



Department of Energy  
Washington, DC 20585

AUG 9 2012

The Honorable Jeff Bingaman  
Chairman  
Committee on Energy and Natural Resources  
U.S. Senate

The Honorable Henry Waxman  
Ranking Member  
Committee on Energy and Commerce  
U.S. House of Representatives

Dear Senator Bingaman and Representative Waxman:

Thank you for your letter describing concerns raised by stakeholders with the Department of Energy's (DOE) rulemaking to implement Section 433 of the Energy Independence and Security Act of 2007 (EISA) regarding fossil fuel use in federal buildings. DOE shares your interest in making the Federal government a leader in incorporating energy efficiency and clean energy into building design. Moreover, DOE takes very seriously the issues raised by these stakeholders and is considering appropriate action to address those concerns.

As part of the President's all-of-the-above strategy to reduce our dependence on oil, save businesses and consumers money, make us more energy secure, protect the environment, and position the United States as the global leader in clean energy, the Department of Energy, through the Federal Energy Management Program (FEMP), assists Federal agencies in reducing energy use and increasing the use of renewable energy.

The Federal government has the opportunity to significantly reduce its energy bills as well as to provide leadership in achieving greater energy efficiency and meeting other sustainability goals. The Federal government owns or leases more than 3 billion square feet of building space, which represents 4 percent of the commercial square footage in the United States. In addition, the Federal government owns or leases more than 650,000 fleet vehicles. In total, the annual energy bill to the Federal government in FY2010 was approximately \$20 billion.

The Energy Conservation and Production Act (ECPA), as amended by EISA Section 433, requires DOE to establish revised performance standards for the construction of new Federal buildings, including commercial buildings, multi-family high-rise residential buildings and low-rise residential buildings. On October 15, 2010, DOE issued a notice of proposed rulemaking to establish regulations implementing the fossil fuel generated energy provisions of the ECPA performance standards for Federal buildings. The concerns raised in your letter echoed many of



the comments submitted in response to the proposed rule. Based on the number and scope of those comments, DOE is considering a supplemental notice of proposed rulemaking.

The supplemental notice will respond to the comments by suggesting alternative compliance pathways and provide further opportunity for the public to comment on the rulemaking. Issues for which DOE sought comment under the proposed rule and for which DOE would provide for additional comment in a supplemental notice include, but are not limited to, the scope of the requirements in the context of major renovations; the potential use of renewable energy credits for compliance; options for establishing a process for agencies to seek a downward adjustment from the reduction levels, particularly in the context of major renovations; and clarifying the potential treatment of CHP.

Furthermore, we believe the alternatives that might be contained in a supplemental notice would likely be more suitable for the Federal government's use of energy savings performance contracts (ESPCs). The use of performance based contracts, such as ESPCs, has helped in achieving and making progress on the energy efficiency and renewable energy goals of the Federal government. Since 2006, FEMP has assisted Federal agencies in saving over \$5 billion in energy costs over the average life of efficiency measures implemented through ESPCs.

As part of the Administration's Better Buildings Challenge, the Administration has matched the private sector commitments of \$2 billion in energy efficiency improvements by pledging to pursue—by December 2013—\$2 billion in energy efficiency savings through performance contracts, including ESPCs.

Thank you for your interest in DOE's rulemaking under the EISA Section 433 provision. Should you have any further questions, please do not hesitate to contact Christopher Davis, Deputy Assistant Secretary for Congressional Affairs, at (202) 586-8225.

Sincerely,



Kathleen B. Hogan  
Deputy Assistant Secretary for Energy Efficiency  
Energy Efficiency and Renewable Energy