

developing energy conservation standards for new or existing residential, commercial, or agricultural buildings shall reach a consensus regarding factors and data used to develop such standards. This consensus shall apply to, but not be limited to—

- (1) fuel price projections;
- (2) discount rates;
- (3) inflation rates;
- (4) climatic conditions and zones; and
- (5) the cost and energy saving characteristics of construction materials.

(Pub. L. 96-294, title V, § 595, June 30, 1980, 94 Stat. 762.)

#### § 8286a. Use of factors and data

Factors and data consented to pursuant to section 8286 of this title may be revised and agreed to by a consensus of the heads of the various Federal agencies involved. Such factors and data shall be used by all Federal agencies in establishing and revising various energy conservation standards used by such agencies, except that other factors and data may be used with respect to the standards applicable to any program if—

- (1) the other factors and data are approved by the Secretary of Energy solely on the basis that such other factors and data are critical to meet the unique needs of the program concerned;
- (2) using the consented to factors and data would cause a violation of an express provision of law; or
- (3) statutory requirements or responsibilities require a modification of the consented to factors and data.

(Pub. L. 96-294, title V, § 596, June 30, 1980, 94 Stat. 762.)

#### § 8286b. Omitted

##### CODIFICATION

Section, Pub. L. 96-294, title V, § 597, June 30, 1980, 94 Stat. 762, which required the President (who delegated the duty to the Secretary of Energy by Memorandum of June 23, 1993, 58 F.R. 34519) to report annually to Congress on activities carried out under this subchapter and on other efforts to coordinate Federal energy conservation programs, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 15th item on page 19 of House Document No. 103-7.

#### SUBCHAPTER VII—ENERGY SAVINGS PERFORMANCE CONTRACTS

#### § 8287. Authority to enter into contracts

##### (a) In general

(1) The head of a Federal agency may enter into contracts under this subchapter solely for the purpose of achieving energy savings and benefits ancillary to that purpose. Each such contract may, notwithstanding any other provision of law, be for a period not to exceed 25 years. Such contract shall provide that the contractor shall incur costs of implementing energy savings measures, including at least the costs (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy

savings directly resulting from implementation of such measures during the term of the contract.

(2)(A) Contracts under this subchapter shall be energy savings performance contracts and shall require an annual energy audit and specify the terms and conditions of any Government payments and performance guarantees. Any such performance guarantee shall provide that the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.

(B) Aggregate annual payments by an agency to both utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the agency would have paid for utilities without an energy savings performance contract (as estimated through the procedures developed pursuant to this section) during contract years. The contract shall provide for a guarantee of savings to the agency, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.

(C) Federal agencies may incur obligations pursuant to such contracts to finance energy conservation measures provided guaranteed savings exceed the debt service requirements.

(D) A Federal agency may enter into a multi-year contract under this subchapter for a period not to exceed 25 years beginning on the date of the delivery order, without funding of cancellation charges before cancellation, if—

- (i) such contract was awarded in a competitive manner pursuant to subsection (b)(2) of this section, using procedures and methods established under this subchapter;
- (ii) funds are available and adequate for payment of the costs of such contract for the first fiscal year; and
- (iii) such contract is governed by part 17.1 of the Federal Acquisition Regulation promulgated under section 1303 of title 41 or the applicable rules promulgated under this subchapter.

(E) FUNDING OPTIONS.—In carrying out a contract under this subchapter, a Federal agency may use any combination of—

- (i) appropriated funds; and
- (ii) private financing under an energy savings performance contract.

(F) PROMOTION OF CONTRACTS.—In carrying out this section, a Federal agency shall not—

- (i) establish a Federal agency policy that limits the maximum contract term under subparagraph (D) to a period shorter than 25 years; or
- (ii) limit the total amount of obligations under energy savings performance contracts or other private financing of energy savings measures.

(G) MEASUREMENT AND VERIFICATION REQUIREMENTS FOR PRIVATE FINANCING.—

- (i) IN GENERAL.—In the case of energy savings performance contracts, the evaluations and savings measurement and verification required under paragraphs (2) and (4) of section 8253(f) of this title shall be used by a Federal agency to meet the requirements for the need for energy audits, calculation of energy sav-