



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF AGRICULTURE

[Docket No. FR-6271-N-08]

Rescission of Final Determination: Adoption of Energy Efficiency Standards for New Construction of HUD- and USDA Financed Housing

AGENCY: Department of Housing and Urban Development (HUD) and Department of Agriculture (USDA).

ACTION: Notice of rescission.

SUMMARY: This document announces the immediate rescission of the “Final Determination: Adoption of Energy Efficiency for New Construction of HUD- and USDA Financed Housing” (Final Determination), published on April 26, 2024, as well as subsequent notices by HUD and USDA (the Agencies) related to extensions of effective dates for the standards rescinded by this notice.

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

FOR FURTHER INFORMATION CONTACT:

HUD: Brian Schlosnagle, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW, Room 10180, Washington, DC 20410; telephone number 202-402-4366 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

USDA: Robert Bogan, Administrative Management Specialist, Program Support Services, Rural Housing Service; Department of Agriculture, 1400 Independence Avenue SW, Room 6900-S, Washington, DC 20250; telephone number 202-557-1000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 481 of the Energy Independence and Security Act of 2007 (“EISA,” Pub. L. 110-140) amended section 109 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Cranston-Gonzalez) (42 U.S.C. 12709), which establishes procedures for setting minimum energy standards for certain categories of newly constructed housing financed by HUD and USDA.¹

EISA references two standards: the International Energy Conservation Code (IECC) and American National Standards Institute/American Society of Heating, Refrigerating, and Air-Conditioning Engineers/Illuminating Electrical Society Standard 90.1 (ASHRAE 90.1). The IECC standard applies to single family homes and multifamily low-rise buildings (up to 3 stories), while the ASHRAE 90.1 standard applies to multifamily residential buildings with 4 or more stories.

The IECC and ASHRAE 90.1 are industry-based consensus codes that are typically updated on three-year cycles. Following each update, HUD and USDA are required to adopt the new versions of the IECC and ASHRAE 90.1 within one year. If the one-year deadline is not met, the agencies may adopt updated versions only if they make a determination “that the revised codes do not negatively affect the availability or affordability” of the covered housing and the Secretary of Energy has determined “that the revised code or standard would improve energy efficiency.”

II. Procedural History

¹ The programs covered by EISA are as follows: Public Housing Capital Fund; Capital Fund Financing Program; HOPE VI; Choice Neighborhoods Implementation Grants; Project-Based Voucher Program; Section 202 Supportive Housing for the Elderly; Section 811 Supportive Housing for Persons with Disabilities; Rental Assistance Demonstration; FHA Single Family Mortgage Insurance Programs; FHA Multifamily Mortgage Insurance Programs; USDA Section 502 Guaranteed Housing Loans; USDA Section 502 Rural Direct Housing Loans; and USDA Section 523 Mutual Self Help Technical Assistance Grants, homeowner participants. **NOTE:** For HUD, EISA also applies to new construction projects in the HOME Investment Partnerships Program (HOME) and the Housing Trust Fund program through their program statutes or regulations.

A. Development of the Determinations

On May 18, 2023, HUD and USDA published a Preliminary Determination (88 FR 31773) that the 2021 IECC and ASHRAE 90.1-2019 would not negatively affect the affordability or availability of EISA-covered housing. After receiving feedback during the public comment period, the agencies published the Final Determination on April 26, 2024, (89 FR 33112) with an updated economic analysis and found that adoption of the standards would not negatively impact the affordability or availability of EISA-covered housing.

The Final Determination made changes to the Preliminary Determination based on public comments.² Notwithstanding the adjustments made in the Final Determination, HUD and USDA published a request for additional comments on the new standards on July 7, 2025 (90 FR 29882).³ The agencies informed the public of their intent to “review the analysis contained in the Final Determination”⁴ and that “HUD and USDA would like to better understand how the adoption of the updated codes is working in practice.”⁵

B. Litigation

On January 2, 2025, a coalition of fifteen States and the National Association of Home Builders filed a lawsuit in federal court against HUD and USDA alleging, among other things, that the 2024 Final Determination violates the Administrative Procedure Act, 5 U.S.C. § 706, and should therefore be set aside.⁶ During the pendency of the litigation the Agencies filed a motion to dismiss and both parties filed cross-motions for summary judgment. On March 5, 2026, the Court denied the Agencies’ motion to dismiss and granted in part the Plaintiffs’ motion for summary judgment, setting aside and vacating the 2024 Final Determination.

III. Discussion

² The changes based on public comments are outlined in Section I. F. of the Final Determination. See 89 FR 33120-33121.

³ Both before and after the July 7, 2025, request for additional comments HUD and USDA published extensions of the effective dates for complying with the new standards. See 90 FR 11622 (March 10, 2025); 90 FR 14775 (April 4, 2025); and 90 FR 50750 (November 10, 2025).

⁴ 90 FR at 29882.

⁵ *Id.* at 29885.

⁶ *State of Utah, et al. v. Secretary, US Department of Housing and Urban Development, et al.* (E.D. Texas)

On the first day of the new administration, the President highlighted the need to control the cost of living for ordinary Americans. See *Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis* (Presidential Memorandum) (January 20, 2025).⁷ Included in the memorandum was a mandate to the heads of all executive departments and agencies to pursue “appropriate actions to lower the cost of housing and expand housing supply.”⁸ Empirical data as well as anecdotal evidence show that the implementation of the Final Determination is antithetical to this purpose.

Myriad factors beyond code-based energy requirements, including labor costs and material costs, combine to exert upward pressure on the cost of both single- and multifamily housing construction. For instance, according to the Bureau of Labor Statistics Producer Price Index for Single Family Residential Construction, a spike in the cost of building materials occurred between January 2020 and January 2022. While cost growth has slowed, it has not fallen with the result that building material costs have seen a 43% increase between January 2020 and November 2025.⁹ Additionally, contractors’ bid amount for construction of homes (what builders are charging to build a home excluding land) has increased 42% between 2019 and 2024.¹⁰ Supply chain issues, while ameliorating, persist and also add to the total cost of home construction. These realities are exacerbated by the requirements imposed by the Final Determination.

As a threshold matter, the agencies consider it noteworthy that the econometrics relied upon in the Preliminary Determination are from 2020 and 2021, making them up to six years old. Even given the fact that the Final Determination included updated measures (see fn.2), the most

⁷ Published at 90 FR 8245 (January 28, 2025).

⁸ Id.

⁹ Federal Reserve Bank of St. Louis, *Producer Price Index by Commodity: Inputs to Industries: Net Inputs to Single Family Residential Construction, Goods Less Foods and Energy* (WPUIP23111013), November 2025 (updated January 14, 2026), available at <https://fred.stlouisfed.org/series/WPUIP23111013>

¹⁰ HUD/Census Survey of Construction, *Characteristics of New Housing*, available at <https://www.census.gov/construction/chars/index.html>

recent of those numbers are from 2023.¹¹ The updated measures for construction cost increase uses data going back as far as 2020; similarly, the energy cost increase adjustment uses data going back as far as 2022.

Another factor at play in the complex mix of variables that affect potential homebuyers is mortgage rates, which have begun to show signs of improving in late 2025. Nonetheless, they currently stand at an average of 6.2% for conventional 30-year financing – nearly a full point above the 5.3% assumption of the Final Determination.

While not tied directly to the issue of code-based energy standards, another factor pushing the price of new home construction upward is the cost of land. A recent report from leading real estate research and consulting firm John Burns Research and Consulting (JBREC) indicates that in 4Q 2025 lot price appreciation continues to outpace falling new home prices (net of incentives).¹² And while YOY average price appreciation for undeveloped land in suburban areas nationally decreased in 4Q25 to very slightly negative, brokers reported +5% YOY average price appreciation for undeveloped land in closer in submarkets.¹³ Additionally, hitherto unconsidered uses of land contribute to whittle away land that might otherwise be used for residential construction. According to JBREC, 38% of brokers nationally report a somewhat to significant increase in residential land sales for data center construction in 2025.¹⁴

This additional factor placing upward pressure on construction costs is yet another reason not to impose expensive new regulations – in the form of building code-based energy standards – at a time when ordinary Americans are struggling to achieve the dream of homeownership.

Finally, the agencies note that the Final Determination overstated the availability of the § 45L New Energy Tax Credit as a vehicle for builders to offset some of the costs of complying with the new energy standards, stating “there are now significant new resources available

¹¹ *Construction Cost Increase* – data from 2020-2023; *Energy Price Increase* – data from 2022; *Energy Price Escalator* – data from 2023.

¹² John Burns Research and Consulting, 4Q25 Residential Land Survey, January 22, 2026 (p.24)

¹³ *Id.* at p.8.

¹⁴ *Id.* at p.49.

through the Inflation Reduction Act (IRA) which provide unprecedented financial support for building energy efficient housing.”¹⁵ However, as the agencies went on to acknowledge, the § 45L tax credit is not a direct subsidy for building to the 2021 IECC; rather, the credit is available to eligible contractors who construct or sell new homes that meet specific energy efficiency standards set by the ENERGY STAR program or the Department of Energy's Efficient New Homes program. The credit amount varies based on the energy savings achieved and prevailing wage rates for construction. Even assuming for the sake of argument that the § 45L credit could have been used in a manner to lower construction costs – and presumably by extension to lower costs for potential homebuyers – that utility has dramatically decreased by the reality that the One Big Beautiful Bill Act, *Pub. L. 119-21*, accelerates the sunset for federal energy tax incentives – with the § 45L tax credit specifically set to expire for homes acquired after June 30, 2026.

Rescission:

In light of the foregoing realities, the Final Determination flies in the face of the Administration’s express policy of increasing the supply of housing and making housing more affordable. The net effect of these realities is that affordability of housing in the Departments’ respective covered housing programs would be negatively affected by implementation of the Final Determination (42 USC 12709(d)(1)). In addition, as noted above, the Final Determination has been judicially vacated and thus is no longer in force. As such, effective immediately, the Department of Housing and Urban Development and the Department of Agriculture rescind the Final Determination of April 26, 2024, in its entirety. The Departments also rescind the subsequent notices of March 10, 2025, April 4, 2025, and November 10, 2025, related to extensions of effective dates for the standards rescinded by this notice. Each of the Departments’ respective covered programs shall comply with the energy efficiency standards that were in effect immediately prior to the publication of the Final Determination.

¹⁵ 89 FR 33123.

Scott Turner,
Secretary, U.S. Department of Housing and Urban Development.

Brooke L. Rollins,
Secretary, U.S. Department of Agriculture.
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