

Submitted via FossilFuelReduct-2010-STD-0031@ee.doe.gov

January 27, 2023

Jeremy Williams
Department of Energy
Building Technologies Program
Mailstop EE-5B
1000 Independence Avenue SW
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**Re: Support for an Extension of the Comment Period and Request for Information
*Clean Energy for New Federal Buildings and Major Renovations of Federal
Buildings*, Docket EERE–2010–BT–STD–0031, RIN 1904–AB96 (87 Fed. Reg.
78,382-78,436, December 21, 2022)**

Dear Mr. Williams:

The American Gas Association (“AGA”), American Public Gas Association (“APGA”), National Propane Gas Association (“NPGA”), Plumbing-Heating-Cooling Contractors—National Association (“PHCC”) and U.S. Chamber of Commerce (“Chamber”) (collectively, “Joint Requesters”) support the joint request filed by the Alliance to Save Energy, Business Council for Sustainable Energy, and the U.S. Green Building Council on January 17, 2023 to extend the public comment period by 30 days in the above-referenced proceeding.¹ The supplemental notice of proposed rulemaking (“SNOPR”) to establish revised energy performance standards for the construction of new and renovated Federal buildings, requires careful review and consideration in order to develop meaningful comments. Joint Requesters submit this letter to note that additional time to provide comments in response to the SNOPR is required and justified. In addition, Joint Requesters request that the Department of Energy (“DOE”) publicly release additional information used to develop the SNOPR which is critical in evaluating the proposal.

On December 21, 2022, DOE published in the Federal Register the SNOPR seeking comment on revised energy performance standards for the construction of new and renovated 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 (“EISA”) of 2007. The SNOPR presents an updated proposal with a new focus that accounts for the needs of Federal agencies and the goals of President Biden’s Administration and responds to comments received on prior notice of proposed rulemaking (“NOPR”) and SNOPR documents. Consistent with the requirements of ECPA and EISA, this document presents revised Federal building energy performance standards that would require reductions in Federal agencies’ on-site use of fossil fuels consistent with the targets of ECPA and EISA and provides processes by which agencies can petition DOE for the downward adjustment of said targets for buildings.

¹ *Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings*, 87 Fed. Reg. 78382 (Dec. 21, 2022).

Request for the Release of Critical Information

Joint Requesters request that DOE release information critical to evaluating the proposal. Specifically, DOE should publicly release any model(s) it used to create the SNOPR and any underlying data not already released. Without knowing exactly how DOE determined the cost and climate implications referenced in the SNOPR, it is impossible to recreate the findings and meaningfully analyze any alternatives. For example, the SNOPR and the technical document do not provide any details on upfront costs beyond a final estimated cost saved.

Request for an Extension of the Comment Period

While the Administrative Procedure Act (“APA”) does not establish a minimum comment period for rulemakings, courts require that agencies provide a “meaningful” opportunity for comment.² In short, “[t]he opportunity for comment must be a meaningful opportunity” and “in order to satisfy this requirement, an agency must also remain sufficiently open-minded.”³ Additional time is needed to meaningfully analyze and respond to the SNOPR.

DOE should extend the comment period by an additional 30 days as requested by the Alliance to Save Energy, Business Council for Sustainable Energy and U.S. Green Building Council. An extension will permit stakeholders sufficient time to develop meaningful comments on the complex and important issues presented in the SNOPR, and aid DOE in developing a sufficient record in this proceeding. Furthermore, the public comment period for the SNOPR is only 60 days and encompasses a winter period when many stakeholders were away from work for the holiday season. Specifically, the specified 60-day comment period encompasses four federal holidays,⁴ thus making it difficult to develop meaningful comments in response to the SNOPR under the current timeline. Providing a 30-day extension for comments in this proceeding will not cause a significant delay in DOE’s consideration of the record and any next steps.

Thank you for the review and consideration of this extension request and the request for the release of pertinent information. If you have any questions regarding this submission, please do not hesitate to contact us.

Respectfully submitted,

American Gas Association
American Public Gas Association
National Propane Gas Association
Plumbing-Heating-Cooling Contractors—National Association
U.S. Chamber of Commerce

² See, e.g., *Rural Cellular Ass’n v. Fed. Commc’ns Comm’n*, 588 F.3d 1095, 1101 (D.C. Cir. 2009), *Gerber v. Norton*, 294 F.3d 173, 179 (D.C. Cir. 2002).

³ *Rural Cellular Ass’n*, 588 F.3d at 1101.

⁴ Christmas Day, New Year’s Day, Birthday of Martin Luther King, Jr., and Washington’s Birthday.