

TO: DOE Office of General Counsel,

FROM: Robin Roy, Natural Resources Defense Council, rroy@nrdc.org

DATE: February 26, 2013

RE: Disclosure of Permitted Communication Concerning Fossil Fuel Energy Consumption Reduction for New Construction and Major Renovations of Federal Buildings -- Docket No. EERE-2010-BT-STD-0031; RIN 1904-AB96

This memo provides an overview of communications made to DOE staff on the subject of the rulemaking referenced above. The communications occurred at a meeting held on February 13, 2013.

Meeting attendees:

DOE

Kathleen Hogan (DOE/EERE)
Chris Calamita (DOE/OGC)
Timothy Unruh (DOE/EERE)
Dan Cohen (DOE/OGC)
John Cymbalsky (DOE/EERE)
Ami Grace-Tardy (DOE/OGC)
Alyssa Sullivan (DOE/EERE)
Sarah Jensen (DOE/EERE)
Sarah Blackwood DOE EERE leg

Stakeholders

Meg Waltner (Natural Resources Defense Council)
Paula Gant (American Gas Association)
Elizabeth Noll (American Gas Association)
Robin Roy (Natural Resources Defense Council)
Christina Finkenhofner (American Institute of Architects)
Jennifer Schafer (Federal Performance Contracting Coalition)
Lowell Ungar (Alliance to Save Energy)
Douglas Read (ASHRAE)
Radha Adhar (Sierra Club)
Courtney Abrams (Environment America)
Elizabeth Tate (American Public Gas Association)

The Stakeholders discussed a letter sent to DOE on November 12, 2012 making certain requests with respect to the rulemaking, and made the following points:

- During the comment period on the proposed rule and subsequently, Stakeholders have raised concerns regarding important details, as well as a lack of detail on how certain issues might be addressed.
- It would be beneficial for DOE to issue a Supplementary Notice of Proposed Rulemaking (SNOPR) to explain how DOE proposes to implement Section 433 with respect to issues that were not addressed in sufficient detail in the proposed rule, and to allow for additional public comment.

- In advance of a SNOPR, it would be beneficial for DOE to issue a Request for Information (RFI) to facilitate faster and more effective communication and refinement of key implementation approaches.
- Stakeholders note that their members are currently working to develop a unified response on key implementation issues, to facilitate effective consideration by DOE.
- Questions that could be beneficially addressed with a RFI and SNOPR including the following:
 - o What should be the criteria for major renovations subject to the requirements?
 - o Do the requirements apply to projects that are financed (such as through Energy Saving Performance Contracts) or only to projects done with appropriated funds?
 - o How should requirements written in the law in terms of whole-building energy use be applied to partial renovations of buildings (eg of one part of a building or one building system)? Can partial targets be used?
 - o How should proper baselines be developed that account for various building types and climate variations?
 - o Should the requirements be expressed in metrics that are more familiar to builders and contractors (such as percentage better than code)?
 - o Under what conditions can compliance be achieved through purchased contracts of renewable energy, onsite renewable generation, and offsets applicable to onsite gas equipment including combined heat and power systems.
 - o How should energy consumption related to natural gas and electric vehicles be treated?
 - o What further guidance on exemptions would be beneficial?
 - o Under different rules under consideration, what would be the likely impact on partial building energy efficiency retrofits (such as under Energy Saving Performance Contracts) and on efficient on-site use of fuels (such as combined heat and power systems)?