



August 16, 2016

Via regulations.gov

The Honorable Ernest Moniz, Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

**Re: Comments on Proposed Energy Conservation Standards for Manufactured Housing;
81 Fed. Reg. 39756 (June 17, 2016).**

Dear Secretary Moniz,

The U.S. Small Business Administration's Office of Advocacy (Advocacy) submits the following comments in response to the Department of Energy's (DOE) June 17, 2016 notice of proposed rulemaking on "Energy Conservation Standards for Manufactured Housing." After conducting outreach with small business stakeholders, Advocacy has concerns that DOE's proposal will have a disproportionate impact on small manufacturers of manufactured homes. Advocacy recommends that DOE present and analyze significant alternatives, and adopt a regulatory alternative to the proposed standard that will minimize the economic impact to small manufacturers.

About the Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), gives small entities a voice in the Federal rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy. The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that

the public interest is not served by doing so.

Background

DOE recently published a proposed rule seeking to implement the Energy Independence and Security Act of 2007 (EISA).¹ EISA requires DOE to establish energy conservation standards for manufactured housing based on the most recent version of the International Energy Conservation Code (IECC) “except where DOE finds that the IECC is not cost-effective or where a more stringent standard would be more cost-effective, based on the impact of the IECC on the purchase price of manufactured housing and on total lifecycle construction and operating costs.”² The proposed standards would impact, *inter alia*, factory design, construction techniques, and current construction and safety standards.³ The proposed rule was the subject of a negotiated rulemaking that involved consensus recommendations from a 22-member Manufactured Housing working group (MH working group).⁴ The MH working group included a trade association whose membership is comprised exclusively of small businesses; however, no small businesses were directly included in the working group.

DOE published an Initial Regulatory Flexibility Analysis (IRFA) with its proposed rule, but it did not comply with the RFA’s requirement to quantify or describe the economic impact that its proposed regulation might have on small entities. Small manufacturers of manufactured housing and their representatives have expressed concerns to Advocacy that the proposed regulations will have a disproportionate impact on their business. Small manufacturers have described ever increasing compliance burdens, crippling conversion costs, and concerns with their ability to stay competitive in an industry already dominated by big business.

Advocacy’s Comments

DOE’s proposed rule would have significantly disproportionate economic impacts on small manufactured home manufacturers if finalized. The RFA requires DOE to show that it has analyzed the impact of the proposed rules on small manufacturers, and properly considered regulatory alternatives to minimize that impact. Advocacy recommends that DOE adopt a regulatory alternative that will minimize the disproportionate impact of its proposal on small manufacturers.

DOE Should Describe or Quantify the Economic Impact of its Rule on Small Entities

The RFA requires agencies to provide an IRFA so that the agency and the public can know with certainty how the regulation will affect small businesses. DOE has not quantified nor described the economic impact of its proposed rule on small manufacturers. In its IRFA, DOE estimates that “the proposed rule would reduce Industry Net Present Value (INPV) by 0.4 to 5.1 percent” and that “DOE did not receive sufficient qualitative data to conclude that small manufacturer(s) would experience impacts that are substantially different than the industry at large.”⁵ It does not appear that DOE grasps the unique challenges that small manufacturers encounter. Conversion

¹ 42 U.S.C §17381

² Proposed Energy Conservation Standards for Manufactured Housing; 81 *Fed. Reg.* 39756 (June 17, 2016); *See also* 42 U.S.C. §17071.

³ *Id.*

⁴ Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) - Manufactured Housing Working Group; 79 *Fed. Reg.* 48097 (August 15, 2014).

⁵ *See supra* note 2.

costs, for example, tend to be fixed and do not scale with sales volume. Small businesses must make redesign investments that are similar to their larger competitors, but because small manufacturer costs are spread over a lower volume of units, it takes longer for small manufacturers to recover from their investments.

Compliance with the proposed rule would be a massive undertaking, and small manufacturers and Advocacy are concerned that DOE has chosen to exclude compliance and enforcement provisions from the proposed rule. Compliance and enforcement costs are major costs to small manufacturers, and should be included and analyzed in the proposed rule. Redesign costs, plant modifications, recosting and sourcing new materials, inspections, approvals, consulting fees, and employee training are additional costs DOE must analyze to determine the effect of the proposed rule. To comply with the RFA, DOE must acknowledge and analyze these foreseeable economic impacts to small manufacturers.

Another concern of small manufacturers is the domino effect that a higher cost home would have on their segment of the manufactured housing market. DOE estimates the proposed rule would drive up the cost of single-section and multi-section manufactured homes as much as \$2,423 and \$3,745 respectively.⁶ Small businesses believe this estimate is extremely low and does not accurately reflect either the baseline cost, or the dealer and retail markups.⁷ Even assuming that DOE's estimates are accurate, a several thousand dollar increase would result in a reduction of affordability at the lower end of the price-point spectrum, and less energy conservation will be realized because those consumers will be priced out of the market.

Manufactured home purchasers tend to have lower incomes; the median income for manufactured homeowners is about \$26,000 a year.⁸ Small manufacturers have expressed to Advocacy that even a modest increase in the price of manufactured housing will prevent many of their potential customers from obtaining financing, eliminating those purchasers from the market entirely, which would in turn severely impact small manufacturers' consumer base. Approximately 75% of manufactured housing purchasers with purchase financing take out a chattel loan.⁹ Chattel loans differ from traditional mortgage financing in that chattel loans can be priced between 50 to 500 basis points higher, and the loan terms are generally shorter, which affect the monthly cost.¹⁰

Further, the dominant business in the manufactured home industry can sell its manufactured homes at cost, or offer energy rebates to its consumers to offset the increased price of energy efficient homes. This is because it has the ability to remain profitable through the loans and insurance sold with the housing.¹¹ Small businesses cannot absorb the added cost to comply with

⁶ 81 *Fed. Reg.* at 39757.

⁷ *See e.g.*, Comments of the Manufactured Housing Association for Regulatory Reform (MHARR), Docket no. EERE-2009-BT-BC-0021-0154 (filed August 11, 2016) at Attachment 18 (calculating the bill of material increase, selling price, and retail markup to total \$4,601 for a single-wide, and \$5825 for a double wide. MHARR believes the DOE's cost calculations are skewed because they are based on costs to larger manufacturers that have the advantage of paying lower supply costs based on volume due to superior bargaining strength within the supply market).

⁸ *See* "Manufactured-housing consumer finance in the United States" at 17 (September 2014). Retrieved from the Consumer Finance Protection Bureau http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf.

⁹ *Id.* at 24 (Manufactured homes may be titled as real property and obtain a traditional mortgage if the home is a real estate fixture, *i.e.*, the homeowner must own the land and permanently affix the manufactured home thereon).

¹⁰ *Id.*

¹¹ *See e.g.*, MHARR comments, *supra* note 7 at Attachment 26.

the proposed regulation and remain competitive in the manufactured housing market.

DOE Must Provide an Analysis of Significant Alternatives

Section 603 of the RFA requires that agencies include “a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.”¹² DOE’s IRFA does not contain any discussion of alternatives. Advocacy urges DOE to present and discuss regulatory alternatives in their Final Regulatory Flexibility Analysis (FRFA) and explain its reasoning for adopting or declining to adopt each alternative.

DOE Should Adopt a Standard that is Economically Feasible for Small Manufacturers

Adopting energy conservation standards that impede the ability of small manufacturers to remain in the market is harmful from both an economic and energy conservation standpoint. Small businesses make up 99.7 percent of U.S. employers, and 63 percent of net new private-sector jobs.¹³ Maintaining a small business presence in any industry is important not only for the economy, but also promotes competition, which leads to development, innovation and growth.

Complying with the proposed rule will be significantly more difficult for small manufacturers. At a minimum, Advocacy recommends that DOE adopt delayed compliance schedules for small manufacturers, as providing them more time to comply with DOE’s rules will allow them to spread costs and manage their limited resources in a way that will minimize the economic impact to their business. Advocacy also supports waivers and exemptions for small manufacturers wherever possible.

Conclusion

Advocacy appreciates this opportunity to communicate the concerns of small businesses and advocate for regulatory flexibility on their behalf. DOE should analyze the impact of its proposed regulations on small entities, as well as alternatives that would minimize those impacts. Given the significant and disproportionate impact that this proposed rule would have on small manufacturers of manufactured housing, Advocacy encourages DOE to adopt a standard that will achieve energy savings without imposing serious harm on small business manufacturing. Please do not hesitate to contact me or Assistant Chief Counsel Rosalyn Steward at 202-205-7013 if you have any questions.

Sincerely,



The Honorable Darryl L. DePriest
Chief Counsel
Office of Advocacy
U.S. Small Business Administration

¹² 5 U.S.C. § 603(c).

¹³ See “Frequently Asked Questions” (September 2012). Retrieved from the U.S. Small Business Administration Office of Advocacy https://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf.



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cc: The Honorable Howard Shelanski
Administrator, Office of Information and Regulatory Affairs,
Office of Management & Budget