

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 460

[EERE-2009-BT-BC-0021]

RIN 1904-AC11

### Energy Conservation Program: Energy Conservation Standards for Manufactured Housing

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of data availability; request for information.

**SUMMARY:** The U.S. Department of Energy (DOE) is announcing this notice of data availability (“NODA”) and soliciting public input regarding data relating to certain aspects in developing energy conservation standards for manufactured housing. These data are likely to help serve as support for DOE’s further refinement of certain aspects of its proposed standards for these structures. They may also serve as the basis for DOE’s restructuring of its approach in laying out the framework for standards that would apply to manufactured housing. DOE is seeking comment on these data along with several options that it is currently considering that could form an alternative basis for regulating the energy efficiency of manufactured housing. DOE also seeks any additional information that might further inform the agency’s views regarding the manner in which to regulate these structures.

**DATES:** Written comments and information are requested and will be accepted on or before September 17, 2018.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2009-BT-BC-0021, by any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *Email:* to [Manufactured\\_Housing@ee.doe.gov](mailto:Manufactured_Housing@ee.doe.gov). Include EERE-2009-BT-BC-0021 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section III of this document.

*Docket:* The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at <https://www.regulations.gov/docket?D=EERE-2009-BT-BC-0021>. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Sofie Miller, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-1943. Email: [Manufactured\\_Housing@ee.doe.gov](mailto:Manufactured_Housing@ee.doe.gov).

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-8145. Email: [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: [Manufactured\\_Housing@ee.doe.gov](mailto:Manufactured_Housing@ee.doe.gov).

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#### I. Introduction

Manufactured housing comprises a housing category that consists of structures constructed in a factory, built on a permanent chassis, and transportable in one or more sections that are then erected on-site. See 24 CFR 3280.2 This type of housing has traditionally been regulated by the Department of Housing and Urban Development (“HUD”), which has regulated these structures with the purpose of reducing personal injuries, deaths, property damage, and insurance costs, and to improve the quality, durability, safety, and affordability of these homes. See 42 U.S.C. 5401(b). Consistent with its statutory authority, HUD has created a comprehensive regulatory framework to address a variety of aspects related to these structures, including certain elements related to their energy efficiency. See, e.g. 24 CFR 3280.507(a) (specifying thermal insulation requirements) and 24 CFR 3280.508(d) (detailing requirements related to the installation of high-efficiency heating and cooling equipment in manufactured homes). HUD’s standards are preemptive nationwide and differ from standards developed under the auspices of (and published by) the International Code Council (“ICC”). The ICC standards,

known as the International Energy Conservation Code (“IECC”), have been adopted by many state and local governments in establishing minimum design and construction requirements for the energy efficiency of residential and commercial buildings. However, due to the preemptive nature of HUD’s standards, the ICC standards are not currently applied to manufactured housing. Consistent with this approach and Federal law, DOE is tasked with evaluating whether the adoption of standards based on the most recent version of the IECC would satisfy the applicable statutory requirements.

#### A. Authority and Background

Section 413 of the Energy Independence and Security Act of 2007, Public Law 110–140 (December 19, 2007) (“EISA”) requires DOE to establish by regulation standards for the energy efficiency of manufactured housing. See 42 U.S.C. 17071(a)(1). Prior to establishing these regulations, DOE must satisfy two conditions—(1) provide manufacturers and other interested parties with notice and an opportunity for comment and (2) consult with the Secretary of HUD, who may then “seek further counsel from the Manufactured Housing Consensus Committee.”<sup>1</sup> 42 U.S.C. 17071(a)(2). These standards must generally be based on the most recent version of the IECC, except where DOE finds that the IECC is not cost effective, or a more stringent standard would be more cost effective. A finding that standards based on the IECC are not cost effective or that standards more stringent than the IECC are cost effective would be based on the impact of the adoption of the IECC standards on the purchase price of manufactured housing and on total life-cycle construction and operating costs. See 42 U.S.C. 17071(b)(1). In establishing its standards, DOE may consider:

- The design and factory construction techniques of manufactured housing,
- The climate zones established in the U.S. Department of Housing and Urban Development’s Manufactured Home Construction and Safety Standards (“the HUD Code”) rather than

the climate zones included as part of the IECC, and

- Alternative practices that result in net estimated energy consumption equal to or less than the specific IECC standards. See 42 U.S.C. 17071(b)(2).

In addition, EISA provides that a manufacturer who violates the regulations established by DOE under 42 U.S.C. 17071(a) “is liable to the United States for a civil penalty in an amount not exceeding 1 percent of the manufacturer’s retail list price of the manufactured housing.” See 42 U.S.C. 17071(c).

#### B. Rulemaking History

In the years since EISA became law, DOE has undertaken several steps down the complex regulatory path of fulfilling Section 413’s directive for promulgating new regulations under the processes and conditions set forth in the statute. After studying the issue, on February 22, 2010, DOE published an advanced notice of proposed rulemaking and request for comment identifying 13 distinct issues concerning energy efficiency in manufactured housing about which it sought public input. See Energy Standards for Manufactured Housing, 75 FR 7556, 7557 (February 22, 2010). After receiving and considering the submitted comments, DOE prepared a draft notice of proposed rulemaking (“draft NOPR”) and submitted it to the Office of Information and Regulatory Affairs (“OIRA”) in the Office of Management and Budget for review, pursuant to Executive Order 12866. Ultimately, the draft NOPR did not clear the OIRA review process, and DOE withdrew it on March 13, 2014.<sup>2</sup>

Following the withdrawal of the draft NOPR from OIRA, DOE notified the public of its intent to establish a negotiated rulemaking working group for manufactured housing. DOE believed that this approach would be “better suited to resolving complex technical issues” concerning the standards, among other benefits. 79 FR 33874 (June 13, 2014). The working group was convened and met for a total of 12 days over a three-month period. See Energy Conservation Program: Energy Efficiency Standards for Manufactured Housing, 80 FR 7550,

7551 (February 11, 2015).<sup>3</sup> These meetings led to the adoption of a term sheet detailing numerous technical recommendations for energy efficiency standards for manufactured housing. See Document ID EERE–2009–BT–BC–0021–0107.<sup>4</sup> Also, in accordance with a recommendation from the working group, DOE sought further public comment regarding some technical issues that had arisen in the rulemaking process. See 80 FR 7551–7553. In addition to these extensive efforts to solicit comments from the public and the expertise of the working group, DOE also held meetings with HUD throughout the regulatory process and engaged in discussions with the Manufactured Housing Consensus Committee. See 81 FR 39762–39763, 39765. It has also conferred with various other stakeholders. See *id.* 81 FR 39763, 39765.

On June 17, 2016, DOE published in the **Federal Register** a NOPR, which, in addition to comprehensively describing DOE’s analysis, was accompanied by a technical support document detailing DOE’s analyses supporting that proposal. See 81 FR 39756. See also Document ID EERE–2009–BT–BC–0021–0136.<sup>5</sup> The agency also prepared a draft environmental assessment pursuant to the National Environmental Policy Act, on which it sought public input, particularly regarding the impacts of the proposed standards on the indoor air quality of manufactured homes. See Draft Environmental Assessment for Notice of Proposed Rulemaking, “Energy Conservation Standards for Manufactured Housing” With Request for Information on Impacts to Indoor Air Quality, 81 FR 42576 (June 30, 2016). DOE received nearly 50 comments on the proposed rule during the comment period. After considering those comments, DOE prepared a draft final rule governing energy efficiency in manufactured housing and submitted it to OIRA for review under Executive Order 12866. OIRA received the draft final rule on November 1, 2016.<sup>6</sup> Again,

<sup>3</sup> See also Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)—Manufactured Housing Working Group, 79 FR 48097 (August 15, 2014); Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)—Manufactured Housing Working Group, 79 FR 59154 (October 1, 2014).

<sup>4</sup> Available at: <https://www.regulations.gov/document?D=EERE-2009-BT-BC-0021-0107>.

<sup>5</sup> Available at: <https://www.regulations.gov/document?D=EERE-2009-BT-BC-0021-0136>.

<sup>6</sup> See *supra*, note 2. On November 9, 2016, DOE also published a notice of proposed rulemaking for test procedures, as a companion to the draft energy efficiency standards rule for manufactured housing. See Energy Conservation Program: Test Procedures for Manufactured Housing, 81 FR 78733 (November 9, 2016). Test procedures specify how those subject

<sup>1</sup> HUD describes its Manufactured Housing Consensus Committee as “a statutory Federal Advisory Committee body charged with providing recommendations to the Secretary on the revision and interpretation of HUD’s manufactured home construction and safety standards and related procedural and enforcement regulations. The [Committee] is charged with developing proposed model installation standards for the manufactured housing industry.” [https://www.hud.gov/program\\_offices/housing/rmra/manufacturedhousing/cc1](https://www.hud.gov/program_offices/housing/rmra/manufacturedhousing/cc1) (last accessed on July 9, 2018).

<sup>2</sup> The withdrawn date can be found at <https://www.reginfo.gov/public/do/eoAdvancedSearch> and entering “1904–AC11” for the RIN and checking “Concluded” under “Review Status”. Additionally, while the OIRA review was ongoing, on June 25, 2013, DOE published a request for information in which it sought additional public input regarding four identified issues related to its rulemaking. See Energy Efficiency Standards for Manufactured Housing, 78 FR 37995, 37996–37997 (June 25, 2013).

however, DOE's draft final rule did not clear the OIRA review process and was withdrawn on January 31, 2017.<sup>7</sup>

## II. Request for Information

Since the publication of DOE's proposals, the agency has re-examined its available data and re-evaluated its approach in developing standards for manufactured housing. In particular, HUD made DOE aware of the adverse impacts on manufactured housing affordability that would likely follow if DOE were to adopt the approach laid out in its June 2016 proposal. As a result, and in consideration of specific suggestions offered by HUD, DOE initiated a review of its data and analysis and has begun reconsidering the framework to use in regulating these structures. In particular, DOE had previously considered a regulatory regime similar to the one it administers with regard to appliance and commercial equipment standards, *i.e.*, setting a uniform, minimum mandatory level of efficiency that must be achieved by all subject products. However, DOE's authority to establish energy efficiency standards for appliance standards is separate from its authority to establish energy conservation standards for manufactured homes. Thus, DOE is examining if it must set a single, mandatory level of efficiency. As a result of this re-examination, DOE developed a number of alternatives on which it seeks further input from the public. These alternatives would facilitate a variety of different levels of efficiency. In developing these alternatives, DOE gave careful consideration to a variety of factors, including the first-time costs related to the purchase of these homes. In the following sections, DOE presents a series of issues on which it seeks input to aid in the development of the technical and economic analyses regarding each of these potential alternatives to the proposed regulatory framework contained in DOE's June 2016 standards proposal.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this process that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. *See* 82

FR 9339 (February 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its regulations applicable to manufactured housing consistent with the requirements of EISA.

### A. June 2016 Proposal's Analytical Assumptions

As with any of its appliance and equipment standards rulemaking proposals, DOE made a number of analytical assumptions to determine what minimum level of efficiency it should use in establishing mandatory energy conservation standards for manufactured housing. These assumptions spanned a variety of factors, including affordability, which climate zones to use, which solar heat gain coefficient ("SHGC") to use in a given climate zone, the price elasticity value to use in DOE's calculation of potential impacts, whether to include certification, compliance, and enforcement costs as part of DOE's analysis, and whether the tightening of a manufactured home's building envelope—which is what the proposed standards were designed to help accomplish—would impact indoor air quality by increasing the likelihood of trapping pollutants inside the building.

*Issue 1:* What analytical aspects related to DOE's June 2016 proposal—aside from those specifically noted later in this document—should DOE consider re-examining as part of its ongoing consideration of a final rule for manufactured housing? (Within this context, this request also encompasses whether DOE's analysis sufficiently addresses the cost-effectiveness of standards based on the current IECC code when considering the code's impact on both the purchase price of manufactured housing and on total life-cycle construction and operating costs. *See* 42 U.S.C. 1771(b)(1). Why should DOE reconsider these aspects and what specific changes, if any, should DOE make to them? As part of this request, DOE is interested in any specific supplemental supporting data regarding any changes that commenters may suggest.

Additionally, in further researching the manufactured housing market, DOE has examined additional information from a variety of sources. Of particular note is information from the Consumer Financial Protection Bureau ("CFPB"), which released a report in 2014 that focused on this particular market.<sup>8</sup> That report, "Manufactured-Housing

Consumer Finance in the United States," [hereinafter, "CFPB Report"] detailed the characteristics of manufactured housing consumers and the market for manufactured home financing. Key findings from the report include:

- Manufactured home ownership varies widely by region, with the majority of manufactured homes located outside of metropolitan areas;
- Manufactured home owners tend to have lower incomes and less net worth than their counterparts who own site-built homes;
- There is an extremely constrained secondary market for manufactured homes, following the collapse of the manufactured home market in the late 1990s through the early 2000s;
- Most manufactured-housing purchasers who finance their homes obtained a loan of between \$10,000 and \$80,000, with a median loan value of \$55,000.

These data suggest that manufactured housing purchasers face substantial constraints compared to traditional home purchasers. In turn, these constraints may make purchasers of manufactured homes more price-sensitive to potential changes that would impact the costs to construct (and purchase) a manufactured home.<sup>9</sup>

The CFPB data also point to certain key demographic characteristics. On a regional level, the CFPB noted that manufactured housing is more common in certain regions than others—with this type of housing being more common in the South and the West than in certain Northeastern states. Manufactured homes are also much more prevalent in rural areas, with about 2/3 of all occupied manufactured homes being located outside of metropolitan statistical areas; in these areas, 14% of homes are manufactured homes. Manufactured housing as a proportion of occupied housing units is lowest in Maryland, New Jersey, Connecticut, Hawaii and Massachusetts (1%) and highest in South Carolina, New Mexico, and Mississippi (17%, 16%, and 15%, respectively). *See* CFPB Report, at 10–12.

<sup>9</sup> The CFPB Report also suggests that manufactured home consumers are particularly cost-driven: "There is evidence that some households who move into manufactured housing are less satisfied with their homes than those who choose to move into site-built housing. These results suggest that for at least some households, the choice to live in a manufactured home may be more cost-driven than quality-driven." CFPB, *Manufactured-housing consumer finance in the United States*, at 22 (September 2014) [hereinafter, "CFPB Report"] (available at [http://files.consumerfinance.gov/f/201409\\_cfpb\\_report\\_manufactured-housing.pdf](http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf)).

to energy efficiency standards are to confirm products are in compliance with such standards.

<sup>7</sup> *See supra*, note 2.

<sup>8</sup> *See* [https://files.consumerfinance.gov/f/201409\\_cfpb\\_report\\_manufactured-housing.pdf](https://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf).

Further, manufactured home owners are more likely to be older and likely to have lower incomes or net worth. The median annual income of families living in manufactured homes is also slightly over \$26,000, and the median net worth of these families is \$26,000 (a quarter of that of families in site-built homes). *See id.* at 16–18.

The CFPB also made a number of other observations with respect to the available financial data it examined.

First, it indicated that the manufactured home market collapsed in the late 1990s through the early 2000s as consumers experienced loan repayment difficulties driven by low-quality manufactured home lending. Following the collapse, at least eight large lenders exited the manufactured home lending market, some of which drove losses in the secondary market. *See generally id.* at 26–29. At the time of CFPB's report, sales and production remained depressed with an extremely constrained resale market for manufactured homes. *See id.* at 6, 26–28, 37.

Second, most manufactured-housing purchasers finance between \$10,000 and \$80,000, with a loan median of \$55,000. *See id.* at 30. Owners of manufactured homes finance different amounts depending on whether they finance the costs of only the manufactured home or the costs of both the home and the land on which it is sited. *See id.* at 21.

Manufactured home owners who finance their homes tend to pay higher interest rates than their site-built home counterparts. A key reason for this difference is that the vast majority of manufactured housing stock is titled as chattel, and as a result is eligible only for chattel financing. Chattel financing is typically offered to purchasers at a significantly higher interest rate than the rates offered to their site-built home counterparts. While some manufactured home owners who also own the land on which the manufactured home is sited may be eligible for mortgage financing, there is a tradeoff between lower origination costs with significantly higher interest rates (chattel loans) and higher origination costs with significantly lower interest rates and greater consumer protections (mortgage). *See id.* at 23–25.

Issue 2: a. DOE seeks comment regarding the CFPB's findings. Are these findings reasonably accurate or are there other factors that DOE should consider when determining the economic impact of energy conservation standards on the ability of purchasers to buy manufactured homes? Assuming that these findings are reasonably accurate, what role, if any, should they play in

shaping the standards that DOE ultimately adopts for manufactured housing and why? If the CFPB's findings are not accurate, what specific shortcomings do they have and what assumptions/changes should DOE apply when determining the stringency and types of standards the agency should establish for manufactured housing?

b. DOE's own data from its Residential Energy Consumption Survey of 2015 suggests that manufactured housing households pay about 60% more for their energy per square foot than the entire housing stock. Is this estimate accurate—and if so, why? What specific factors contribute to this condition? If this estimate is not accurate, why—what specific factors are being overlooked in the survey that contribute to this inaccuracy?

#### B. Ownership-Related Costs

DOE's analysis for its June 2016 proposal considered the economic impacts of the proposed standards on individual manufactured home purchasers. Similar to its approach toward appliance standards, these analyses focused on the prospect of applying a single, uniform minimum standard that all manufactured homes of a given size (single- or multi-section) and in a given climate zone (*i.e.*, region of the country) would need to meet. Necessarily, this approach examined the overall economic impacts in a broad fashion by applying a uniform standard to all manufactured housing units within a given climate zone and home size category. However, the approaches that the Department has taken with respect to appliance standards may not be suitable in the case of manufactured housing, which fills a distinct need for housing for a particular subset of consumers. In particular, under the statutory provision requiring the Department to develop standards for manufactured housing, the standards must generally be based on the most recent version of the IECC, except where DOE finds that the IECC is not cost effective, or a more stringent standard would be more cost effective. A finding that standards based on the IECC are not cost effective or that standards more stringent than the IECC are cost effective would be based on the impact of the adoption of the IECC standards on the purchase price of manufactured housing and on total life-cycle construction and operating costs. As a result, the approach presented by the working group (and adopted by DOE in its proposal) may have inadvertently overlooked certain factors and yielded an incomplete picture regarding the potential impacts flowing from its

proposal and whether the standards must be based on the most recent version of the IECC. Consequently, DOE is seeking comment on a variety of issues related to these factors to help further inform its views regarding the economic impacts related to the establishment of energy efficiency standards for manufactured housing, and how those impacts effect use of the most recent version of the IECC.

Issue 3: Manufactured housing owners tend to be lower-income than other homeowners,<sup>10</sup> and are also likely to finance their manufactured housing purchase using high-rate chattel loans. As a result, the Department is particularly interested in comments and data regarding the affordability of manufactured housing and how the options outlined in this NODA would affect upfront manufactured housing affordability. DOE also seeks comment on whether and how the different approaches outlined in this NODA would differently affect the affordability of manufactured homes.

Additionally, as part of this inquiry, DOE seeks public input on each of the following items:

a. Affordability is a combination of upfront cost, which may price out some consumers at time of purchase, and operating costs, which will affect all manufactured housing owners over a longer time horizon. The Department seeks comments that provide information on how to weigh these components in defining “affordability,” with particular focus on affordability for low-income consumers.

b. The Department also seeks comment on what a reasonable payback period might be for efficiency in manufactured homes, and any relevant tradeoffs between upfront cost and payback period that the Department should consider to avoid creating a situation where the upfront cost increases may price consumers out of the market for new homes, even if those costs might be recouped over time. While the cost of site-built home efficiency upgrades may be recouped when an owner sells the home, the same may not be true of manufactured homes because (1) manufactured housing owners have relatively short tenancies<sup>11</sup>

<sup>10</sup> “Certain consumer segments are disproportionately represented among owners and renters of manufactured homes, in particular older consumers, consumers that have completed only high school, households with relatively low income, and households with relatively low net worth.” CFPB Report, at 13.

<sup>11</sup> *See* Consumer Financial Protection Bureau, Manufactured-housing consumer finance in the United States, September 2014 at 42–43; [http://files.consumerfinance.gov/f/201409\\_cfpb\\_report\\_manufactured-housing.pdf](http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf).

and (2) the resale market for manufactured housing is highly constrained,<sup>12</sup> such that the original owner will likely not recoup upfront efficiency investments if the payback period exceeds tenancy. DOE seeks additional information from commenters on the manufactured housing resale market that would inform the Department's consideration of what a reasonable payback period would be. If available, the Department also seeks information on the distribution of manufactured housing tenancy rates.

c. The Department is also interested in comments that inform whether special consideration should be given to affordability, particularly given that low-income and older consumers are disproportionately represented among manufactured housing owners.<sup>13</sup> Executive Order 13563, which reinforces the principles of Executive Order 12866, indicates that agencies "may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts"<sup>14</sup> where appropriate and permitted by law.

d. The Department seeks data and information regarding basing standards on the most recent version of the IECC, in particular, whether standards based on the most recent version of the IECC would not be cost effective or that standards more stringent than the most recent version of the IECC would be cost effective, in either case based on the impact of the adoption of the IECC standards on the purchase price of manufactured housing and on total life-cycle construction and operating costs.

Issue 4: DOE is aware that efficiency standards for manufactured housing may affect consumers in different regions differently, and seeks information on (1) the disparate regional effects of a standard, and (2) whether these effects are mitigated by use of tiered standards or a tiered labeling program.

Issue 5: DOE seeks to better understand the market for manufactured homes. Available sources provide information regarding the average or median manufactured housing purchase price<sup>15</sup> or the proportion of

manufactured housing owners who borrowed different amounts to finance their manufactured housing purchase,<sup>16</sup> but do not directly show the distribution of manufactured housing prices across the market and the percentage of consumers who purchase at each price category. DOE is interested in such information, particularly to the extent that such information could inform the consideration of threshold standards.

#### C. Prescriptive and Performance-Based Standards

In DOE's June 2016 standards proposal, the agency laid out two possible approaches it was considering at the time. The first option involved potential prescriptive requirements that would apply to a variety of components used in constructing the thermal envelope of a given manufactured home. These requirements laid out prescribed specifications related to thermal resistance (R-value) for wall, ceiling, and floor insulation, thermal transmittance specifications (U-factor) for windows, skylights, and doors, and glass glazing (SHGC) requirements. See 81 FR 39757. These prescriptive levels would vary based on the climate zone in which the home is located. 81 FR 39766. The second option presented a potential performance-based approach that would establish a maximum overall thermal transmittance for requirement for the building structure's thermal envelope (U<sub>o</sub>) and set additional U-factor and SHGC requirements. See *id.* Like with the prescriptive approach, these requirements would also vary by climate zone.

In addition to these approaches, DOE also considered including provisions for determining U-factor, R-value, SHGC, and U<sub>o</sub>. It also considered establishing prescriptive requirements for installation of insulation and sealing the building's thermal envelope and duct system to limit air leakage, which would in turn reduce potential thermal losses. See *id.*

Issue 6: DOE is interested in feedback regarding whether any aspects of its 2016 proposal need further consideration and if so, why. For comments pointing to weaknesses or strengths with respect to DOE's proposal, the agency seeks any supporting data in addition to that which DOE has already made public as part of the manufactured housing standards rulemaking docket.

#### D. Alternative Approaches

DOE is also considering an altogether different approach consisting of incremental packages that maximize energy savings of a manufactured home within certain incremental cost parameters. These options respond to concerns from stakeholders, including HUD, regarding the potentially prohibitive upfront costs of its 2016 proposed standards. As a result, this analysis illustrates packages that maximize energy savings within incremental cost thresholds of \$500, \$1,000, or \$1,500. DOE is seeking comment on whether any of the cost threshold packages presented here (*i.e.* either \$500, \$1,000, or \$1,500), when applied as a national standard, would address the concerns of stakeholders regarding the high upfront cost of its 2016 proposed standards. Further, DOE developed two sets of cost threshold packages: One set includes envelope and duct sealing as options to include in the cost threshold packages, and one set does not include envelope and duct sealing regardless of cost effectiveness.

Unlike the tiered standards discussed in this NODA, these cost threshold packages illustrate the costs and benefits of a potential national standard that would apply across the fleet of manufactured homes. However, given the Department's interest in tailoring its standards to consumers with differing preferences and needs, DOE is also soliciting comments on whether it can employ a tiered approach to these standards, wherein the \$500, \$1,000, and \$1,500 cost packages could be applied to, or offered as an option for, various segments of the market for manufactured homes.

The Department also recognizes the value of providing accurate information on potential energy savings. In addition to being low incremental or additional cost to manufacturers, better informed consumers are empowered to make choices that meet their individual needs for energy savings within their own personal economic circumstances. This approach builds on the guidance in Executive Order 12866, which instructs each agency to identify opportunities to provide information the public can use to make informed choices.<sup>17</sup> To this end, the Department is considering a tiered labeling approach that would classify various levels of energy savings based on stringency and categorize these options within certain tiers, such as a Brass, Bronze, Silver, Gold, and Platinum tier, wherein the Platinum tier

<sup>12</sup> Kevin Jewell, "Manufactured Housing Appreciation: Stereotypes and Data." Consumers Union, Southwest Regional Office. May 2003. Page 6. <http://consumersunion.org/pdf/manufacturedhousing/Appreciation.pdf>.

<sup>13</sup> See footnote 10, *supra*.

<sup>14</sup> Executive Order 13563, Section 1(c), 76 FR 3821 (January 21, 2011).

<sup>15</sup> See U.S. Census Bureau, *Cost and Size Comparison: New Manufactured Homes and Single-Family Site Built Homes (2007–2014)*, for example.

<sup>16</sup> See Consumer Financial Protection Bureau, *Manufactured-housing consumer finance in the United States*, September 2014, for example.

<sup>17</sup> Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993) (Section 1(b)(3)).

would represent the most efficient products on the market and Brass would represent the least efficient.

Consequently, DOE is evaluating the following options:

Package 1—This package would maximize the energy savings of a manufactured home at an upfront cost of either \$500, \$1,000, or \$1,500. The accompanying analysis illustrates the associated lifecycle costs and payback period for each potential standard level across climate zones.<sup>18</sup> This package would exclude envelope and duct sealing to maximize energy savings under any of the cost threshold options examined.

Package 2—Like Package 1, this package would maximize the energy savings of a manufactured home at an upfront cost of either \$500, \$1,000, or \$1,500. The accompanying analysis illustrates the associated lifecycle costs and payback period for each potential standard level across climate zones.<sup>19</sup> Unlike Package 1, this package would allow envelope and duct sealing to maximize energy savings under all of the cost threshold options examined.

Package 3—Rather than setting a national standard within a specified cost threshold, this option would create a framework where several different tiers of energy efficiency would be offered to consumers based on their particular needs and pricing sensitivities. These tiers would be based on cost increments, which, for purposes of DOE's current analysis, would be based on \$500 increments with a cap at \$1,500.

Package 4—This package would require each manufactured home to include a label prior to sale indicating expected energy use and savings. The labeling system would be tiered in the sense that different levels of energy savings would be labeled differently, such as by being categorized with a Brass, Bronze, Silver, Gold, or Platinum rating. These tiers would be based on potential energy savings. The Department is considering this package in conjunction with any of the other alternatives discussed above or with potential alternatives that may be suggested in response to this request for comment.

Package 5—Finally, to ensure that manufactured housing continues to be a viable source for affordable housing, this package would exclude all manufactured homes with a cost level and retail purchase price (not including land costs) equal to or less than the loan

limit established in accordance with Section 2(b)(1)(C) of the National Housing Act, 12 U.S.C. 1703(b)(1)(C), plus 5% (Title I Loan Limits). (Currently = \$73,162 or  $1.05 \times \$69,678$ .) Similarly, under this package, DOE would apply a higher price threshold (\$294,515) under the same conditions—*i.e.* cost level and purchase price (not including land costs)—that would encourage (but not require) manufactured housing at a certain price to meet DOE's standards. For all other manufactured housing that exceeds this level, DOE could apply one of the package approaches described under Packages 1 through 4.

In evaluating these various options, DOE is considering a scenario where manufacturers continue to offer more economical versions of manufactured homes for certain segments of the market that are currently available but that may not necessarily fall into one of the cost incremental categories described above. A regime in which manufacturers continue to offer those manufactured homes that are currently available on the market as well as variants at greater levels of efficiency would allow particularly price sensitive individuals who may not have the financial means to pursue other housing options to maintain their ability to purchase a manufactured home of their choice while also allowing those with greater means who desire increased energy efficiency to purchase a manufactured home that suits their desires. Under any of these scenarios, DOE would consider developing a labeling framework to inform consumers regarding these options. DOE also seeks comment on implementing a tiered labeling system in conjunction with the other options discussed in this document to address any potential information asymmetry and preserve consumer choice.

Issue 7: DOE seeks comment on whether it should consider and implement a cost-based tier structure with respect to regulating the energy efficiency of manufactured housing. DOE notes that a tiered approach could better address some of the concerns that may exist with respect to the first-time costs that purchasers may encounter with more efficient—but more expensive—manufactured homes. If so, why—and if not, why not?

Issue 8: Consumers may fail to optimize the efficiency of their homes due to a lack of available information on the benefits of energy savings. Recognizing this, the NODA presents an option that would provide tiered labeling for consumers to compare and contrast information on upfront costs and long-term energy savings across

manufactured housing structures. The Department is seeking comments on the benefit of providing consumers with such information, which preserves consumer choice, and the best way to provide consumers with information that they can easily understand and put to use.

a. What information is available to consumers when they make manufactured housing purchasing decisions, and what additional information would be useful? Further, how can the Department add value in the provision and display of information?

b. DOE seeks comments regarding whether access to information is a barrier to manufactured housing consumers, and if so, what is the magnitude of this barrier (*i.e.* to what extent does the lack of information prevent consumers from purchasing efficient homes)?

Issue 9: DOE is also considering a number of approaches that would increase consumer access to information and increase the efficiency of manufactured homes.

a. In weighing these approaches, the Department seeks comment on the advantages and disadvantages of using a tiered approach for efficiency standards versus using a single national standard that would apply to all manufactured homes within a single climate zone. DOE also seeks information regarding what a labeling framework would need to consider if a tiered approach were used and what the costs of such an approach would likely be. The Department further seeks comment on the advantages and disadvantages of using a tiered approach to labeling requirements versus a single national labeling standard for manufactured homes.

b. Within the tiered options discussed above, the Department seeks public input on what the appropriate criteria are to use for establishing thresholds (*e.g.*, price, cost, region, etc.) and how best to define these criteria (*e.g.*, manufacturer added cost, retail price, etc.). DOE also seeks public input on other factors that it should consider when establishing tiered standards.

With respect to tightening a manufactured home's building envelope, the agency notes that this technique appears to be a cost-effective way to increase energy efficiency. However, many previous commenters, including HUD's Manufactured Housing Consensus Committee, raised the possibility that sealing requirements may pose challenges for indoor air

<sup>18</sup> See <https://www.regulations.gov/document?D=EERE-2009-BT-BC-0021-0200>.

<sup>19</sup> See footnote 18, *supra*.

quality.<sup>20</sup> Degraded indoor air quality could introduce additional costs in terms of health and safety or operation and maintenance that may impede the cost efficacy of these approaches.

Previous commenters have submitted existing literature on manufactured housing indoor air quality, including a report from the Centers for Disease Control and Prevention (“CDC”), an agency within the Department of Health and Human Services (“HHS”). The CDC report, which was prepared in conjunction with HUD, found generally that indoor air can contain a number of contaminants that contribute to health complaints, and that indoor air quality is of particular concern in manufactured housing due to its confined spaces and, in some cases, lower ventilation and air exchange rates.<sup>21</sup> In addition, the CDC report found that “manufactured structures with relatively less air circulation may develop higher levels of indoor contaminants.” However, comprehensive data on air quality in manufactured homes was unavailable at the time of CDC’s report.<sup>22</sup>

Issue 10: Is new information available on the relationship between tightening the home envelope and indoor air quality? If so, what is the nature of that information, why should DOE consider it, and how should the agency integrate it into its analyses?

Issue 11: DOE is particularly interested in baseline measures of air flow in recently-built manufactured housing against which to measure any potential reductions in air changes per hour (“ACH”). DOE also seeks information related to what the appropriate ACH threshold is for maintaining adequate indoor air quality.<sup>23</sup>

Issue 12: What potential health and safety costs of incremental reductions in ACH and/or indoor air quality should the Department consider when evaluating this approach and why? What steps should DOE consider taking to reduce these costs while preserving indoor air quality for manufactured home residents and what disadvantages, if any, are there to each of these specific steps?

Issue 13: Regarding the overall structure of DOE’s approach to its

proposed climate zones, should these zones be reconsidered—and if so, why? Should DOE use HUD’s existing climate zones? If DOE were to develop its own climate zones, what factors should it consider in doing so? What factors would support the continued use of the proposed climate zones and how do those factors weigh against using HUD’s existing climate zones or in favor of adjusting them further?

#### *E. Compliance Lead-Times*

The June 2016 proposal used a compliance date lead-time of one year from the publication of a final rule. DOE proposed a lead-time of one year under the belief that this amount of time would be sufficient to allow manufacturers to transition their designs, materials, and factory operations and processes to comply with the finalized version of the energy conservation standards that DOE considered adopting. In light of the amount of time that has elapsed since the date of DOE’s June 2016 proposal, and the possibility that the agency may explore an alternative approach for regulating the energy efficiency of manufactured homes through the use of a tiered system along with variants of DOE’s earlier proposal that would rely on HUD’s three climate zones, DOE is interested in soliciting public comment on whether its proposed lead-time remains appropriate.

Issue 14: Should DOE continue to apply a one year lead-time to the energy conservation standards for manufactured housing? Does the approach—*i.e.* single uniform national standard versus a multi-tiered national standard—impact the amount of lead-time manufacturers would require to meet the applicable standards? If so, why—and if not, why not? If DOE were to adopt an approach that presented different compliance options in the form of cost-based tiers, would manufacturers require more, less, or the same amount of lead-time as the agency’s proposal (*i.e.* one year)? Why or why not?

Issue 15: With respect to the manufactured housing standards that DOE promulgates, DOE seeks comment on what enforcement mechanism would be the most appropriate to apply and why. In considering enforcement mechanisms, DOE is interested in information concerning the burden and cost impacts for suggested approach(es), as well as the compliance lead-time needed by the industry. Further, DOE seeks information as to whether enforcement cost of any suggested approach may extend beyond the manufacturing industry to the sales and

distribution channels that interface with prospective purchasers.

### **III. Submission of Comments**

DOE invites all interested parties to submit in writing by the date listed in **DATES**, comments and information on matters addressed in this notice and on other matters relevant to DOE’s consideration of energy conservation standards for manufactured housing. These comments and information will aid in the development of energy conservation standards for these structures.

Submitting comments via <http://www.regulations.gov>. The <http://www.regulations.gov> web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to <http://www.regulations.gov> information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments submitted through <http://www.regulations.gov> cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through <http://www.regulations.gov> before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your

<sup>20</sup> <https://www.regulations.gov/document?D=EERE-2009-BT-BC-0021-0162>.

<sup>21</sup> CDC and HHS, Safety and Health in Manufactured Structures (2011) [hereinafter, “Safety and Health”].

<sup>22</sup> Safety and Health, at p. 25.

<sup>23</sup> As of 2003, ASHRAE and HUD had established a minimum whole-house ventilation requirement of 0.35 ACH for achieving appropriate indoor air quality. See <https://www.huduser.gov/publications/pdf/moisturereport.pdf>.

comment may not be viewable for up to several weeks. Please keep the comment tracking number that <http://www.regulations.gov> provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to <http://www.regulations.gov>. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287-1445 or via email at [Manufactured\\_Housing@ee.doe.gov](mailto:Manufactured_Housing@ee.doe.gov).

Signed in Washington, DC, on July 31, 2018.

**Cathy Tripodi,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2018-16650 Filed 8-2-18; 8:45 am]

**BILLING CODE 6450-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Parts 308 and 327

**RIN 3064-AE75**

#### Rules of Practice and Procedure

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) proposes

to amend its rules of practice and procedure to remove duplicative, descriptive regulatory language related to civil money penalty (CMP) amounts that restates existing statutory language regarding such CMPs, codify Congress's recent change to CMP inflation-adjustments in the FDIC's regulations, and direct readers to an annually published notice in the **Federal Register**—rather than the Code of Federal Regulations (CFR)—for information regarding the maximum CMP amounts that can be assessed after inflation adjustments. These revisions are intended to simplify the CFR by removing unnecessary and redundant text and to make it easier for readers to locate the current, inflation-adjusted maximum CMP amounts by presenting these amounts in an annually published chart. Additionally, the FDIC proposes to correct four errors and revise cross-references currently found in its rules of practice and procedure.

**DATES:** Comments must be received by October 2, 2018.

**ADDRESSES:** You may submit comments, identified by RIN 3064-AE75, by any of the following methods:

- *Agency website:* <http://www.fdic.gov/regulations/laws/Federal/>. Follow the instructions for submitting comments on the Agency website.

- *Email:* [Comments@fdic.gov](mailto:Comments@fdic.gov). Include the RIN 3064-AE75 in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

*Public Inspection:* All comments received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/Federal/>—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E-1002, Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

**FOR FURTHER INFORMATION CONTACT:** Graham N. Rehrig, Senior Attorney, Legal Division, (202) 898-3829, [grehrig@fdic.gov](mailto:grehrig@fdic.gov), or Sydney Mayer, Attorney, Legal Division, (202) 898-3669.

**SUPPLEMENTARY INFORMATION:**