

February 21, 2023

Jeremy Williams
U.S. Department of Energy
Building Technologies Program, Mailstop EE-5B
1000 Independence Avenue SW
Washington, DC 20585-0121

**Re: Joint Comments
Supplemental Notice of Proposed Rulemaking, Department of Energy; *Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings*, 87 Fed. Reg. 78382 (December 21, 2022); EERE-2010-BT-STD-0031, RIN 1904-AB96**

Dear Mr. Williams:

On December 21, 2022, the Department of Energy (“DOE”) issued a supplemental notice of proposed rulemaking (“SNOPR”) to establish revised energy performance standards for the construction of new Federal buildings, including commercial buildings, multifamily high-rise residential buildings, and low-rise residential buildings per the Energy Conservation and Production Act (“ECPA”), as amended by the Energy Independence and Security Act of 2007 (“EISA”).¹ The undersigned organizations, which represent a variety of diverse stakeholder interests and support energy efficiency and conservation, submit these joint comments in opposition to the proposed rule.² The SNOPR would increase energy usage, increase costs, not improve the energy efficiency of Federal buildings, and not be consistent with the administration’s emissions goals. The undersigned organizations request that DOE not implement the proposal.

DOE issued the SNOPR in an attempt to comply with its statutory requirements related to federal building energy efficiency standards.³ By statute DOE was to establish, by rule, revised Federal building energy efficiency performance standards by December 19, 2008. Such standards were to require that Federal buildings be designed so that the fossil fuel-generated energy consumption of the buildings is reduced over time.⁴ The preamble to the EISA states that the purpose of the statutory requirements is to

¹ *Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings*, EERE-2010-BT-STD-0031, RIN 1904-AB96, 87 Fed. Reg. 78,382 (December 21, 2022).

² Certain of the undersigned organizations, will also file separate detailed comments in this proceeding which, among other things, will address the various legal infirmities within DOE’s proposal.

³ 42 U.S.C. § 6834. (2023).

⁴ Specifically, the energy consumption must be reduced “as compared with such energy consumption by a similar building in fiscal year 2003 (as measured by Commercial Buildings Energy Consumption Survey or Residential Energy Consumption Survey data from the Energy Information Agency), by the percentage specified in the following table[.]” 42 U.S.C. § 6834(a)(3)(D)(i)(I).

Fiscal Year	Percentage Reduction
2010.....	55
2015.....	65
2020.....	80
2025.....	90

increase the efficiency of buildings and improve the energy performance of the Federal Government.⁵ Furthermore, the congressional record indicates that the purpose was to make federal buildings more energy efficient in order to reduce consumption of foreign oil and reduce emissions of greenhouse gasses.⁶

In the SNO PR, DOE proposes to evaluate Federal buildings’ reduction of energy use on a site only basis as compared to evaluating source energy, despite the fact that in prior proposals in this proceeding DOE proposed to use source energy⁷ and DOE supports the use of source energy in other contexts.⁸ DOE concedes that its new proposal and the shift from source to site would not increase efficiency and not reduce CO₂ emissions.⁹ In fact, DOE projects that the proposal will lead to an increase in energy use¹⁰ and an increase in CO₂ emissions.¹¹ In addition, DOE estimates increased costs as a result of the proposal.¹² DOE should not issue a rule that is clearly inconsistent with the purpose of the EISA, because it will reduce efficiency, increase energy use, and increase costs, as well as increase CO₂ emissions.

Ultimately, this proceeding will have substantial implications for Federal buildings, both commercial and residential, contractors, lessors, and taxpayers who will have to pay the increased costs of the proposal. DOE should not issue a rule that will have such negative impacts and would be inconsistent with the EISA.

Thank you for your consideration.

Sincerely,

- Alabama Natural Gas Association
- Alaska Oil & Gas Association
- America Gas Association
- American Pipeline Contractors Association
- American Public Gas Association
- MEA Energy Association
- Municipal Gas Authority of Georgia
- National Propane Gas Association
- National Utility Contractors Association
- Northeast Gas Association
- Northwest Gas Association
- Plumbing-Heating-Cooling Contractors-National Association
- Tennessee Gas Association

2030.....100

Id.

⁵ Energy Independence and Security Act of 2007, 110 P.L. 140, 121 Stat.1492 (2007) Synopsis.

⁶ See Cong. Rec. H708 (daily ed. Jan. 18, 2007) (statement of Rep. Markey).

⁷ See *Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings*, 75 Fed. Reg. 63,404, 63,407 (2010); see also *Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings*, 79 Fed. Reg. 61,694, 61, 711 (2014).

⁸ See, e.g., *Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Statement of Policy for Adopting Full Fuel-Cycle Analyses Into Energy Conservation Standards Program*, 76 Fed Reg. 51,281 (2011) (discussing the fact the using a full fuel-cycle measure would provide more complete information about the total energy use and GHG emissions than the primary (or site) energy measures).

⁹ SNO PR at 78,410.

¹⁰ SNO PR at 78,412.

¹¹ SNO PR at 78,410 and 78,412.

¹² See e.g., SNO PR at 78,411.