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Mr. John Cymbalsky  
U.S. Department of Energy  
Office of Energy Efficiency and Renewable Energy  
1000 Independence Avenue SW., EE-5B,  
Washington, DC 20585

Submitted Electronically

**RE: Energy Conservation Standards for Manufactured Housing Supplemental Proposed Rule, Docket Number EERE-2009-BT-BC-0021**

The International Code Council (ICC) is a nonprofit organization, with more than 64,000 members, that is dedicated to helping communities and the building industry provide safe, resilient, and sustainable construction through the development and use of model codes (I-Codes) and standards used in the design, construction, and compliance processes. Most U.S. states and communities, federal agencies, and many global markets choose the I-Codes to set the standards for regulating construction, plumbing and sanitation, fire prevention, and energy conservation in the built environment. The Code Council recognizes the essential role the I-Codes and supporting resources play in realizing energy efficiency and greenhouse gas (GHG) reduction goals through a new framework, [Leading the Way to Energy Efficiency: A Path Forward on Energy and Sustainability to Confront Climate Change](#). We appreciate the opportunity to provide comment on the Department of Energy's (DOE) proposed energy conservation requirements for manufactured housing in the above-captioned matter.

The Energy Independence and Security Act of 2007 (EISA) requires DOE to establish by regulation standards for the energy efficiency of manufactured housing.<sup>1</sup> These standards “shall be based on the most recent version of the International Energy Conservation Code (including supplements), except in cases in which the Secretary finds that the code is not cost-effective, or a more stringent standard would be more cost effective, based on the impact of the code on the purchase price of manufactured housing and on total life-cycle construction and operating costs.”<sup>2</sup> EISA required DOE to complete this rulemaking nearly ten years ago.<sup>3</sup>

Absent action by DOE, energy efficiency requirements for manufactured housing remain tied to U.S. Department of Housing and Urban Development requirements (the “HUD Code”) which have not been updated since 1994. In contrast, the International Energy Conservation Code (IECC) has increased energy efficiency requirements by roughly 40% over the past 15 years along with corresponding improvements in building, mechanical, and material science and technology. High energy burdens remain a persistent challenge in the United States for families living in manufactured housing. Energy efficiency improvements for manufactured homeowners are overdue.

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<sup>1</sup> See 42 U.S.C. § 17071(a)(1).

<sup>2</sup> § 17071(b)(1).

<sup>3</sup> See 42 U.S.C. § 17071(a)(1).

We commend Congress and the Department for recognizing the role model codes, like the IECC, serve in achieving national priorities. The model codes are designed to support consistency in policy and reflect knowledge and practice from across the building industry. At the same time, they allow for flexibility during adoption to reflect specific building types or technologies.

In referencing the IECC, we request the Department ensure it has respected the Code Council's rights as a copyright holder. The Department's 2016 and 2021 proposed rules on energy conservation standards for manufactured housing published a modified version of the IECC, which is copywritten. ICC notified the Department of this issue in its comments to the 2016 proposed rule and does so again here. OMB Circular A-119 spells out how federal agencies are to reference voluntary consensus standards in regulatory activities:

*g. How should my agency reference standards?*

*Where your agency seeks to incorporate a standard by reference, **your agency should reference the standard, along with sources from which a copy of the standard may be obtained**, in relevant publications, regulations, and related internal documents. The Office of the Federal Register's regulations at 1 CFR Part 51 govern the use of incorporation by reference in regulation. For all other uses, your agency must determine the most appropriate form of reference. **If a standard is used and published in an agency document, your agency must observe and protect the rights of the copyright holder** and meet any other similar obligations, such as those relating to patented technology that must be used to comply with the standard.*<sup>4</sup>

The OMB Circular A-119 expresses a clear preference for incorporation by reference as the desired means through which to protect the rights of copyright holders. The Code Council strongly encourages the Department to incorporate by reference the copywritten material from the IECC that DOE published in the 2021 proposed rule and any additional material from the IECC DOE chooses to include in its final rule. In the few instances in which the Department has reproduced whole tables or sections with minor, non-substantive, amendments the Code Council would encourage the Department to instead incorporate those tables or sections by reference.

If DOE wishes to publish any part of the IECC in a future rulemaking, including a final rule in this matter, in order to comply with OMB Circular A-119, DOE must: (a) expressly acknowledge that the IECC is a copyright protected document, published and owned by ICC; (b) explicitly state that any reproduction or copying of the standard requires express written permission or license from ICC; and (c) state that copies of the IECC may be viewed for free on ICC's website, <https://codes.iccsafe.org>, and are available for purchase from ICC at its website, [www.iccsafe.org](http://www.iccsafe.org).

The Code Council's response to delineated questions in the proposed rule are provided below.

*Question 2. DOE welcomes comment on approaches for testing, compliance and enforcement provisions for the proposed standards and alternative proposal. DOE also welcomes comments and information related to potential testing, compliance and enforcement under the current HUD inspection and enforcement process, and potential costs of testing, compliance and enforcement of the proposed standards and alternative proposal in this document.*

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<sup>4</sup> Office of Management and Budget, Executive Office of the President, *OMB Circular A-119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (OMB Circular A-119)*, available at [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A119/revised\\_circular\\_a-119\\_as\\_of\\_1\\_22.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A119/revised_circular_a-119_as_of_1_22.pdf) (emphasis added).

Compliance verification ensures that the performance requirements are met. Testing and inspection should be conducted under the purview of either a state program or third-party entities with the requisite knowledge and procedures to assure the results. In states without state programs, third-party providers should be permitted to conduct testing and inspection. The Department should require third-party providers be accredited to ISO/IEC 17020, which ensures the competence of inspection bodies, their impartiality, and the consistency of their inspection activities.

To the greatest extent practicable, the Department should coordinate any compliance verification processes it mandates with the existing program in place at HUD. Overlapping or disjointed requirements would create process inefficiencies for manufacturers and inspection agencies, potentially raising costs.

*10. DOE requests comment on the Tier 1 energy conservation standards, which would be applicable to manufactured homes with a manufacturer's retail list price of \$55,000 or less. DOE also requests comment on the proposed energy conservation standards based on the most recent version of the IECC for the Tier 2 and untiered standards and the consideration of R-21 sensitivity for exterior wall insulation for climate zones 2 and 3.*

*11. DOE requests comment on the additional energy efficiency requirements from the 2021 IECC and whether they should apply to manufactured homes, including those that DOE has initially considered as not applicable to manufactured homes. If so, DOE requests comment on how these requirements would apply and the costs and savings associated with these requirements.*

The 2021 IECC provides several pathways to achieve compliance. This optionality allows for flexibility, which, depending on construction parameters, can achieve equivalent or greater efficiency at a lower incremental cost. We encourage DOE to consider these options in its rulemaking. Should DOE consider options that require verification onsite, post transport, the Department should be mindful of the scope of local building officials' inspection authority with respect to manufactured housing. Should DOE propose options within this scope, the Department should ensure sufficient training is provided to impacted officials.

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Thank you for the opportunity to provide comments. If you have any questions concerning the Code Council's recommendations, please do not hesitate to contact us.

Sincerely,

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