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[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 460

[EERE-2009-BT-BC-0021]

RIN 1904-AF53

Energy Conservation Program: Energy Conservation Standards for Manufactured Housing; Extension of Compliance Date

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is publishing a final rule to amend the compliance date for its manufactured housing energy conservation standards.

Currently, manufacturers must comply with these standards on and after May 31, 2023.

This final rule delays compliance until July 1, 2025, for Tier 2 homes, and until 60 days after issuance of enforcement procedures for Tier 1 homes. DOE is delaying the compliance date to allow DOE more time to establish enforcement procedures that provide clarity for manufacturers and other stakeholders regarding DOE's expectations of manufacturers and DOE's plans for enforcing the standards.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

The docket web page can be found at www.regulations.gov/docket?D=EERE-2009-BT-BC-0021. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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I. Background

The Energy Independence and Security Act of 2007 (“EISA,” Pub. L. 110-140) directs the U.S. Department of Energy (“DOE” or, in context, “the Department”) to establish energy conservation standards for manufactured housing (“MH”).¹ (42 U.S.C. 17071) Manufactured homes are constructed according to a code administered by the U.S. Department of Housing and Urban Development (“HUD Code”). 24 CFR part 3280. *See also generally* 42 U.S.C. 5401-5426. Structures, such as site-built and modular homes, that are constructed to state, local or regional building codes are excluded from the coverage of the HUD Code.²

EISA directs DOE to base its standards on the most recent version of the International Energy Conservation Code (“IECC”) and any supplements to that code, except in cases where DOE finds that the IECC is not cost-effective or where a more

¹ The National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, defines “manufactured home” as “a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a 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” 42 U.S.C. 5402(6).

² *See* 42 U.S.C. 5403(f). *See also* 24 CFR 3282.12.

stringent standard would be more cost-effective, based on the impact of the IECC on the purchase price of manufactured housing and on total life-cycle construction and operating costs. (*See* 42 U.S.C. 17071(b)(1))

On June 17, 2016, DOE published in the *Federal Register* a notice of proposed rulemaking (“NOPR”) to propose energy conservation standards for manufactured housing, including proposals recommended by the negotiated rulemaking working group for manufactured housing. 81 FR 39756 (“June 2016 NOPR”). DOE received nearly 50 comments on the proposed rule during the comment period. In addition, DOE also received over 700 substantively similar form letters from individuals.

On August 3, 2018, DOE published a Notice of Data Availability (“NODA”), stating it was examining possible alternatives to the requirements proposed in the June 2016 NOPR and seeking further input from the public, including on first-time costs related to the purchase of manufactured homes. 83 FR 38073 (“August 2018 NODA”). Prior to the NODA, in December of 2017, the Sierra Club filed a suit against DOE in the U.S. District Court for the District of Columbia, alleging that DOE had failed to meet its statutory deadline for establishing energy efficiency standards for manufactured housing. *Sierra Club v. Granholm*, No. 1:17-cv-02700-EGS (D.D.C. filed Dec. 18, 2017). In November 2019, the court in the Sierra Club litigation entered a consent decree in which DOE agreed to complete the rulemaking by stipulated dates.

After evaluating the comments received in response to the June 2016 NOPR and the August 2018 NODA, DOE published a supplemental NOPR (“SNOPR”) on August 26, 2021, in which DOE proposed energy conservation standards for manufactured homes based on the 2021 IECC. 86 FR 47744 (“August 2021 SNOPR”). DOE’s primary proposal in the August 2021 SNOPR was a “tiered” approach based on the 2021 IECC. The “tiered” approach identifies a subset of less stringent energy conservation standards for certain manufactured homes (based on retail list price) in light of the cost-

effectiveness considerations required by EISA. DOE’s alternate proposal was an “untiered” approach, wherein energy conservation standards for all manufactured homes would be based on certain thermal envelope components and specifications of the 2021 IECC. Both proposals replaced the June 2016 NOPR proposal. *Id.* DOE sought comment on these proposals, as well as alternate thresholds, including a size-based threshold (e.g., square footage, number of sections) and a region-based threshold, and alternative exterior wall insulation requirements (R-21) for certain HUD zones. *Id.*

On October 26, 2021, DOE published a NODA regarding updated inputs and results of the analyses presented in the August 2021 SNOPR (both “tiered” and “untiered” approaches), including a sensitivity analysis regarding an alternative sized-based tier threshold and an alternate exterior wall insulation requirement (R-21) for certain HUD zones. 86 FR 59042 (“October 2021 NODA”). In addition, DOE reopened the public comment period on the August 2021 SNOPR through November 26, 2021. DOE sought comments on the updated inputs and corresponding analyses, encouraged stakeholders to provide additional data to inform the analyses, and stated it might further revise the rulemaking analysis based on new or updated information. *Id.*

On May 31, 2022, DOE published a final rule codifying the current energy conservation standards for manufactured housing in a new part of the Code of Federal Regulations (“CFR”) under 10 CFR part 460, subparts A, B, and C (“May 2022 Final Rule”). 87 FR 32728. Subpart A of 10 CFR part 460 presents generally the scope of the rule and provides definitions of key terms. Subpart B establishes new requirements for manufactured homes that relate to climate zones, the building thermal envelope, air sealing, and installation of insulation, based on certain provisions of the 2021 IECC. Subpart C establishes new requirements based on the 2021 IECC related to duct sealing;

heating, ventilation, and air conditioning (“HVAC”); service hot water systems; mechanical ventilation fan efficacy; and heating and cooling equipment sizing.

Under the energy conservation standards, the stringency of the requirements under subpart B are based on a tiered approach depending on the number of sections of the manufactured home. Accordingly, two sets of standards are established in subpart B (*i.e.*, Tier 1 and Tier 2). Both Tier 1 and Tier 2 incorporate building thermal envelope measures based on certain thermal envelope components subject to the 2021 IECC that DOE determined applicable and appropriate for manufactured homes. Tier 1 applies these building thermal envelope provisions to single-section manufactured homes, but only includes components at stringencies that would increase the incremental purchase price by less than \$750 in order to address affordability concerns that were raised by HUD and other stakeholders during the consultation and rulemaking process. Tier 2 applies these same building thermal envelope provisions to multi-section manufactured homes but at higher stringencies specified for site-built homes in the 2021 IECC, with an alternate exterior wall insulation requirement (R-21) for climate zones 2 and 3 based on consideration of the design and factory construction techniques of manufactured homes, as presented in the August 2021 SNO PR and October 2021 NODA. Manufacturers can comply with the building thermal envelope requirements through a prescriptive pathway (*e.g.*, using materials with specified ratings) or a performance pathway based on overall thermal transmittance (U_o) performance. *See* 10 CFR 460.102(c). Further, the energy conservation standards for both tiers also include duct and air sealing, insulation installation, HVAC and service hot water system specifications, mechanical ventilation fan efficacy, and heating and cooling equipment sizing provisions, based on the 2021 IECC. DOE concluded that this approach is cost-effective based on the expected total

life-cycle cost (“LCC”) savings for the lifetime of the home associated with implementation of the energy conservation standards. *See e.g.*, 87 FR 32742.

In the May 2022 Final Rule, DOE adopted a compliance date such that the standards would apply to manufactured homes that are manufactured on or after one year following the publication date of the final rule in the *Federal Register*, which is May 31, 2023. In doing so, DOE noted its belief that many manufacturers already have experience complying with efficiency requirements similar to what DOE required in the May 2022 Final Rule based on manufacturers’ previous experience with HUD *Uo* requirements and ENERGY STAR Version 2 efficiency requirements for homes produced on or after June 1, 2020. 87 FR 32759. DOE did not specify its approach for enforcement of the standards in the May 2022 Final Rule, and noted that manufacturers would be able to comply with the standards as they were issued. In fact, DOE noted that many of the requirements in the standards would require minimal compliance efforts (*e.g.*, documenting the use of materials subject to separate Federal or industry standards, such as the R-value of insulation or U-factor values for fenestration). 87 FR 32758, 32790. Nevertheless, DOE noted in the May 2022 Final Rule that it may address compliance and enforcement issues and procedures in a future agency action (*see* 87 FR 32757-32758), which is discussed further in section II of this document.

On March 24, 2023, DOE published in the *Federal Register* a NOPR proposing to amend the compliance date for the manufactured housing energy conservation standards (88 FR 17745, “March 2023 NOPR”). In that NOPR, DOE described the need to amend the compliance date for the manufactured housing standards, noting that it has not yet issued procedures for investigating and enforcing against noncompliance with the standards, and that a delay is necessary to ensure that DOE can receive and incorporate meaningful stakeholder feedback into its enforcement procedures prior to part 460’s

compliance date. Accordingly, DOE proposed to require compliance with the Tier 1 standards beginning 60 days after publication of its final enforcement procedures, and compliance with the Tier 2 standards beginning 180 days after publication of its final enforcement procedures. With respect to the requirements of subpart C of part 460, DOE would similarly expect compliance with those provisions beginning 60 days after publication of its final enforcement procedures for Tier 1 homes, and beginning 180 days after publication of its final enforcement procedures for Tier 2 homes. 88 FR 17746.

II. Discussion of Final Rule

In this final rule, DOE is amending the compliance date for part 460 consistent with its proposed compliance date in the NOPR for Tier 1 (*i.e.*, 60 days after issuance of DOE's enforcement procedures for part 460). However, for Tier 2, DOE is amending the compliance date to July 1, 2025. After consideration of comments, DOE has determined that amending the compliance date to July 1, 2025, for Tier 2 homes will provide greater certainty for manufacturers versus an indeterminate date. Moreover, the July 1, 2025, compliance date will ensure DOE will have enough time to develop enforcement procedures and engage in the rulemaking process, including providing adequate time for stakeholders to submit robust feedback on DOE's proposed enforcement procedures, and DOE's consideration of that feedback. DOE believes extending the compliance date for Tier 2 homes to July 1, 2025, will also provide manufacturers with sufficient time to adjust their operations and practices consistent with DOE's enforcement procedures.

A. Comments on the March 2023 NOPR

Commenters were generally supportive of DOE's proposal to amend the compliance date for part 460. DOE received over 500 comments on the March 2023 NOPR. The vast majority of these comments were campaign form letters (Campaign Form Commenters) containing nearly identical commentary on the NOPR.³ DOE also received several other comments from stakeholders. Comments and DOE responses are discussed in the following sections.

Need to Amend Compliance Date and Alternative Compliance Dates

The Campaign Form Commenters strongly urged DOE to amend the compliance date for part 460 until DOE's future enforcement procedures take effect. Campaign Form Commenters stated that it is virtually impossible for the industry to know whether its compliance efforts will be found satisfactory without a clear understanding of how DOE will enforce the standards or how they will be evaluated for compliance. Campaign Form Commenters stated that industry members need time to understand DOE's enforcement procedures and prepare their operations to ensure compliance with the energy standards. Campaign Form Commenters stated it is therefore imperative that DOE delay the compliance date and engage in rulemaking for test procedures, compliance, and enforcement before the DOE energy standards are implemented. The Northwest Energy Efficiency Alliance⁴ (NEEA) stated that a short delay is reasonable for DOE to establish enforcement procedure clarity. The American Public Gas Association (APGA),⁵ Kit HomeBuilders West (Kit HomeBuilders),⁶ Skyline Champion Corporation (Skyline),⁷

³ DOE notes that it received letters from several state manufactured housing trade groups that contained similar substantive comments as the campaign form letters. DOE, therefore, addresses these state trade group letters in its responses to the Campaign Form Commenters. DOE received such letters from manufactured housing trade groups in the following states: Arizona, Alabama, Florida, Indiana, Michigan, Mississippi, Minnesota, Nevada, New Mexico, New York, Pennsylvania, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, Washington (Northwest Housing Alliance), and Wisconsin.

⁴ EERE-2009-BT-BC-0021-2562.

⁵ EERE-2009-BT-BC-0021-2566.

⁶ EERE-2009-BT-BC-0021-2181.

⁷ EERE-2009-BT-BC-0021-2555.

Cavco Industries, Inc. (Cavco),⁸ and the Manufactured Housing Institute (MHI)⁹ support amending the compliance date so that DOE may establish enforcement provisions for the standards to be fully realized and workable. (APGA at p.1, Skyline at p. 1; Cavco at p. 1, MHI at p. 1) MHI further stated that the current compliance date could not come at a worse time for the only industry focused on providing attainable homeownership to the most vulnerable Americans, and that delaying the compliance date would alleviate some of these pressures, while affording DOE the opportunity to develop enforcement procedures missing from part 460 and resolve other issues. (MHI at p. 8) Hemminger Homes (Hemminger) stated that it would be hard to comply with the current DOE standards in part 460 since the details are not laid out as to what needs to be done, by whom, or the penalties that may be applied for not complying.¹⁰ (Hemminger at p. 1) Hemminger stated that the postponement of the DOE implementation date is very important to all parties that will be affected by it. (Hemminger at p. 2) The Manufactured Housing Association for Regulatory Reform (MHARR) supports an indefinite extension of both the compliance and effective dates for part 460 pending development of new standards under part 460 and pending development of cost-effective testing, enforcement, and compliance criteria.¹¹ (MHARR at p. 4) MHARR stated that delay of the effective and compliance dates is essential because the standards cannot be complied with in their current form and enforcing the current part 460 without a set of adopted testing, enforcement, and compliance procedures would deprive manufacturers of due process rights. (MHARR at p. 5)

DOE agrees with the commenters that it is necessary to amend the compliance date for part 460. As noted in the March 2023 NOPR, DOE believes enforcement

⁸ EERE-2009-BT-BC-0021-2568.

⁹ EERE-2009-BT-BC-0021-2559.

¹⁰ EERE-2009-BT-BC-0021-2570.

¹¹ EERE-2009-BT-BC-0021-2541.

procedures will provide additional clarity to manufacturers and consumers regarding DOE's expectations of manufacturers and DOE's plans for enforcing the standards. Delaying the compliance date until after the enforcement procedures are issued provides manufacturers time to understand DOE's enforcement procedures and prepare their operations to ensure compliance with DOE's standards. Additionally, DOE will provide notice and opportunity for stakeholders to comment on its enforcement procedures in the rulemaking process to establish those procedures. As noted previously, DOE believes the compliance dates adopted in this final rule provide (1) time for DOE to develop enforcement procedures and engage in the rulemaking process necessary to codify those procedures, (2) clarity to manufacturers on when and how to comply, and (3) time for manufacturers to adjust their practices consistent with DOE's enforcement procedures. More specifically, DOE believes providing a set date for Tier 2 homes provides manufacturers with additional clarity on when compliance will be required so that manufacturers can build in the time necessary to make the adaptations to manufacturer processes required to implement the more stringent Tier 2 standards. Accordingly, DOE has finalized those compliance dates in part 460.

Skyline, Cavco, and MHI stated that DOE should allow for a longer compliance lead time after issuance of enforcement procedures given the vast design and process changes required by DOE's standards and the uncertainty regarding testing, compliance, and enforcement. (Skyline at p. 1, Cavco at p. 1, MHI at p. 2) MHI stated that, at present, manufacturers do not know what enforcement procedures will require, so they do not know whether the designs and processes created after May 2022 to attempt to comply with DOE's standards will comport with DOE's enforcement procedures, and that to date, DOE has provided no guidance on what enforcement procedures may require, so no work can be done to understand or apply them until they are made final. MHI further stated that, due to supply chain constraints, manufacturers may need to change designs or

processes to comply with DOE's standards based on material availability and cost. (MHI at p. 10) Accordingly, Skyline, Cavco, and MHI stated that DOE should use a compliance lead time of 3 to 5 years after issuance of final enforcement procedures, like that typically seen in DOE's appliance energy efficiency standards, to permit the industry sufficient time to redesign floor plans, obtain approval from HUD for those designs, make capital improvements to manufacturing facilities, create new and different manufacturing processes, implement quality control procedures, and begin producing compliant homes. Skyline, Cavco, and MHI stated that, at minimum, DOE should provide a 1-year compliance lead time after issuance of enforcement procedures given that such procedures are likely to require manufacturers to start over with their efforts to comply with DOE's standards. (Skyline at p. 2, Cavco at p.2, MHI at p. 9)

DOE agrees that additional time after DOE issues enforcement procedures is appropriate for manufacturers, particularly for Tier 2 homes, and is therefore finalizing a compliance date of July 1, 2025, for Tier 2 homes. DOE notes that this date corresponds roughly to 3 years after the issuance of part 460.¹² DOE acknowledges that many manufacturers may need some time to adjust their practices to ensure homes are compliant with DOE's standards in a manner consistent with the forthcoming enforcement procedures. DOE disagrees that an extended period of 3 to 5 years after issuance of final enforcement procedures is necessary, as suggested by some commenters.¹³ DOE believes that the compliance lead times in this final rule provide enough time for DOE to issue its enforcement procedures, while manufacturers begin modifying their practices to comply with DOE's standard. The compliance lead times

¹² Part 460 was issued on May 31, 2022, with an effective date of August 1, 2022.

¹³ DOE notes that the statutory authority that applies to this rule (*i.e.*, EISA 2007) is not the same authority that applies to DOE's Appliance Standards Program (*i.e.*, the Energy Policy and Conservation Act), where DOE has established robust certification, compliance, and enforcement provisions. Therefore, any compliance and enforcement procedures pertaining to manufactured housing that are referenced in this rule or developed as part of the manufactured housing enforcement rulemaking have no relation DOE's Appliance Standards Program.

also afford manufacturers time to gain a better understanding of DOE's enforcement process.¹⁴ In addition, by setting a fixed date for compliance with Tier 2 standards, DOE is providing manufacturers with additional clarity, facilitating the ability of manufacturers to plan for the actions necessary to come into compliance with DOE's standards. Accordingly, DOE is finalizing a compliance date of July 1, 2025, for Tier 2 homes.

Twenty-one energy efficiency, environmental, and/or consumer advocate organizations filed joint comments (Joint Commenters)¹⁵ in opposition to DOE's proposed amended compliance date, noting that the DOE standards are long overdue and the current energy efficiency standards for manufactured homes in the HUD Code are almost three decades old. (Joint Commenters at p. 1) Joint Commenters stated that DOE has the authority to enforce the standards now and that DOE gave no explanation in the March 2023 NOPR as to why a delay is necessary. (Joint Commenters at p. 1) Joint Commenters stated that, while the NOPR suggests the lack of a compliance program may reduce the consumer benefits, the NOPR also acknowledges that lack of a standard will remove the consumer benefits during the delay. Joint Commenters stated a possible, greater gain in energy savings with enforcement procedures does not excuse depriving many thousands of residents of needed energy savings. Joint Commenters further stated

¹⁴ For example, the Bipartisan Infrastructure Law (Pub. L. 117-58) and the Inflation Reduction Act (Pub. L. 117-369) provided incentives for various energy reduction measures in homes, including manufactured homes. *See e.g.*, sec. 40502 of Pub. L. 117-58 and sec. 13304 of Pub. L. 117-369. Over time, these incentives will help manufacturers transition to the Tier 2 standards as more homes are designed around the requirements of Tier 2 standards and other incentive programs that are similar to the Tier 2 standards.

¹⁵ EERE-2009-BT-BC-0021-2567. The joint commenters include: American Council for an Energy-Efficient Economy, California Efficiency + Demand Management Council, Earthjustice, Elevate Innovations in Manufactured Homes (I'm HOME) Network, Institute for Energy and the Environment, Vermont Law and Graduate School, Institute for Market Transformation, National Association for State Community Services Programs, National Association of Energy Service Companies, National Association of State Energy Officials, National Housing Trust, Next Step Network, Northeast Energy Efficiency and Electrification Council, Northeast Energy Efficiency Partnerships, Northwest Energy Efficiency Alliance, Neighborhood Partnership Housing Services (NPHS), Natural Resources Defense Council, Responsible Energy Codes Alliance, Rewiring America, Sierra Club, and the Vermont Energy Investment Corporation (VEIC).

that manufacturers can meet the standard by May 31, 2023, especially since manufacturers have options for meeting the core envelope requirements. Joint Commenters noted that manufacturers have been preparing to meet the standard for almost a year, and have had many years of advance notice that a similar standard was coming. NEEA, separately, stated that the industry has been aware of the new efficiency target since August 26, 2021, and details since May 31, 2022, and conversations with NEEA partners indicate the industry can meet the requirements by May 31, 2023. (NEEA at p.1) Joint Commenters further noted that manufacturers are familiar with meeting the substantive requirements of the standards, and the many ENERGY STAR partners and participants in the NEEM+ program have experience building to efficiency levels similar to the DOE standards. Joint Commenters noted that DOE can address any immediate ambiguities or confusion with guidance and with appropriate flexibility until an enforcement procedures rule is complete, rather than delaying the compliance date. (Joint Commenters at p. 1-2)

Although DOE agrees with Joint Commenters that manufacturers have experience implementing efficiency measures similar to DOE's standards (*e.g.*, NEEM+, ENERGYSTAR, etc.) and some are capable of complying with the standards by May 31, 2023, DOE disagrees that additional time is unnecessary. While manufacturers may be able to comply with the standards now, manufacturers do not have a clear picture as to how DOE will evaluate compliance or address enforcement of noncompliance. As noted in the March 2023 NOPR, manufacturers need this clarity in order to ensure homes are compliant with DOE's standards in a manner consistent with DOE's expectations for compliance and enforcement. Manufacturers will need time to adjust their practices in accordance with DOE's forthcoming enforcement procedures to demonstrate compliance with the standards to minimize the potential for civil penalties due to noncompliance.

Accordingly, DOE has determined that a delay of the compliance date until after promulgation of enforcement procedures is warranted. DOE did note in the March 2023 NOPR that some consumer benefits may be lost in delaying implementation of the standards. However, these benefits may not be fully realized if manufacturers do not fully comply with the amended standards and DOE lacks clarity on its enforcement processes. DOE believes that the absence of a clear, workable enforcement framework for manufacturers may jeopardize the full realization of the consumer benefits that will result from full implementation of the standards. Enforcement procedures provide the necessary backbone to help ensure the savings from the standard are fully realized.

Joint Commenters stated that if DOE decides it must delay the compliance date, it should set a new fixed date instead of an open-ended delay. Joint commenters stated that the open-ended delay DOE has proposed nullifies the Department's statutory duty to issue standards and that DOE has not offered any justification for proposing an open-ended delay as opposed to a delay of limited duration. Joint Commenters stated that a more limited delay would enable DOE to address the compliance issues that the Department claims warrant attention, while providing clearer guidance to all stakeholders regarding the path forward. (Joint Commenters at p. 2) Joint Commenters further stated that if DOE nonetheless delays the compliance date as proposed, compliance should be required shortly after the enforcement procedures are finalized. Joint Commenters stated that the compliance date delay following issuance of enforcement procedures should be the same for Tier 2 homes as for Tier 1 homes (60 days). Joint Commenters state that DOE is not proposing to strengthen the standard or any changes to Tier 2, and DOE provides no explanation for the additional 120 days given for the compliance date for Tier 2 homes. (Joint Commenters at 2)

DOE disagrees with Joint Commenters that its proposed amended compliance date "nullifies" DOE's obligation to issue standards under EISA. The standards have

been in effect since August 1, 2022. As noted in the March 2023 NOPR, manufacturers need clarity from DOE's forthcoming enforcement procedures in order to ensure homes comply with DOE's standards. Nevertheless, upon consideration of Joint Commenters' suggestion of a fixed date, DOE concludes that setting a fixed date for compliance with the Tier 2 home standards will provide added certainty to manufacturers, consumers, and other interested parties. It is imperative that DOE amend the compliance date to allow sufficient time for DOE to develop procedures, engage in the rulemaking process, and consider all necessary information and feedback obtained during the rulemaking to establish enforcement procedures. Additionally, as noted previously, manufacturers will need time to adjust their practices in accordance with DOE's forthcoming enforcement procedures to best ensure demonstrable compliance with the standards while minimizing the potential for civil penalties due to noncompliance. Accordingly, DOE has determined that the delay of the compliance dates adopted in this final rule is warranted. With respect to the difference between the compliance dates for Tier 1 and Tier 2 homes, DOE recognizes that it did not fully explain this distinction in the NOPR, but does so now. DOE has determined that additional time is necessary for manufacturers to make adjustments to their operations and practices to ensure compliance with the Tier 2 standards because the Tier 2 standards are inherently more energy efficient than the Tier 1 standards. In addition, by establishing a fixed date for Tier 2, manufacturers will have a greater ability to plan for the adjustments needed to achieve compliance as compared to an indeterminate future date, thus maximizing the probability of full compliance with the more stringent Tier 2 standards. Accordingly, DOE is implementing the July 1, 2025, compliance date for Tier 2 homes in this final rule.

Need for Enforcement Procedures

Campaign Form Commenters stated that the industry must be given a sufficient time to respond to DOE's proposed enforcement procedures with their feedback and concerns, and that DOE must seriously consider the recommendations provided by the industry and address these concerns in its final rule to ensure that DOE's enforcement procedures are feasible and support the continued production of affordable manufactured homes. Hemminger stated that it would be hard to comply with the current DOE standards in part 460 since the details are not laid out as to what needs done, by whom, or penalties that may be applied for not complying. (Hemminger at p. 1) Hemminger stated that if the DOE standards are reviewed and clarified, then manufacturers, their vendors, and inspection agencies would clearly know what is expected. (Hemminger at p. 2) Hemminger also stated that the entire network of people who produce, sell, deliver, install, inspect, and finance these homes need to know what is expected of them, and that in return potential homeowners will be able to decide whether or not they will be able to afford a home. Hemminger concluded by stating that everyone needs to be confident that homes being sold are fully compliant and customers need to be sure that they will not receive a notice of violation as well. (Hemminger at p. 2)

Skyline, Cavco, and MHI supported DOE's proposal to amend the compliance date to afford DOE additional time to establish enforcement procedures so that the benefits of DOE's standards can be fully realized. (Skyline at p. 1, Cavco at p. 1, MHI at 1) Skyline, Cavco, and MHI stated that DOE should create testing, compliance, and enforcement procedures that protect manufacturers from a vague and incalculable civil penalty, as well as potential civil liability. These commenters stated that EISA allows for a civil penalty of "1 percent of the manufacturer's retail list price of the manufactured housing" for violations of DOE's standards but that manufacturers generally do not create a "retail list price," and that term is not recognized in the manufactured housing industry.

(Skyline at p. 1-2, Cavco at p. 1-2, MHI at 3-4) MHI stated that enforcement procedures could help clarify what it stated are issues with DOE's current standards, such as manufacturers being unable to use certain components (*e.g.*, windows) in certain climate zones necessary to meet part 460, or potential conflicts with implementing the DOE standard and the HUD Code, particularly regarding furnace sizing requirements. (MHI at p. 4-5)

Joint Commenters stated that DOE should develop enforcement procedures as soon as possible. Joint Commenters stated that since HUD has not been able to incorporate the DOE standard in a timely way, and since its advisory committee (the Manufactured Housing Consensus Committee or "MHCC") has recommended that HUD not adopt the DOE standard but instead develop a weaker standard, DOE cannot at this point simply rely on HUD to ensure compliance. Instead, Joint Commenters stated that DOE should develop procedures to improve compliance in case HUD fails to incorporate the DOE standard, as a backup enforcement mechanism, and to provide compliance tools and facilitate measurement of compliance. DOE also should consider whether finalizing the test procedures that were issued as a draft in 2016 would add further clarity and improve compliance. (Joint Commenters at p. 2)

DOE agrees with commenters that enforcement procedures are necessary to provide clarity to manufacturers to ensure compliance with DOE's standards and the full realization of benefits of DOE's standards. Regarding specific issues raised by commenters for DOE to address in its enforcement procedures, DOE will consider these comments in its rulemaking to establish those procedures. DOE intends to engage in the rulemaking process in the coming months to establish enforcement procedures for part 460. As noted previously, DOE is adopting the compliance dates in this final rule to ensure that DOE has sufficient time to develop enforcement procedures, engage in the

rulemaking process, and fully consider stakeholder feedback on the enforcement procedures. DOE encourages commenters to participate in that rulemaking and provide feedback to the Department.

DOE's 2021-2022 Rulemaking for Part 460

In addition to comments on DOE's proposal to amend the compliance date of part 460, commenters also commented on the standards of part 460, generally, and DOE's rulemaking to establish those standards (summarized in section I). Campaign Form Commenters stated that, while they support and commend DOE's decision to amend the compliance date to allow more time to establish enforcement procedures, DOE's proposal to amend the compliance date does not address the underlying concerns of the industry regarding DOE's standards. Campaign Form Commenters stated that the standards did not take into consideration current construction methods and transportation requirements for manufactured homes, and that the standards were developed based on site-based construction standards and applied to a performance-based national code. Campaign Form Commenters further stated that, as the Nation's only form of unsubsidized affordable housing, the costs associated with the DOE's energy standards will increase the costs of manufactured homes, at a time when affordable housing is in high demand, and deprive many low-income and minority homebuyers the dream of homeownership. Hemminger stated that engineers may be required to redesign homes by changing roof systems, wall systems, floor systems, heat systems, carriers, and installer requirements to comply with the regulation, and that all of these will affect the prices that consumers will have to pay. Hemminger further stated that when comparing the cost versus value, the customer will not be able to save enough money over the time that they own their home to cover the additional purchase cost and financing needed, and if that is the situation, there will be fewer people that will be able to purchase a compliant home. (Hemminger at p. 2)

MHARR stated that, regardless of any delay of the compliance date, DOE's manufactured housing energy conservation standards should be withdrawn and redone because they would be destructive of the manufactured housing industry and the availability of affordable homeownership for lower and moderate-income Americans. (MHARR at p. 8) MHARR stated that the lack of enforcement and compliance procedures in current part 460 is proof of the inadequacy of DOE's rulemaking. (MHARR at p. 7) MHARR stated that no amount of delay or modification can remedy DOE's failure to abide by EISA's cost-effectiveness and HUD-coordination requirements in the rulemaking process, and that the failure to abide by EISA's requirements makes the standards of part 460 and any action to modify such standards invalid, arbitrary, and not in accordance with applicable law. (MHARR at p. 8) L.A. "Tony" Kovach¹⁶ similarly stated that part 460 should be scrapped and redone, and that the standards are not cost-effective due to their effects on affordability. L.A. "Tony" Kovach also noted concerns of small manufacturers' ability to comply with DOE's standards and the role of such manufacturers, and larger manufacturers, in the rulemaking process.

Senator Tim Scott, Ranking Member of the Senate Committee on Banking, Housing and Urban Affairs (Senator Scott),¹⁷ expressed concern that DOE's standards unnecessarily limit consumer choices and raise costs for families seeking affordable homeownership opportunities, stating that DOE expressly ignored the cost of testing, compliance, and enforcement in its part 460 rulemaking, which conflicts with EISA's requirement for DOE to consider cost-effective standards for manufactured homes. (Senator Scott at p. 1-2) Senator Scott stated that DOE's standards are overly broad, unduly burdensome, and undermine commonsense efforts to increase supply and assist families looking for affordable housing opportunities, and that DOE should delay the

¹⁶ EERE-2009-BT-BC-0021-2517.

¹⁷ EERE-2009-BT-BC-0021-2564.

compliance date and consider withdrawing part 460 to incorporate appropriate modifications in consultation with HUD and the MHCC. (Senator Scott at p. 2)

Skyline, Cavco, and MHI stated that the failure of DOE to consider the cost of testing, compliance, and enforcement renders DOE's cost-effectiveness analysis for part 460 incomplete and inaccurate, and that DOE used flawed assumptions regarding increases in component part prices and interest rates in its analysis. Skyline, Cavco, and MHI stated that DOE should implement the delay rule not only to create testing, compliance, and enforcement provisions, but also to reconsider its cost analysis. Skyline, Cavco, and MHI further stated that DOE's current standards will price tens of thousands of homebuyers out of homeownership and cause them to remain in housing that is less energy efficient than today's manufactured homes, and that even modest purchase price increases disproportionately impact manufactured home purchasers who typically have incomes far below the national average. (Skyline at p. 2, Cavco at p. 2, MHI at p. 1-3) Skyline, Cavco, and MHI also stated that DOE should use the delayed compliance date to resolve its failure to adequately consult with HUD during the rulemaking for part 460, and that DOE should consult with HUD and the MHCC now to make modifications or additions to the standards. (Skyline at p. 2, Cavco at p. 2, MHI at p. 5)

MHI stated that requirements of DOE's standards are unworkable. More specifically, MHI stated that §460.205's requirement to use Air Conditioning Contractors of America (ACCA) Manuals J and S creates an unworkable conflict with the HUD code and that there are currently no furnaces available that are both rated for use under the HUD Code and that comply with part 460. (MHI at p. 4) MHI further stated that windows with solar heat gain coefficient (SHGC) values required by part 460 cannot be used in homes above certain elevation, that the *U_o* performance requirements of Tier 2 would require removal of all windows in climate zone 3 homes (in violation of the HUD Code), and that the R-21 insulation necessary to comply with DOE's standards has never

been implemented in manufactured homes. (MHI at p. 4-5) MHI stated that DOE should amend the compliance date of part 460 to also reconsider its cost-effectiveness analysis in the May 2022 Final Rule, particularly in light of recent market downturns. (MHI at p. 8) Kit HomeBuilders raised several questions regarding implementation of the standards with regard to sizing requirements under ACCA Manuals J and S, and insulation requirements. More specifically, Kit HomeBuilders stated that requirements of part 460 could force homebuyers to a more expensive foundation design that goes below frost depth which consists of more site preparation, form work, and concrete and material, and that the ACCA Manuals J and S requirements of part 460 would require additional software and cost and could be problematic for homes sold as lot models, dealer stock, and/or “spec homes.” Kit HomeBuilders stated that the current HUD heat-loss calculation method along with the new code updates would achieve the same, if not a better, scenario for HUD homes since the calculation would not be held up by site criteria while also providing furnace certification and economy temperatures as currently required.

DOE’s only proposal in this rulemaking is whether to amend the compliance date of part 460. Therefore, comments regarding the substance of the May 2022 Final Rule, including the standards adopted by DOE and the rationale DOE offered in support of its decision, are out of the scope of the current rulemaking action. Nevertheless, DOE notes that it addressed many of the concerns raised by these commenters in the May 2022 Final Rule. Pursuant to EISA, DOE based its standards on the latest version of the IECC and performed a life-cycle cost-effectiveness analysis of its standards, which DOE determined to be cost-effective. *See e.g.*, 87 FR 32735, 32742. As part of its analysis, DOE considered the design and factory construction techniques of manufactured homes, transportation issues, and potential need for redesign of manufactured homes. *See e.g.*, 87 FR 32764, 32767, 32772-73, 32790. These considerations were informed by the

rulemaking working group negotiations and term sheet, as well as comments on the 2021 SNOPR and NODA. 87 FR 32742, 32749. DOE notes that it utilized feedback from consultations with HUD, as well as stakeholder comments, to address affordability concerns, which led to the tiered approach in part 460. *See e.g.*, 87 FR 32743-32745, 32756. Although DOE does not agree with the commenters' assertions regarding the substance of the May 2022 Final Rule, this disagreement does not affect DOE's determination with respect to the limited proposal at issue in this rulemaking. DOE concludes, after reviewing all submitted comments, that manufacturers and purchasers would benefit from additional clarity on DOE's procedures for ensuring compliance with its standards in the May 2022 Final Rule, which DOE will develop in a forthcoming enforcement procedures action.

Alignment with the HUD Code

The Arkansas Department of Labor and Licensing (ADLL) stated that it is responsible for enforcing the HUD Code in Arkansas, the authority for which is derived from the HUD process set forth at 24 CFR 3282.301 through 3282.309. ADLL stated that it has received numerous inquiries from the industry, regulators, and lawmakers as to the impact of DOE's manufactured housing standards, stating that DOE's standards have caused substantial confusion in Arkansas given the conflicts between DOE's standards and the HUD Code.¹⁸ (ADLL at p. 1) ADLL stated that this confusion is likely to continue until DOE's standards are aligned with the HUD Code. ADLL stated its understanding that any increase in energy efficiency requirement for manufactured homes would have to be set forth in the HUD Code to be enforced through ADLL, and that DOE should delay the compliance date of part 460 until such time as DOE can work with HUD to adopt any increased energy efficiency requirements into the HUD Code. (ADLL at p. 1-2)

¹⁸ EERE-2009-BT-BC-0021-2520.

Kit HomeBuilders stated its belief that HUD should be an integral part of incorporating DOE's standards into the HUD Code, while working with the industry on how this can be accomplished, which would benefit the industry by allowing HUD and its stakeholders the opportunity to work together on how requirements can be met and enforced. Senator Scott stated that any effort by DOE to develop standards should not undermine HUD's long-established requirements but must complement existing requirements to ensure appropriate consideration of the affordability and availability of such housing choices for consumers. (Senator Scott at p. 2) Skyline and Cavco commented that DOE's standards set forth several requirements that conflict with the HUD Code and ignore current component supply challenges and realities of manufactured home construction. Skyline and Cavco stated that, while these conflicts and challenges should be resolved through substantive rulemaking, some of them could potentially be resolved through testing, compliance, and enforcement, and that DOE should delay the compliance date for part 460 to attempt to resolve these conflicts and challenges through testing, compliance, and enforcement. (Skyline at p. 2, Cavco at p. 2)

MHI commented that DOE should consult with HUD and the MHCC for additions or modifications to DOE's standards. MHI stated that the MHCC refused to recommend wholesale adoption of DOE's standards into the HUD Code, preferring a more incremental approach, to preserve home affordability, and particularly noted that the MHCC determined that DOE circumvented the standards development process prescribed in EISA which requires cost justification and consultation with HUD. (MHI at p. 5-6) MHI stated that the MHCC's recommended changes to the HUD Code allow for testing, enforcement, and regulatory compliance within HUD's existing framework, which helps minimize costs to manufacturers and ultimately consumers, but that there still may be a gap in enforcement between HUD's final standards and DOE's final standards, which may need to be resolved. MHI commented that should HUD adopt the

MHCC recommendations into the HUD code, manufacturers will be subject to two sets of conflicting regulations. MHI stated that HUD and DOE should consider engaging in joint rulemaking to ensure that the HUD Code and Energy rule are fully aligned, and that there is precedent for such joint rulemaking as HUD and the Department of Transportation engaged in similar joint rulemaking for manufactured home transportation standards. (MHI at p. 7-8)

Joint Commenters stated that DOE should assist HUD to incorporate the DOE standard into the HUD Code as soon as possible. Joint Commenters stated that having two different energy standards for manufactured homes does not benefit anyone, and applying HUD's compliance procedures would improve compliance and achieve greater energy savings. Joint Commenters stated that, to the extent possible, the DOE standard should be incorporated by reference into the HUD Code so that future updates of the DOE standard do not again lead to different standards and long delays. (Joint Commenters at p. 2) NEEA commented that the HUD design and inspection process for manufactured homes could be easily modified to achieve equivalent energy efficiency performance, and that DOE could provide validation of equivalence where DOE's language or approach differs and is more in line with HUD enforcement standard practice. NEEA also stated that the most significant challenges manufacturers face can be addressed if DOE would provide HUD with a crosswalk of equivalent energy efficiency. NEEA provided specific recommendations for four sections of the HUD Code that if used should be equivalent to the DOE standard: 24 CFR 3280.103 (light and ventilation), 3280.505 (air infiltration), 3280.506 (heat loss/heat gain), and 3280.715 (circulating air systems). (NEEA at p. 2-3)

As stated previously, DOE's only proposed action in this rulemaking is whether to amend the compliance date of part 460. Therefore, comments regarding potential future collaboration or rulemaking with HUD regarding DOE's standards and/or the

HUD Code are outside the scope of the current rulemaking action. However, DOE notes that it addressed a number of the concerns raised by these commenters in the May 2022 Final Rule. As noted in that rule, DOE consulted with HUD in establishing its efficiency standards for manufactured homes. *See e.g.*, 87 FR 32736, 32742. Moreover, DOE made efforts to ensure that its standards would not prevent a manufacturer from complying with the requirements, including energy conservation requirements, set forth in the HUD Code at the time of that rulemaking. *See e.g.*, 87 FR 32736. Additionally, DOE provided a crosswalk of its standards and the relevant standards in the HUD Code to demonstrate how DOE's standards interact with the HUD Code. *See e.g.*, 87 FR 32782. Nevertheless, DOE agrees with commenters that enforcement procedures are necessary and will help provide clarity to manufacturers to ensure compliance with DOE's standards and provide expectations for DOE enforcement. Regarding specific issues raised by commenters for DOE to address in its enforcement procedures or with HUD, DOE will consider these comments while establishing those procedures. DOE intends to engage in the rulemaking process in the coming months to establish enforcement procedures for part 460. DOE encourages commenters to participate in that rulemaking and provide feedback to the Department to establish enforcement procedures that address the concerns of all stakeholders.

B. Final Rule

Based on the foregoing, under its authority to establish energy conservation standards for manufactured housing (42 U.S.C. 17071), DOE amends the compliance date for the manufactured housing energy conservation standards in 10 CFR part 460 until 60-days after promulgation of DOE's forthcoming enforcement procedures for Tier 1 homes, and until July 1, 2025, for Tier 2 homes. With respect to the requirements of subpart C of part 460, DOE requires compliance with those provisions beginning 60 days after publication of its final enforcement procedures for Tier 1 homes, and beginning July

1, 2025, for Tier 2 homes. Importantly, DOE has made minor changes to the regulatory text of §460.1 from that which was proposed in the March 2023 NOPR, including the reservation of a new subpart D of part 460, which will contain DOE's forthcoming enforcement procedures. Upon issuance of DOE's enforcement procedures in subpart D, DOE will update the compliance date for Tier 1 homes in §460.1 to state the specific calendar date by which manufacturers must comply once that date is known.

As noted in the March 2023 NOPR, DOE believes enforcement procedures will provide additional clarity to manufacturers and consumers regarding DOE's expectations of manufacturers and DOE's plans for enforcing the standards. Delaying the compliance date until after the enforcement procedures are issued provides manufacturers time to understand DOE's enforcement procedures and adjust their operations to ensure compliance with DOE's standards. DOE acknowledges that some of the consumer benefits (*e.g.*, cost savings) provided by DOE's standards will not be realized during the delay period. However, these benefits may not be fully realized in the absence of a delay if manufacturers lack clarity on what to expect from DOE's enforcement of such standards. DOE believes that the absence of a clear, workable enforcement framework for manufacturers jeopardizes the full realization of the consumer benefits that will result from full implementation of the standards. Amending the compliance date is therefore necessary to ensure the realization of the consumer benefits of DOE's standards. DOE believes the July 1, 2025, compliance date for Tier 2 provides manufacturers with additional clarity to plan for and make adjustments to their operations, consistent with DOE's enforcement procedures.

Accordingly, DOE delays the May 31, 2023, compliance date for the standards of 10 CFR part 460 until 60 days after DOE's publication of its final enforcement procedures for the Tier 1 standards, and until July 1, 2025, for the Tier 2 standards.

IV. Administrative Procedure Act

The Administrative Procedure Act requires that publication of a rule be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause. 5 U.S.C. 553(d)(3). An explanation of this good cause must be included with the rule. *Id.* DOE has found good cause to dispense with this 30-day period required by the Administrative Procedure Act to make this final rule effective upon publication in the *Federal Register*. As discussed previously, amending the compliance date is necessary because DOE has yet to publish enforcement procedures for part 460. Enforcement procedures will provide additional clarity to manufacturers and consumers regarding DOE's expectations of manufacturers and DOE's plans for enforcing the standards. Delaying the compliance date until after the enforcement procedures are effective provides manufacturers time to understand DOE's enforcement procedures and prepare their operations to ensure compliance with DOE's standards.

Given the immediacy of the May 31, 2023, compliance date currently prescribed, DOE finds good cause to make this rule delaying that date effective on publication. 5 U.S.C. 553(d)(3). This will prevent a problematic scenario in which, after May 31, 2023, manufacturers would need to comply with the standards—without the benefit of relevant enforcement procedures—only to have the compliance date delayed weeks later. Moreover, this prevents manufacturers from being subject to legal actions (from DOE or otherwise) for potential noncompliance with DOE's standards in this period. DOE believes the need for immediate effect of this final rule to avoid these scenarios exceeds the need for persons affected by DOE's standards to have 30 days to prepare for amendment of the compliance date given that there is little (if any) burden to prepare for the amended compliance date of this rule. Rather, manufacturers will be able to continue working towards compliance with the standards (with the benefit of eventual DOE enforcement procedures) without facing a need to comply with DOE's standards for a

matter of weeks before the amended compliance date takes effect. Accordingly, by making this final rule effective immediately, DOE is providing manufacturers with certainty that they need not comply with part 460 until after DOE issues enforcement procedures that will provide clarity for manufacturers' compliance with the standards.

Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this final rule before its effective date. The report will state that it has been determined that this final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 460

Administrative practice and procedure, Buildings and facilities, Energy conservation, Housing standards, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on May 19, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on May 19, 2023.

Treana V. Garrett
Federal Register Liaison Officer,
U.S. Department of Energy

For the reasons stated in the preamble, DOE amends part 460 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 460—ENERGY CONSERVATION STANDARDS FOR MANUFACTURED HOMES

1. The authority citation for part 460 continues to read as follows:

Authority: 42 U.S.C. 17071; 42 U.S.C. 7101 *et seq.*

2. Revise §460.1 to read as follows:

§460.1 Scope.

This subpart establishes energy conservation standards for manufactured homes as manufactured at the factory, prior to distribution in commerce for sale or installation in the field. Manufacturers must apply the requirements of this part to a manufactured home subject to § 460.4(b) that is manufactured on or after 60 days after publication of final enforcement procedures for this part. DOE will amend this section to include the specific compliance date, once known. Manufacturers must apply the requirements of this part to a manufactured home subject to §460.4(c) that is manufactured on or after July 1, 2025.

Subpart D – [Added and Reserved]

3. Add reserved subpart D.

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