



Questions for the Record
Elizabeth Noll
Energy Efficiency Advocate
Natural resources Defense Council

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy and Power Hearing on
“Strategic Petroleum Reserve Discussion Draft and Title IV Energy Efficiency”

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Questions:

As the largest building owner, the efficiency of federal government buildings is crucial to reducing carbon emissions in the United States. Section 433 of the Energy Independence and Security Act requires new and substantially rebuilt federal buildings to meet strong efficiency performance standards to reduce the use of energy generated from fossil fuels. This provision was intended to reduce carbon pollution by promoting energy efficiency and renewable energy in government buildings in a common-sense and reasonable manner. And DOE is currently in the process of developing a rule to implement these important standards.

- 1. Please briefly discuss DOE’s revised regulations:**
 - a. Does the revised regulation address concerns previously raised by stakeholders?**
 - b. Has the Department worked with interested stakeholders to ensure the rule is practical, reasonable, and effective?**

In October 2014 the Department of Energy (DOE) issued a Supplemental Notice of Proposed Rulemaking (SNOPR) responding to comments received on the Notice of Proposed Rulemaking (NOPR) and providing additional clarification and consideration in response to the concerns raised. The SNOPR provides the necessary clarification and sought the additional guidance to finalize the rule to implement these standards.

Further Background:

In October 2010, the Department of Energy (DOE) issued a Notice of Proposed Rulemaking establishing regulations implementing the fossil fuel generated energy provisions of the Energy Independence and Security Act of 2007 (EISA). During the comment period and subsequently, stakeholders raised concerns regarding important details in the proposed rule, as well as a lack of clarity on how certain issues might be addressed. For example, stakeholders sought clarification regarding how the Department would establish proper baselines for the Department to define a covered facility and whether that definition might be overly inclusive, and the likely impact of that definition on Energy Saving Performance Contracts. Further, there were questions related to compliance through purchased contracts of renewable energy, onsite renewable generation, and offsets applicable to onsite gas equipment.

In October 2014, DOE issued a Supplemental NOPR to address and seek additional comment on the concerns regarding the 2010 proposal. The SNOPR made adjustments from the 2010 proposal that both reflect stakeholder comments and set out a workable path to achieve the provision's goals. In particular, DOE responded to the comments received on the NOPR and requested comment on additional approaches to the scope of the requirements in the context of major renovations, the potential use of renewable energy certificates for compliance, and a streamlined process for agencies to seek a downward adjustment from the required reduction levels. It also proposes special accommodations for efficient combined heat and power systems that rely on natural gas, all of which help create a rule that is practical, reasonable, and effective.

Summary of Supplemental NPOR:

- i. Regulatory Scheme: The SNOPR addresses requirements for new construction and major renovations of Federal commercial and high-rise residential buildings, as well as Federal low-rise residential buildings.
- ii. Rulemaking Basis: The statute requires that covered Federal buildings be designed so that the fossil fuel-generated energy consumption of the buildings is reduced, as compared with such energy consumption by a similar building in FY 2003, by certain percentages by target years.
- iii. Covered Buildings: The original proposed rule would apply to certain new Federal buildings, and major renovations to Federal buildings, as specified in section 433 of EISA 2007. By statute, the term "Federal building" means any building to be constructed by, or for the use of, any Federal agency, including buildings built for the purpose of being leased by a Federal agency, and privatized military housing. (42 U.S.C. 6832(6)). The SNOPR narrowed the scope to new Federal buildings and major renovations to Federal buildings covered by EISA 2007.
 1. Federal buildings covered by EISA 2007 include new Federal buildings, or major renovations to Federal buildings, that are also: (1) public buildings, as defined in 40 U.S.C. 3301 for which a transmittal of a prospectus to Congress is required

under 40 U.S.C. 3307; or (2) Federal buildings for which the construction cost or major renovation cost is at least \$2,500,000 (2007 dollars, adjusted for inflation).

- iv. Definitions: The proposal contains definitions for “combined heat and power (CHP) system,” “district energy system,” “fiscal year,” “major renovation,” “power purchase agreement (PPA),” “proposed building,” and “renewable energy certificate.” The rulemaking also proposes to define 16 categories of commercial buildings and one category of multi-family high-rise residential buildings in 10 CFR part 433 and one category of low-rise residential buildings in 10 CFR part 435.
- v. Fossil Fuel-Generated Energy Consumption Requirements: For buildings for which design for construction begins in the FY’s 2013 to 2029, tables of the proposed maximum allowable fossil fuel-generated energy consumption by building type and climate zone are provided.
 1. For major renovations that are less than whole building renovations (system or component level retrofits) DOE is proposing that the maximum allowable fossil fuel-generated energy consumption in FY 2013 through 2029 be based on a percentage of the whole building energy consumption represented by the renovated system or component.
- vi. Fossil Fuel-Generated Energy Consumption Determination: To determine compliance with the fossil fuel reductions, agencies would be required to estimate the fossil fuel-generated energy consumption of their proposed building design and compare that estimate to the allowable fiscal year percentage reduction target.
 1. DOE has proposed a calculation to make this estimated fossil fuel-generated energy consumption for the proposed building.
 2. The regulations would establish criteria for on-site renewable electricity generation and off-site renewable electricity generation (including generation represented by renewable energy credits). DOE has also proposed a clarification as to how electricity associated with district heating or cooling systems, district chilled water, and CHP systems would be treated.
- vii. Petitions for Downward Adjustment:
 1. Under the provision of Section 433 of EISA 2007 and as proposed, agencies other than GSA (and including GSA-tenant agencies with significant control over building design) would be able to petition DOE for an adjustment to the fossil fuel requirement for a specific building if meeting the requirement is technically impracticable in light of the agency’s functional needs for the building.
 - a. A petition for a downward adjustment would need to include a description of the building and associated components and equipment, an explanation of why compliance with the requirements is technically impracticable in light of the functional needs of the building, a demonstration that all cost-effective energy efficiency and on-site renewable energy measures were included in the building design, and a description of measures that were evaluated but rejected.

- b. Additionally, DOE's rulemaking proposes separate, streamlined downward adjustment processes for major renovations that are whole building renovations and for major renovations that are system or component level retrofits.

In addition to soliciting comment through the Supplemental NOPR, DOE has met with a range of groups about the proposal. In November of 2012, the following organizations met with DOE and expressed their shared interest in a well-designed, effective and reasonable approach to the energy efficient design of federal facilities: American Council for an Energy-Efficient Economy, American Gas Association, The American Institute of Architects, American Public Gas Association, ASHRAE, Environment America, Environment and Energy Study Institute, Federal Performance Contracting Coalition, Natural Resources Defense Council, Sierra Club and U.S. Green Building Council. The conversation between the Department and these organizations was particularly valuable because of the diversity of organizational perspectives represented and the progress that was made in identifying important details had not been adequately addressed in the Department's 2010 NOPR.

In summary, the Department has, through the meetings held with stakeholders, consideration of public comments, and issuance of the Supplemental NOPR, demonstrated that it has heard stakeholders' concerns with the 2010 proposed rule and is committed to addressing those concerns and creating an effective and practical final standard.

If enacted, section 4115 of the draft would repeal the fossil fuel use reduction requirements under section 433. This provision is based on the premise that these efficiency requirements are unreasonable and unworkable. However, the private sector has made great strides in achieving, and in some cases surpassing, the goals of section 433.

- 1. Is it premature to write off this provision as unworkable before DOE completes its rulemaking?**
- 2. Should the federal government be leading by example in this area?**

The U.S. Department of Energy has recently revised the proposed regulations, and the revisions appear to be both workable and a positive step for an economic and sustainable energy future. We believe it is premature to write off this provision as unworkable before DOE has completed its rulemaking. It is particularly valuable for the federal government to demonstrate leadership by showing how rapidly and economically such energy efficiency gains can be achieved.

The discussion draft on Energy Efficiency that was under consideration at the April 30, 2015 hearing recognizes the enormous opportunity for the federal government to save money and

reduce the environmental impacts associated with energy use in federal facilities. The federal government spends about \$6 billion each year on energy in owned and leased buildings. The federal government is the largest consumer of energy in the United States, with 350,000 buildings and 600,000 road vehicles in the federal fleet. In fiscal year 2007, federal buildings accounted for 36 percent of the U.S. government's energy use. The General Services Administration, the Department of Defense, the Department of Energy and other agencies have been on a steady path of improvement and implementation of measures. Also, they conduct ongoing technical and economic analyses. These efforts indicate that far more savings are available through cost-effective efficiency technologies, given adequate investment and implementation. The draft proposal also recognizes the important role played by Energy Savings Performance Contracts and utilities in harnessing energy efficiency opportunities, and enhances the ability of federal agencies to tap their financing and implementation capability.

Section 4115, in contrast with other provisions related to federal facilities in this bill, is counterproductive to the mid- and long- term effort to achieve substantial gains in energy efficiency and reduce environmental impacts. In particular, it would repeal 42 U.S.C. 6834(a)(3)(D)(i), which establishes a requirement to gradually phase out the use of fossil fuels in federal facilities. The largest contribution to that phase-out would occur through improvements in energy efficiency. It is particularly valuable for the federal government to demonstrate leadership by showing how rapidly and economically such energy efficiency gains can be achieved. Accordingly, Section 4115 does not belong in an energy efficiency bill. At a minimum, any repeal would need to be balanced with specific and detailed provisions that would ensure that the federal government remains a leader in energy efficiency and reliably deliver energy efficiency savings that are achievable. We recognize that some stakeholders had previously identified concerns with elements of 42 U.S.C. 6834(a)(3)(D)(i), particularly as interpreted in a draft rulemaking by the U.S. Department of Energy. But, the U.S. Department of Energy has recently revised the proposed regulations, and the revisions appear to be both workable and a positive step for an economic and sustainable energy future.