior Vice President
Manufactured Housing Association for
Regulatory Reform
Suite 512
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 783-4087 (Office)
(703) 509-9489 (Direct)
(202) 783-4075 (Fax)
mmarkweiss@aol.com (Email)

cc: Hon. Carol Galante, HUD Assistant Secretary/FHA Commissioner
Mr. Danny Ghorbani, MHARR
MHARR Manufacturers

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

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,

Mark Weiss
President and CEO

cc: MHARR Manufacturers

Attachment

From: Regulations.gov <no-reply@regulations.gov>
To: mharrdg <mharrdg@aol.com>
Subject: Your Comment Submitted on Regulations.gov (ID: EERE-2009-BT-BC-0021-0110)
Date: Fri, Mar 13, 2015 12:37 pm

regulations.gov

Please do not reply to this message. This email is from a notification only address that cannot accept incoming email.

Your comment was submitted successfully!

Comment Tracking Number: 1jz-8hp4-8d43

Your comment may be viewable on Regulations.gov once the agency has reviewed it. This process is dependent on agency public submission policies/procedures and processing times. Use your tracking number to find out the status of your comment.

Agency: Energy Efficiency and Renewable Energy Office (EERE)
Document Type: Rulemaking
Title: 2015-02-11 Energy Conservation Program: Energy Efficiency Standards for Manufactured Housing; Request for information.
Document ID: EERE-2009-BT-BC-0021-0110

Comment:
The comments of the Manufactured Housing Association for Regulatory Reform (MHARR) are attached.

Uploaded File(s):

- MHARRDOERFIRESPONSE (1).pdf

This information will appear on Regulations.gov:

First Name: Mark
Last Name: Weiss
Organization Name: Manufactured Housing Association for Regulatory Reform
Submitter's Representative: Mark Weiss, President and CEO

This information will not appear on Regulations.gov:

All of the information will appear on Regulations.gov

For further information about the Regulations.gov commenting process, please visit http://www.regulations.gov/#!faqs.

U.S. Department of Energy
Office of Energy Efficiency and Renewable
Energy, Building Technologies Program
Mailstop EE-2J
1000 Independence Avenue, S.W.
Washington, DC 20585-1585

May 29, 2012

Reference: Regulatory Burden RFI

Dear Sir or Madam:

On behalf of the Manufactured Housing Institute (MHI) I am pleased to respond to the Department of Energy's (DOE's) May 15, 2012 request for comments and information regarding regulations that should be modified, streamlined, expanded, or repealed as a part of its implementation of Executive Order 13563, "Improving Regulation and Regulatory Review," issued by the President on January 18, 2011.

MHI is the national trade association representing all segments of the factory-built housing industry including manufacturers, lenders, community owners, retailers, and state associations.

MANUFACTURED HOUSING IS AN IMPORTANT SOURCE OF SHELTER AND A SIGNIFICANT ECONOMIC ENGINE

Manufactured homes serve many housing needs in a wide range of communities—from rural areas where housing alternatives (rental or purchase) are few and construction labor is scarce and/or costly (nearly two-out-of-three manufactured homes are located in rural areas), to higher-cost metropolitan areas as in-fill applications. Without land, the average purchase price of a new manufactured home is $62,800, versus $272,900 for a new site-built home (Source: U.S. Census Bureau), which is affordable by almost any measure.

In addition to the valuable role it plays in providing reliable, efficient and affordable housing for 19 million Americans, the manufactured housing industry is an important economic engine. In 2011, the industry produced just over 50,000 new homes, which were produced in more than 120 home-building facilities, operated by 45 different companies, and sold in 4,000 retail home sales centers across the U.S.—generating 75,000 full-time, good-paying, jobs.

Despite its role as a valuable source of affordable housing, a driver of the U.S. economy, and a model of efficiency and sustainability in the larger housing industry, the manufactured housing industry has had ongoing challenges over the past decade. Since 2005, the pace of new manufactured homes sold in the

U.S. has declined by 65 percent (146,881 in 2005 vs. 51,606 in 2011) and there has been a decline of nearly 80 percent since 2000 (when 250,419 new manufactured homes were produced).

ELIMINATE DUPLICATIVE ENFORCEMENT OF MANUFACTURED HOUSING ENERGY EFFICIENCY STANDARDS

The Energy Independence and Security Act of 2007 (EISA; P.L. 110-140) contains provisions requiring the Department of Energy (DOE) to establish and implement energy efficiency standards for manufactured housing (Sec. 413). The legislation moves HUD's statutory responsibility for manufactured home energy standards to DOE.

The law effectively replicates HUD's statutory responsibility for manufactured home energy standards within DOE and establishes a duplicative regulatory standard and system for the manufactured housing industry. A draft proposed DOE rule establishing new energy efficiency standards and regulations for manufactured housing is pending at the Office of Management and Budget.

MHI believes this dual regulation will have the real impact of raising the costs on affordable manufactured housing and costing jobs in an industry already suffering through a significant decline.

<u>The draft proposed DOE Rule imposes overlapping and potentially contradictory regulation</u>

Manufacturers will be subject to building and construction standards, enforcement and oversight by two federal agencies. The proposed rules establish new energy requirements that are currently covered by the HUD Manufactured Housing Construction and Safety Standards (MHCSS). However, the rule also gives DOE broad authority to set, monitor and enforce compliance with new energy efficiency standards. Meanwhile, HUD would continue to oversee compliance and enforcement of its own standards and regulations. This will result in parallel regulation and enforcement by two agencies, creating a duplication of effort and overlap of responsibilities. The draft proposed rule will add cost, blur the lines of accountability and potentially create confusion among industry and regulators.

For example, the draft rule would: result in overlapping or contradictory technical requirements without a clear path to resolution; necessitate a substantial amount of redundant recordkeeping; create the real possibility that each agency may opt to choose separate third-party enforcement agents with potentially overlapping responsibilities and conflicting procedures for verifying compliance; and, provide harsh civil penalties for non-compliance that may conflict with existing HUD regulations.

<u>The draft proposed DOE rule contains onerous and unrealistic testing requirements</u>

Compliance with the draft DOE standards requires homes to be tested in the factory. Separate testing is required to measure duct leakage, whole house (building shell) tightness and air infiltration rates for each window.

These requirements would add significant cost by requiring that the entire home be pre-assembled at the plant for testing purposes, tested following rigorous procedures, then be disassembled for transport to the building site. The testing would slow production, increasing cycle time and adding to production costs. The combined costs to conduct the tests are well in excess of DOE estimates and will add hundreds or possibly thousands of dollars to the cost of each home. High window and shell leakage, in particular, are not issues for new manufactured home construction; homes are routinely produced that are extremely tight. HUD recognized this fact in promulgating standards (subpart §3280) that require

each home be equipped with a whole house ventilation system, assuring sufficient air exchange with the outside. In short, the efficacy of and need for the tests have not been demonstrated by DOE. Evidence from research regarding leakage tests suggest that finding failures (leakage levels that exceed the standard maximum) immediately following plant production is a rare occurrence and, when excess leakage does occur, it is the result of installation of the home in the field (home installation is outside the purview of the proposed DOE standard). Testing every home as stipulated will engender a substantial cost without saving energy.

The proposed DOE draft rule will impact affordability

The vast majority of manufactured homebuyers are low- and moderate-income earners requiring homes that are broadly defined as "affordable." As a result, even a small increase in home cost has a disproportionately large impact on manufactured homebuyers: on their ability to qualify for a home loan; on the proportion of income that goes toward mortgage payments; and, on their ability to purchase basic amenities. It is vitally important, therefore, that any increase in home cost resulting from new energy standards be cost justified; that is, not burden affordability by increasing costs without yielding compensating value (i.e., reducing energy costs).

The proposed DOE standard includes several provisions (e.g., testing, as noted above, among others) that increase cost without providing corresponding value. Further, DOE's estimate of the cost impact is based on anecdotal data and incomplete analysis. For example, DOE estimates testing will costs about $50 per home. The actual figure is likely to be an order of magnitude higher. Other factors that contribute to affordability and reduced purchasing power are not addressed by DOE in quantifying the financial impact of the standard. For example, current lending, appraisal and underwriting practices do not consider energy efficiency. More stringent energy standards, therefore, add an extra financial burden to homebuyers already struggling to qualify for a loan.

DOE's own estimate of the total cost burden to the industry is $4.5 million over four years. While MHI believes the actual cost is likely to be far greater, a careful and thorough cost analysis is warranted and necessary to understand how manufactured homebuyers and the industry will be impacted by the proposed standards. Promulgating standards that may adversely impact the ability of homebuyers to purchase and afford a manufactured home is ill-timed, particularly considering that the industry that has not yet begun to recover from a more than 80 percent decline in sales over the last decade resulting in 160 plants and over 7,500 retail home center closures and a loss of 200,000 jobs.

Other concerns regarding the draft proposed DOE rule

The draft rule is in conflict with provisions of the Manufactured Housing Construction and Safety Standards (MHCSS) Act that require the Manufactured Housing Consensus Committee to review and recommend proposed changes the Manufactured Housing Construction and Safety Standards. Unlike the MHCSS process (and the IECC development process), the proposed DOE standards were not subject to broad review and critique by a broadly representative group of stakeholders and consensus approval.

Requiring more stringent and expensive energy measure (based on the 2012 IECC) creates a competitive disadvantage for the industry vis-a-vis site built homes. Currently only 26 states require site builders to build to the 2009 IRC. Sixteen states are building to the 2006 IECC and one (1) state is in the process of adopting the 2012 IECC. Over the next two year, less than one-half of the country will be building to the 2012 version of the IECC.

Finally, the mission of DOE and HUD are fundamentally different and conflicting. The Department of Energy's mission is to ensure America's security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions. HUD's mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. While HUD actively seeks to protect housing affordability, DOE's primary mission is to find ways to save energy. MHI believes that new standards need to strike a balance: minimize energy use and costs for the next generation of manufactured homes while preserving affordability.

Thank you for the opportunity to comment, and please don't hesitate to contact me if you have questions or if I can provide additional information. My e-mail is lstarkey@mfghome.org, and my phone number is (703) 558-0654.

Sincerely,

Lois Starkey, Vice President
Regulatory Affairs

Manufactured Housing Association for Regulatory Reform

1331 Pennsylvania Avenue, NW • Suite 508 • Washington, DC 20004 • 202-783-4087 • Fax 202-783-4075 • mharrdg@aol.com

July 20, 2012

VIA FEDERAL EXPRESS

Hon. Steven Chu
Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 2085

Re: Energy Efficiency Standards for Manufactured Housing

Dear Secretary Chu:

On February 22, 2010 the Department of Energy (DOE) published an Advance Notice of Proposed Rulemaking (ANPR) concerning its development of "energy efficiency" standards for manufactured homes already subject to comprehensive regulation by the Department of Housing and Urban Development (HUD). That ANPR – the subject of MHARR comments dated March 16, 2010 -- sought public input concerning 13 broad issues. It did not include any proposed regulatory provisions or regulatory impact analysis, stating instead that "DOE intends to develop a regulatory impact analysis (RIA)...." (Emphasis added). To date, a proposed rule concerning these standards has not yet been published in the Federal Register and no further information regarding the content of a proposed rule has been published.

Yet, some stakeholders apparently already know the details of a proposed rule on this matter, as shown by the attached May 29, 2012 communication to DOE, which refers to specific requirements and provisions of a "draft proposed DOE rule" and "draft DOE standards" that were not included in the ANPR, have not been published as a proposed rule and have not otherwise been made public or provided to other interested parties. For example, the communication states that "the draft DOE standards requires (sic) homes to be tested in the factory" and refers to DOE's estimate of a "total cost burden to the industry [of] $4.5 million over four years." Neither of these specifics, to MHARR's knowledge, have been published or provided generally to all interested parties and stakeholders – and no such information has been provided to MHARR.

After a copy of the May 29, 2012 communication was published in the trade press, my colleague, MHARR Senior Vice President, Mark Weiss, contacted DOE to determine if a copy of a "draft" proposed standard had been provided to any party in interest. Mr. Weiss was directed to DOE employee, Michael Erbesfeld, who acknowledged that a draft proposed rule did,

in fact, exist and that a copy had been provided to HUD, but denied that the draft proposed rule, in whole or in part, had been provided to any other party in interest by DOE.

Unfortunately, this response is insufficient as it leaves unanswered key questions affecting the integrity and legitimacy of this rulemaking, including but not limited to: (1) how was all or part of the draft proposed DOE rule leaked to a party in interest; (2) who is responsible for that leak; and (3) what other parties in interest, if any, have been provided inside information concerning this major rulemaking?

In a highly competitive, price sensitive market such as manufactured housing, where small independent businesses such as those represented by MHARR struggle to compete with corporate conglomerates, the selective leak of crucial regulatory information could have severe marketplace repercussions. Accordingly, we ask that both DOE and HUD conduct a thorough internal investigation of this matter and, by copy of this letter, we are informing HUD Assistant Secretary for Housing, Carol Galante -- the senior appointed HUD official with direct oversight responsibility for the HUD manufactured housing program – of this request. At the same time, we are also advising the Government Accountability Office of this matter in connection with its ongoing examination of the HUD manufactured housing program.

We look forward to hearing the results of your investigation before it becomes necessary to take further action.

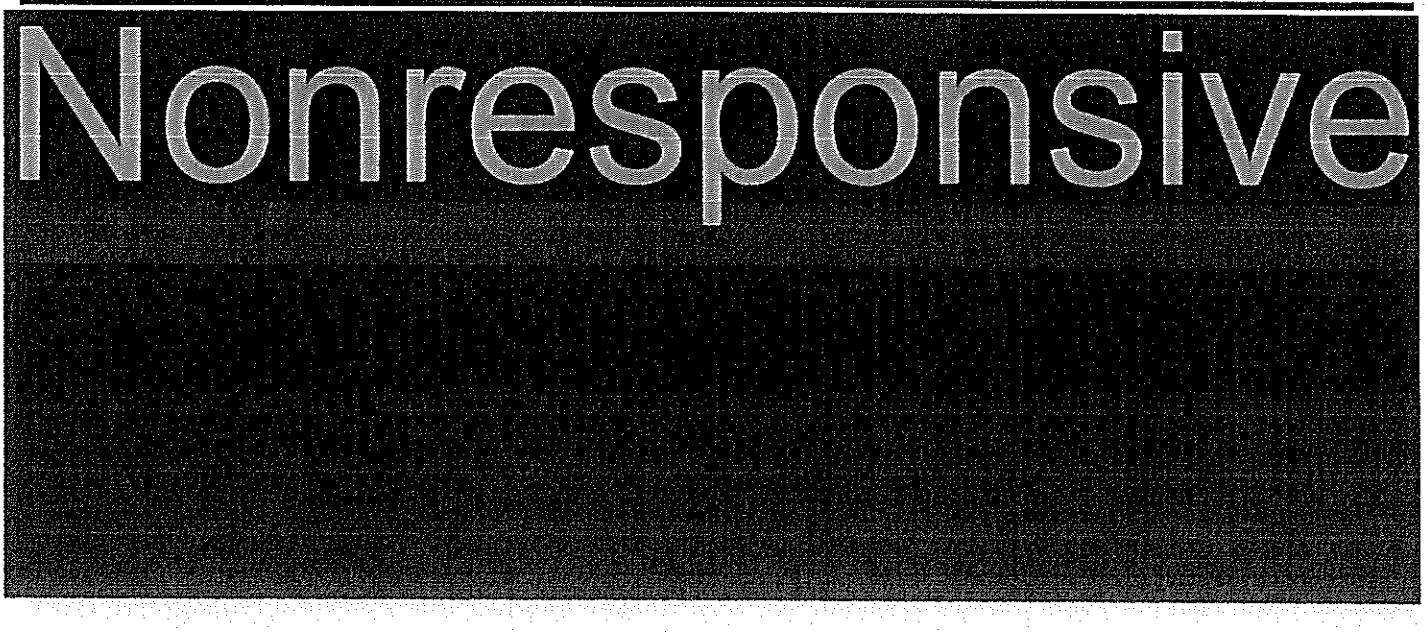
Sincerely,

Danny D. Ghorbani
President

cc: Hon. Carol Galante
Mr. Mathew Scire (GAO)

15

Schierloh, Michael (CONTR)



From: Lucas, Robert G
Sent: Wednesday, August 24, 2011 12:52 PM
To: Erbesfeld, Michael; Michael Lubliner
Subject: Construction costs data for manufactured homes

Mike E.:

Mike Lubliner is with the Washington State University energy office and has extensive experience in manufactured housing energy efficiency, including being a member of the HUD consensus committee that advises HUD on all things related to the HUD manufactured housing code. Mike has already provided extensive input and recommendations to DOE on the manufactured housing energy standards development process as part of the advanced NOPR that DOE published back in February 2010.

Mike has informed me that there is brand new construction cost data for improved energy efficiency measures collected from MH manufacturers in the Pacific Northwest and has kindly volunteered to provide this data. I have requested that this data be sent to you. Mike understands that this data will likely become public record and that communications may be published on the regulations.gov website and furthermore that DOE may or may not utilize this data (i.e., DOE is under no obligation to use this data or even explain why it is not using this data as it was not submitted as a formal comment because the ANOPR comment period closed a long time ago).

This Email is simply to establish contact between the two of you. I have told Mike L. that you are the new project manager on the DOE manufactured housing standards. Mike has indicated that this construction cost data might be sent to you as soon as later today.

Thanks,
Bob

Schierloh, Michael (CONTR)

From: Cohen, Daniel
Sent: Monday, September 21, 2015 10:15 AM
To: Vaidyanathan, Kavita
Subject: FW: manufactured housing NOPR

-----Original Message-----
From: Kohl, Elizabeth
Sent: Friday, October 14, 2011 4:53 PM
To: 'Whiteman, Chad' (b) (6) >
Cc: Cohen, Daniel <Daniel.Cohen@hq.doe.gov>; Calamita, Christopher <Christopher.Calamita@hq.doe.gov>
Subject: manufactured housing NOPR

Chad -- The manufactured housing NOPR has been uploaded into ROCIS and submitted for your review. The draft notice and the environmental analysis in the draft TSD address issues of indoor air quality. (b) (5) Please let us know if you have any questions. Thank you,

Betsy

Betsy Kohl
Attorney-Adviser
Office of the General Counsel
U.S. Department of Energy
202-586-7796

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

October 22, 2013

VIA FEDERAL EXPRESS

FOIA Requester Service Center
U.S. Department of Energy
1000 Independence Avenue, S.W.
Mail Stop MA-90
Washington, D.C. 20585

Re: Freedom of Information Act Request

Dear Sir or Madam:

The Manufactured Housing Association for Regulatory Reform ("MHARR") hereby requests, pursuant to the Freedom of Information Act, 5 U.S.C. 552 ("FOIA"), that copies of the following document(s) related to energy efficiency standards for manufactured homes pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA) (Public Law 110-140) be provided to us:

1. Any and all copies of a Department of Energy (DOE) draft proposed rule for manufactured housing energy standards pursuant to EISA section 413 previously provided to certain parties in interest (other than MHARR) and as more fully described in the attached June 5, 2012 correspondence from the Manufactured Housing Institute (MHI) to Rep. Darrell Issa at pp. 6-8 (Attachment 1) and May 29, 2012 MHI correspondence to DOE (Attachment 2), and as referenced in July 20, 2012 MHARR correspondence with former DOE Secretary Steven Chu (Attachment 3);

2. Any and all correspondence or other documents related to or concerning the disclosure of the said "draft proposed rule" to MHI or any other party; and

3. Any and all correspondence or other communications received by DOE regarding the said "draft proposed rule" including, but not limited to, communications from any party to whom the said "draft proposed rule" had been provided.

The term "document," as used herein, includes records of electronic communications and both written and electronic records of telephonic communications and includes all drafts or versions of the identified document(s).

The document(s) requested herein are sought in the public interest concerning the operation and activities of DOE and not primarily for any commercial interest of the requester.

If all or part of this request is denied, please cite each specific FOIA exemption which you contend justifies the said denial and advise us accordingly.

If you have any questions about processing this request, you may contact me during business hours at (202) 783-4087.

Thank you in advance for your assistance.

Sincerely,

Mark Weiss
Senior Vice President

cc: Mr. Danny D. Ghorbani

ATTACHMENT 9

Department of Energy
Washington, DC 20585

February 18, 2014

Mr. Mark Weiss
Manufactured Housing Association for Regulatory Reform
1331 Pennsylvania Avenue, NW, Suite 512
Washington, D.C. 20004

Re: HQ-2014-00151-F

Dear Mr. Weiss:

This is in response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested copies of the following document(s) related to energy efficiency standards for manufactured homes pursuant to section 413 of the Energy Independence and Security Act of 2007 (EISA) (Public Law 110-140):

1. Any and all copies of a DOE draft proposed rule for manufactured housing energy standards pursuant to EISA section 413 previously provided to certain parties in interest (other than MHARR) and as more fully described in the attached June 5, 2012 correspondence from the Manufactured Housing Institute (MHI) to Rep. Darrell Issa at pp. 6-8 (Attachment 1) and May 29, 2012 MHI correspondence to DOE (Attachment 2), and as referenced in July 20, 2012 MHARR correspondence with former DOE Secretary Steven Chu (Attachment 3);

2. Any and all correspondence or other documents related to or concerning the disclosure of the said "draft proposed rule" to MHI or any other party; and

3. Any and all correspondence or other communications received by DOE regarding the said "draft proposed rule" including, but not limited to, communications from any party to whom the said "draft proposed rule" had been provided.

In a November 13, 2013, telephone conversation with Mr. Todd Burns, of my office, you agreed to review the formal fee estimate, which totaled $3,027.00, based on 23.5 hours of search time and 23.5 hours of review time at various hourly rates. In a December 23, 2013, email with Mr. Burns, you agreed to narrow the timeframe of your request to January 1, 2012 through June 30, 2013. You also requested a revised formal fee estimate. The Office of Energy Efficiency and Renewable Energy and the Office of the General Counsel estimated that it would cost approximately $580.35 to process your request, based on 4.125 hours of search time and 4.125 hours of review time at various hourly rates.

Your request was assigned to the Office of Energy Efficiency and Renewable Energy and the Office of the General Counsel to conduct searches of their files for responsive documents. This

is the final response for the Office of the General Counsel. The Office of Energy Efficiency and Renewable Energy will respond to you in a separate letter.

The Office of the General Counsel conducted a search of its files. The search started on February 10, 2014, which is the cutoff date for responsive documents. The search, however, did not locate any responsive records. Therefore, pursuant to Title 10, Code of Federal Regulations (C.F.R.), Part 1004.7(b)(2), I am responsible for the determination that no responsive records exist in that office. Pursuant to 10 C.F.R. Part 1004.4(d), I am unable to provide any responsive records for that office.

The adequacy of the search may be appealed within 30 calendar days from your receipt of this letter pursuant to 10 C.F.R. Part 1004.8. Appeals should be addressed to Director, Office of Hearings and Appeals, HG-1, L'Enfant Plaza, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. The appeal must contain all of the elements required by 10 C.F.R. Part 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where the Department's records are situated, or (4) in the District of Columbia.

The FOIA provides for the assessment of fees for the processing of requests. *See* 5 U.S.C. § 552(a)(4)(A)(i); *see also* 10 C.F.R. Part 1004.9(a). In our November 18, 2013 letter, you were advised that your request was placed in the "commercial use" category for fee purposes. Any fees incurred for processing this request will be addressed in the final response letter.

If you have any questions about the processing of the request or this letter, you may contact Ms. Diana Ngo or Ms. Candace Ambrose at:

MA-90/Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202)586-5955

I appreciate the opportunity to assist you with this matter.

Sincerely,

Alexander C. Morris
FOIA Officer
Office of Information Resources

mentioned at the meeting with OMB. Chris and I would like to take you up on your offer to tour the facility with the hope that we can find a date that will accommodate all of our schedules. Thanks again for your help,

Mike

From: Lois Starkey [mailto:Lois.Starkey@mfghome.org]
Sent: Wednesday, March 14, 2012 6:04 PM
To: Calamita, Christopher; Jensen, Michael
Cc: Rae Ann Bevington
Subject: Thank You-Invitation

Chris and Mike:

Thanks so much for participating in the meeting with OMB last week.

I am following up with you regarding the tour of a manufacturing facility in Leola, PA. I realize it is last minute, but we would love to have you join us. There will be about 8 folks form the Department of commerce (Census Bureau) and HUD.

We will plan to begin the tour at 11:00 a.m. or as soon as everyone arrives. We will try to complete all our business by 1:00 or 1:30 p.m. so folks can go to lunch and get on the road again.

The address is 99 Horseshoe Road, Leola, 17540. Travel time is between 2.5 and 3 hours, not including rush hour traffic in the Washington Metro Area.

Let me know if you can make it. If this date does not work for you, we would be happy to do it another time. I just need a few weeks notice to schedule something.

In the meantime, I have attached a couple of documents that address affordability and the issue of energy use in buildings, as we discussed at the meeting.

http://www.nahb.org/fileUpload_details.aspx?contentTypeID=3&contentID=174956&subContentID=414304

http://eyeonhousing.wordpress.com/2012/02/10/house-prices-the-priced-out-effect/

Thanks again for your interest in manufactured housing.

Lois

I don't think that we ca

Lois Starkey, Vice President, Regulatory Affairs

2111 Wilson Blvd., Suite 100, Arlington, VA 22201

Tel: 703-558-0654

www.manufacturedhousing.org

lstarkey@mfghome.org

-

2012 Legislative Conference & Business Meeting

Crystal City, VA/ Washington, DC - February 26 - 28, 2012

2012 Congress & Expo for Manufactured and Modular Housing

Las Vegas, NV – April 10 - 12, 2012

2012 Annual Meeting

San Antonio, TX - Oct. 7-9, 2012

Schierloh, Michael (CONTR)

1

From: Michael Lubliner <LublinerM@energy.wsu.edu>
Sent: Thursday, July 19, 2012 1:28 PM
To: Conover, David R
Cc: Tom Eckman (TEckman@nwcouncil.org); Erbesfeld, Michael; McDonald, Sean C; Lucas, Robert G; Mark Ames
Subject: Re: Information

Dave

Thanks for the reply. I have the same understanding about rule making protocol and have no plans to engage you at this time.

I have a call into Mark Ames at ASHRAE govt. affairs to follow-up on my 2 comments at the last ASHRAE codes coordination meeting:

1) advising ASHRAE members of a upcoming opportunity to provide input as part of DOE rulemaking request for public comments and 2) to discuss the proposal to HUD to adopt 62.2 for MHCSS.

Regards
Mike
Cell (b) (6)

Sent from my iPhone

On 2012-07-19, at 8:44 AM, "Conover, David R" <David.Conover@pnnl.gov> wrote:

> Mike – I did not review the attached document you sent and I cannot respond to a pending rulemaking. I do not know what MHI does or does not have access to. My understanding of all rulemakings is all interested and affected parties have equal access at the same time to any rulemaking, notice, etc. through the Federal Register.
>
> Can you please be more specific as to big picture, ASHRAE and stakeholders? If about manufactured housing there is not much I could provide. If anything else if you can provide detail it will allow me to prepare before we talk or address via e-mail (I have calls most of today coupled with deliverables).
>
> Regards,
>
> Dave
>
> **From:** Michael Lubliner [mailto:LublinerM@energy.wsu.edu]
> **Sent:** Wednesday, July 18, 2012 6:47 PM
> **To:** Conover, David R
> **Cc:** Tom Eckman (TEckman@nwcouncil.org)
> **Subject:** Information
>
> Dave,
>
> I understand that you are involved with Rulemaking and know that you cannot discuss details at this time.

I would like to discuss the big picture as it relates to ASHRAE and other stakeholders, when you have time.

I have attached a document from MHI to DOE. Does MHI have access to draft rules (maybe from OMB) that many others stakeholders have not seen?

Best Regards,
Mike Lubliner
Cell (b) (6)

From: [redacted]
To: [redacted]
Subject: DOE Information
Date: Thu, Jun 28, 2012 2:26 pm

Hi [redacted]
The standard said "not for distribution" so professionally I cannot send it to you, so I have just sent the table of contents below.
Hope this helps somewhat.
[redacted]
Best regards,
[redacted]

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

PART 460 -- ENERGY EFFICIENCY STANDARDS FOR MANUFACTURED HOUSING

Subpart A – General

460.1 Scope.
460.2 Definitions.

Subpart B – The Building Thermal Envelope

460.101 Climate zones.
460.102 Building thermal envelope requirements.
460.103 Building thermal envelope air leakage standards.
460.104 Building thermal envelope air leakage test procedures.

Subpart C – HVAC, Service Water Heating, and Lighting

460.201 Heating, ventilating, and air conditioning.
460.202 Duct system air leakage test procedures.
460.203 Service water heating.
460.204 Lighting.

Subpart D – Waivers, Exception Relief, and Alternative Performance

460.301 Waivers.
460.302 Exception relief.
460.303 Alternative performance.

Subpart E – Compliance and Enforcement