

Exhibit 186

ASHRAE Response to PRO’s Ex. 89

| Standard | Authorities Identified by PRO | PRO’s Citation of “Text of Incorporation” | ASHRAE Response |
|--------------------|---|--|--|
| ASHRAE 90.1 (2010) | <p><u>C.F.R Reference</u></p> <ul style="list-style-type: none"> 20 C.F.R. § 905.110 (2015) <p><u>State Law</u></p> <ul style="list-style-type: none"> None | <p>24 C.F.R. § 905.110, "Incorporation by reference" (2015):</p> <p>(a) Certain material is incorporated by reference into this part, with the approval of the Director of the Federal Register, under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, HUD must publish notice of change in the Federal Register and the material must be available to the public. Incorporated material is available from the sources listed below and is available for inspection at HUD’s Office of Policy Development and Research, Affordable Housing Research and Technology Division, Department of Housing and Urban Development, telephone number 202-408-4370 (this is not a toll-free number). This material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 (this is not a toll-free number) or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.</p> <p>(b) American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE., Atlanta, GA 30329 (http://www.ashrae.org/standards-research-technology/standards-guidelines).</p> <p>(1) ASHRAE 90.1-2010, “Energy Standard for Buildings Except Low-Rise Residential Buildings,” copyright 2010, IBR approved for §§ 905.200(b) and 905.312(b) of this part.</p> | <p>PRO does not do any analysis of the cited federal regulation that would illuminate which, if any, portions of the standard it would consider “necessary to comply with [a] legal duty.” <i>ASTM II</i>, 896 F.3d at 450. As explained in Plaintiffs’ Statement of Material Facts filed in support of its recent motion, Standard 90.1(2010) and the other ASHRAE standards at issue all contain an extensive amount of non-essential and non-prescriptive language, including a forward, informative appendixes, and informational notes and policy statements. 2d. Supp. SMF at ¶¶ 70-76.</p> <p>To provide one example, ASHRAE 90.1 (2010) contains tables that provide general information on the natural climate found in Canada and other foreign nations that may be useful to a reader trying to apply Standards 90.1 in those locations. <i>Id.</i> at ¶ 75. The statute PRO cites addresses funding for government housing projects in the United States. 20 C.F.R. § 905.312(b)(1) (2015). So foreign climate data is immaterial, and those parts of the standards could not possible be “necessary” to reproduce.</p> <p>Moreover, PRO’s citation to “text of incorporation” contains a non-substantive list of standards incorporated by reference. The actual substantive part of the regulation that mentions this standard, merely says that Standard 90.1 is one of several standards a government actor can choose to follow in order to receive available funding, thus it is not a “necessary” form of compliance with any legal obligation. <i>See</i> 20 C.F.R. § 905.312(b)(1) (2015)</p> |

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| ASHRAE 90.1 (2007) | <p><u>C.F.R Reference</u></p> <ul style="list-style-type: none"> 10 C.F.R. § 433.3 (2013) <p><u>State Law</u></p> <ul style="list-style-type: none"> None | <p>10 C.F.R. § 433.3, "Materials incorporated by reference" (2013):</p> <p>(a) General. The Department of Energy incorporates by reference the energy performance standards listed in paragraph (b) of this section into 10 CFR part 433. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect DOE regulations unless and until DOE amends its energy performance standards. Material is incorporated as it exists on the date of the approval, and a notice of any change in the material will be published in the Federal Register. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586-2945. Also, this material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.</p> <p>(b) ASHRAE. American Society of Heating Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329, (404) 636-8400; or go to, http://www.ashrae.org/.</p> <p>...</p> <p>(2) ANSI/ASHRAE/IESNA Standard 90.1-2007, ("ASHRAE 90.1-2007"), Energy Standard for Buildings Except Low-Rise Residential Buildings, 2007, ISSN 1041-2336, IBR approved for §§ 433.2, 433.4, 433.5.</p> | <p>PRO does not do any analysis of the cited federal regulation that would illuminate which, if any, portions of the standard it would consider "necessary to comply with [a] legal duty." <i>ASTM II</i>, 896 F.3d at 450. As explained in Plaintiffs' Statement of Material Facts filed in support of its recent motion, Standard 90.1(2007) and the other ASHRAE standards at issue all contain an extensive amount of non-essential and non-prescriptive language, including a forward, informative appendixes, and informational notes and policy statements. 2d. Supp. SMF at ¶¶ 70-76.</p> <p>To provide one example, ASHRAE 90.1 (2007) contains tables that provide general information on the natural climate found in Canada and other foreign nations that may be useful to a reader trying to apply Standards 90.1 in those locations. <i>Id.</i> at ¶ 75. The statute PRO cites addresses new buildings built by Federal Government agencies. So foreign climate data is immaterial, and those parts of the standards could not possibly be "necessary" to reproduce.</p> <p>Moreover, the regulation in question speaks only to a requirement placed on Federal agencies when building new high-rise buildings that they exceed energy targets set out in the standard. It does not impose obligations on private actors.</p> |

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| ASHRAE 90.1 (2004) | <p><u>C.F.R Reference</u></p> <ul style="list-style-type: none"> • 10 C.F.R. § 433.3 (2013) <p><u>State Law</u></p> <ul style="list-style-type: none"> • None | <p>10 C.F.R. § 433.3, "Materials incorporated by reference" (2013):</p> <p>(a) General. The Department of Energy incorporates by reference the energy performance standards listed in paragraph (b) of this section into 10 CFR part 433. The Director of the Federal Register has approved the material listed in paragraph (b) of this section for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect DOE regulations unless and until DOE amends its energy performance standards. Material is incorporated as it exists on the date of the approval, and a notice of any change in the material will be published in the Federal Register. All approved material is available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586-2945. Also, this material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.</p> <p>(b) ASHRAE. American Society of Heating Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE, Atlanta, GA 30329, (404) 636-8400; or go to, http://www.ashrae.org/.</p> <p>(1) ANSI/ASHRAE/IESNA 90.1-2004, ("ASHRAE 90.1-2004"), Energy Standard for Buildings Except Low-Rise Residential Buildings, January 2004, ISSN 1041-2336, IBR approved for §§ 433.2, 433.4, 433.5.</p> | <p>PRO does not do any analysis of the cited federal regulation that would illuminate which, if any, portions of the standard it would consider “necessary to comply with [a] legal duty.” <i>ASTM II</i>, 896 F.3d at 450. As explained in Plaintiffs’ Statement of Material Facts filed in support of its recent motion, Standard 90.1(2004) and the other ASHRAE standards at issue all contain an extensive amount of non-essential and non-prescriptive language, including a forward, informative appendixes, and informational notes and policy statements. 2d. Supp. SMF at ¶¶ 70-76.</p> <p>To provide one example, ASHRAE 90.1 (2004) contains tables that provide general information on the natural climate found in Canada and other foreign nations that may be useful to a reader trying to apply Standards 90.1 in those locations. <i>Id.</i> at ¶ 75. The statute PRO cites addresses new buildings built by Federal Government agencies. So foreign climate data is immaterial, and those parts of the standards could not possible be “necessary” to reproduce.</p> <p>Moreover, the regulation in question speaks only to a requirement placed on Federal agencies when building new high-rise buildings that they exceed energy targets set out in the standard. It does not impose obligations on private actors.</p> |

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| ASHRAE Handbook (1993) | <p><u>C.F.R Reference</u></p> <ul style="list-style-type: none"> 10 C.F.R. § 434.701 (2011) <p><u>State Law</u></p> <ul style="list-style-type: none"> None | <p>10 C.F.R. §434.701, "General" (2011):</p> <p>701.1 General. The standards, technical handbooks, papers, regulations, and portions thereof, that are referred to in the sections and subsections in the following list are hereby incorporated by reference into this part 434. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. A notice of any change in these materials will be published in the Federal Register. The standards incorporated by reference are available for inspection at the U.S. Department of Energy Office of Energy Efficiency, Hearings and Dockets, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. The standards may be purchased at the addresses listed at the end of each standard. The following standards are incorporated by reference in this part:</p> <p>...</p> <p>RS-4 ASHRAE, Handbook, 1993 Fundamentals Volume, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1791 Tullie Circle NE, Atlanta, GA 30329...434.402.1.1; 434.402.1.2.1; 434.402.1.2.2; 434.402.1.2.4; 434.402.2.2.5.</p> | <p>PRO does not do any analysis of the cited federal regulation that would illuminate which, if any, portions of the standard it would consider "necessary to comply with [a] legal duty." <i>ASTM II</i>, 896 F.3d at 450.</p> <p>The handbook is, in this instance, incorporated in order to aid in understanding of other ASHRAE standards cited in the same regulations. The handbook addresses multiple ASHRAE standards, not just those cited in this section of the C.F.R., and the text pertaining to other (non-referenced) ASHRAE standards is plainly not "necessary."</p> |