

FEDERAL GOVERNMENT ENERGY MANAGEMENT  
IMPROVEMENT ACT

APRIL 29, 2003.—Ordered to be printed

Mr. TOM DAVIS of Virginia, from the Committee on Government  
Reform, submitted the following

R E P O R T

[To accompany H.R. 1346]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 1346) to amend the Office of Federal Procurement Policy Act to provide an additional function of the Administrator for Federal Procurement Policy relating to encouraging Federal procurement policies that enhance energy efficiency, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Federal Government Energy Management Improvement Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

## TITLE I—FEDERAL FACILITIES

- Sec. 101. Energy management requirements.  
 Sec. 102. Energy use measurement and accountability.  
 Sec. 103. Energy savings performance contracts.  
 Sec. 104. Federal agency participation in demand reduction programs.

## TITLE II—FEDERAL FLEETS

- Sec. 201. Waivers of alternative fueled vehicle fueling requirement.  
 Sec. 202. Study on reducing petroleum consumption.  
 Sec. 203. Hybrid vehicles.

## TITLE III—FEDERAL PROCUREMENT

- Sec. 301. Procurement of energy efficient products.  
 Sec. 302. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.  
 Sec. 303. Participation of small business concerns.  
 Sec. 304. Amendment to Buy Indian Act.  
 Sec. 305. Buy American.

## TITLE IV—FEDERAL WORKERS

- Sec. 401. Telecommuting study.  
 Sec. 402. Elimination of pension offset.

## TITLE I—FEDERAL FACILITIES

### SEC. 101. ENERGY MANAGEMENT REQUIREMENTS.

#### (a) ENERGY REDUCTION GOALS.—

(1) AMENDMENT.—Section 543(a)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)(1)) is amended by striking “its Federal buildings so that” and all that follows through the end and inserting “the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2004 through 2013 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2001, by the percentage specified in the following table:

Fiscal Year	Percentage reduction
2004	2
2005	4
2006	6
2007	8
2008	10
2009	12
2010	14
2011	16
2012	18
2013	20.”

(2) REPORTING BASELINE.—The energy reduction goals and baseline established in paragraph (1) of section 543(a) of the National Energy Conservation Policy Act, as amended by paragraph (1) of this subsection, supersede all previous goals and baselines under such paragraph, and related reporting requirements.

(b) REVIEW AND REVISION OF ENERGY PERFORMANCE REQUIREMENT.—Section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)) is further amended by adding at the end the following:

“(3) Not later than December 31, 2012, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2014 through 2023.”

(c) EXCLUSIONS.—Section 543(c)(1) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(1)) is amended by striking “An agency may exclude” and all that follows through the end and inserting “(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—

- “(i) compliance with those requirements would be impracticable;
- “(ii) the agency has completed and submitted all federally required energy management reports;
- “(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive Orders, and other Federal law; and
- “(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

- “(B) A finding of impracticability under subparagraph (A)(i) shall be based on—
- “(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or
  - “(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.”
- (d) REVIEW BY SECRETARY.—Section 543(c)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)(2)) is amended—
- (1) by striking “impracticability standards” and inserting “standards for exclusion”; and
  - (2) by striking “a finding of impracticability” and inserting “the exclusion”.
- (e) CRITERIA.—Section 543(c) of the National Energy Conservation Policy Act (42 U.S.C. 8253(c)) is further amended by adding at the end the following:
- “(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).”.
- (f) RETENTION OF ENERGY SAVINGS.—Section 546 of the National Energy Conservation Policy Act (42 U.S.C. 8256) is amended by adding at the end the following new subsection:
- “(e) RETENTION OF ENERGY SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings. Except as otherwise provided by law, such funds may be used only for energy efficiency or unconventional and renewable energy resources projects.”.
- (g) REPORTS.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—
- (1) in the subsection heading, by inserting “THE PRESIDENT AND” before “CONGRESS”; and
  - (2) by inserting “President and” before “Congress”.
- (h) CONFORMING AMENDMENT.—Section 550(d) of the National Energy Conservation Policy Act (42 U.S.C. 8258b(d)) is amended in the second sentence by striking “the 20 percent reduction goal established under section 543(a) of the National Energy Conservation Policy Act (42 U.S.C. 8253(a)),” and inserting “each of the energy reduction goals established under section 543(a).”.

**SEC. 102. ENERGY USE MEASUREMENT AND ACCOUNTABILITY.**

Section 543 of the National Energy Conservation Policy Act (42 U.S.C. 8253) is further amended by adding at the end the following:

“(e) METERING OF ENERGY USE.—

“(1) DEADLINE.—By October 1, 2010, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.

“(2) GUIDELINES.—

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, national laboratories, universities, and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).

“(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

“(i) take into consideration—

“(I) the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;

“(II) the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

“(III) the measurement and verification protocols of the Department of Energy;

“(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

“(iii) establish priorities for types and locations of buildings to be metered and submetered based on cost-effectiveness and a schedule of one or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

“(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

“(3) PLAN.—No later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.”.

**SEC. 103. ENERGY SAVINGS PERFORMANCE CONTRACTS.**

(a) PERMANENT EXTENSION.—Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is repealed.

(b) REPLACEMENT FACILITIES.—Section 801(a) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following new paragraph:

“(3)(A) In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced, established through a methodology set forth in the contract.

“(B) Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in that subparagraph.”.

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

“(2) The term ‘energy savings’ means—

“(A) a reduction in the cost of energy or water, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

“(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

“(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

“(iii) the increased efficient use of existing water sources; or

“(B) in the case of a replacement building or facility described in section 801(a)(3), a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, that would otherwise be utilized in one or more existing federally owned buildings or other federally owned facilities by reason of the construction and operation of the replacement building or facility.”.

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

“(3) The terms ‘energy savings contract’ and ‘energy savings performance contract’ mean a contract (including a utility energy services contract) which provides for—

“(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations; or

“(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities.

Such contracts shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).”

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

“(4) The term ‘energy or water conservation measure’ means—

“(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

“(B) a water conservation measure that improves water efficiency, is life cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.”

(f) REVIEW.—Within 180 days after the date of the enactment of this section, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, and energy efficiency services covered. The Secretary shall report these findings to the Committees on Energy and Commerce and Government Reform of the House of Representatives and the Committees on Energy and Natural Resources and Governmental Affairs of the Senate, and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

**SEC. 104. FEDERAL AGENCY PARTICIPATION IN DEMAND REDUCTION PROGRAMS.**

Section 546(c) of the National Energy Conservation Policy Act (42 U.S.C. 8256(c)) is amended by adding at the end of the following new paragraph:

“(6) Federal agencies are encouraged to participate in State or regional demand side reduction programs. The availability of such programs, including measures employing onsite generation, and the savings resulting from such participation, should be included in the evaluation of energy options for Federal facilities.”.

## **TITLE II—FEDERAL FLEETS**

**SEC. 201. WAIVERS OF ALTERNATIVE FUELED VEHICLE FUELING REQUIREMENT.**

Section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)) is amended to read as follows:

“(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency needs a waiver of such requirement for vehicles in the fleet of the agency in a particular geographic area where—

“(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

“(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified by the head of the agency.

“(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to the Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.”.

**SEC. 202. STUDY ON REDUCING PETROLEUM CONSUMPTION.**

(a) IN GENERAL.—The Administrator of General Services, in cooperation with the Secretary of Energy, shall conduct a study to consider the merits of establishing performance measures to guide the reduction of petroleum consumption by Federal fleets.

(b) MATTERS TO BE ADDRESSED.—The study shall assess the feasibility of performance measures—

(1) to enable agency and congressional decisionmakers to establish annual and long-term performance goals to define the level of petroleum consumption reduction to be achieved by Federal fleets;

(2) to improve the effectiveness and accountability of Federal efforts to reduce petroleum consumption and dependency;

(3) to enhance decisionmaking by providing objective information on achieving performance objectives; and

(4) to provide an alternative to the mandated alternative fueled vehicle requirements in section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212).

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Administrator shall submit to the Committees on Environment and Public Works and Governmental Affairs of the Senate and the Committees on Energy and Commerce and Government Reform of the House of Representatives a report on the study.

**SEC. 203. HYBRID VEHICLES.**

(a) IN GENERAL.—Section 303(b)(1) of the Energy Policy Act of 1992 (42 U.S.C. 13212(b)(1)) is amended by striking subparagraph (D) and the matter after subparagraph (D) and inserting the following:

“(D) 75 percent in fiscal years 1999 through 2003, shall be alternative fueled vehicles. For fiscal years 2004 and thereafter, of the total number of vehicles acquired by a Federal fleet, at least 75 percent shall be alternative fueled vehicles or future technology vehicles.”.

(b) EXEMPTION.—Such section 303(b) is further amended by adding at the end the following new paragraph:

“(4) For the period for which a Federal fleet is operating under the exemption provided in section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)), and where future technology vehicles are available that would meet the agency’s operational requirements for such fleet but the agency chooses not to acquire such vehicles, acquisitions of dual fueled vehicles for that fleet shall not count toward satisfaction of the requirements in this subsection.”.

(c) DEFINITION.—Section 301 of such Act is amended—

(1) by striking “and” at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and by inserting a semicolon; and

(3) by adding at the end the following:

“(15) the term ‘future technology vehicle’ means, for the fiscal years 2004 through 2009, a qualified hybrid motor vehicle, and for fiscal years after 2009, a vehicle—

“(A) that represents emerging technology that does not yet have substantial market penetration;

“(B) for which Federal Government acquisitions can lead the market;

“(C) that achieves significant reductions in air emissions and oil use compared to new vehicles that do have substantial market penetration; and

“(D) that in no event achieves reductions in air emissions and oil use that are less than a qualified hybrid motor vehicle,

as defined by the Secretary through guidance;

“(16) the term ‘qualified hybrid motor vehicle’ means a passenger automobile, light duty truck, or medium duty passenger vehicle as defined in regulations issued by the Administrator—

“(A) which draws propulsion energy from—

“(i) an internal combustion or heat engine using combustible fuel; and

“(ii) a rechargeable onboard energy storage system which operates at no less than 100 volts and which provides a percentage of maximum available power of at least 5 percent;

“(B) which has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator under section 202(i) of the Clean Air Act for that make and model year vehicle; and

“(C) which achieves at least 140 percent of the average 2002 model year city fuel economy for passenger automobiles in the same vehicle inertia weight class, if the vehicle is a passenger automobile, or for light duty trucks in the same vehicle inertia weight class, if the vehicle is a light duty truck, or for medium duty passenger vehicles, if the vehicle is a medium duty passenger vehicle, as determined by the Environmental Protection Agency according to the following vehicle inertia weight classes: 1,500 and 1,750 lbs (calculated based on the 1,750 lbs weight class), 2,000 lbs, 2,250 lbs, 2,500 lbs, 2,750 lbs, 3,000 lbs, 3,500 lbs, 4,000 lbs, 4,500 lbs, 5,000 lbs, 5,500 lbs, 6,000 lbs, 6,500 lbs, 7,000 to 8,500 lbs, and 8,500 to 10,000 lbs;

“(17) the term ‘percentage of maximum available power’ means the maximum power available from the rechargeable energy storage system, during a stand-

ard 10 second pulse power or equivalent test, divided by the sum of such maximum power and the SAE net power of the internal combustion or heat engine; and

“(18) the term ‘vehicle inertia weight class’ has the same meaning as when defined in regulations prescribed by the Administrator for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).”.

(d) ALLOCATION OF INCREMENTAL COSTS.—Subsection (c) of such section 303 is amended to read as follows:

“(c) ALLOCATION OF INCREMENTAL COSTS.—The General Services Administration and any other Federal agency that procures motor vehicles for distribution to other Federal agencies shall allocate the incremental cost of alternative fueled vehicles and future technology vehicles over the cost of comparable internal combustion gasoline vehicles across the entire fleet of motor vehicles distributed by such agency in any fiscal year.”.

## TITLE III—FEDERAL PROCUREMENT

### SEC. 301. PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

(a) REQUIREMENTS.—Part 3 of title V of the National Energy Conservation Policy Act is amended by adding at the end the following:

#### “SEC. 552. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.

“(a) DEFINITIONS.—In this section:

“(1) ENERGY STAR PRODUCT.—The term ‘Energy Star product’ means a product that is rated for energy efficiency under an Energy Star program.

“(2) ENERGY STAR PROGRAM.—The term ‘Energy Star program’ means the program established by section 324A of the Energy Policy and Conservation Act.

“(3) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

“(4) FEMP DESIGNATED PRODUCT.—The term ‘FEMP designated product’ means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

“(b) PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.—

“(1) REQUIREMENT.—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

“(A) an Energy Star product; or

“(B) a FEMP designated product.

“(2) EXCEPTIONS.—The head of an executive agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the executive agency finds in writing that—

“(A) an Energy Star product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account;

or

“(B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

“(3) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

“(c) LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Program, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer’s functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

“(d) DESIGNATION OF ELECTRIC MOTORS.—In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard within 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

“(e) REGULATIONS.—Not later than 180 days after the date of the enactment of this section, the Secretary shall issue guidelines to carry out this section.”

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the National Energy Conservation Policy Act (42 U.S.C. 8201 note) is amended by inserting after the item relating to section 551 the following:

“Sec. 552. Federal procurement of energy efficient products.”

**SEC. 302. INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE.**

(a) AMENDMENT.—Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 et seq.) is amended by adding at the end the following new section:

“INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE

“SEC. 6005. (a) DEFINITIONS.—In this section:

“(1) AGENCY HEAD.—The term ‘agency head’ means—

“(A) the Secretary of Transportation; and

“(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

“(2) CEMENT OR CONCRETE PROJECT.—The term ‘cement or concrete project’ means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

“(A) involves the procurement of cement or concrete; and

“(B) is carried out in whole or in part using Federal funds.

“(3) RECOVERED MINERAL COMPONENT.—The term ‘recovered mineral component’ means—

“(A) ground granulated blast furnace slag;

“(B) coal combustion fly ash; and

“(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

“(b) IMPLEMENTATION OF REQUIREMENTS.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

“(2) PRIORITY.—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

“(3) CONFORMANCE.—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

“(c) FULL IMPLEMENTATION STUDY.—

“(1) IN GENERAL.—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

“(2) MATTERS TO BE ADDRESSED.—The study shall—

“(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

“(B) identify all barriers in procurement requirements to fuller realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

“(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

“(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

“(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

“(3) REPORT.—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to the Committee on Appropriations, Committee on Environment and Public Works, and Committee on Governmental Affairs of the Senate and the Committee on Appropriations, Committee on Energy and Commerce, Committee on Transportation and Infrastructure, and Committee on Government Reform of the House of Representatives a report on the study.

“(d) ADDITIONAL PROCUREMENT REQUIREMENTS.—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, within 1 year of the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects, so as to—

“(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

“(2) eliminate barriers identified under subsection (c).

“(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).”

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents of the Solid Waste Disposal Act is amended by adding after the item relating to section 6004 the following new item:

“Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.”

#### **SEC. 303. PARTICIPATION OF SMALL BUSINESS CONCERNS.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that an Alaska natural gas transportation project will provide significant economic benefits to the United States and Canada. In order to maximize those benefits, Congress urges the sponsors of the pipeline project to maximize, to the maximum extent practicable, the participation of small business concerns in contracts and subcontracts awarded in carrying out the project.

(b) STUDY.—

(1) IN GENERAL.—The Comptroller General shall conduct a study on the extent to which small business concerns participate in the construction of oil and gas pipelines in the United States.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report containing the results of the study.

(3) UPDATES.—The Comptroller General shall update the study at least once every 5 years and transmit to Congress a report containing the results of the update.

(4) APPLICABILITY.—After the date of completion of the construction of an Alaska natural gas transportation project, this subsection shall no longer apply.

(c) SMALL BUSINESS CONCERN DEFINED.—In this section, the term “small business concern” has the meaning given such term in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

#### **SEC. 304. AMENDMENT TO BUY INDIAN ACT.**

Section 23 of the Act of June 25, 1910 (25 U.S.C. 47; commonly known as the “Buy Indian Act”) is amended by inserting “energy products, and energy by-products,” after “printing.”

#### **SEC. 305. BUY AMERICAN.**

It is the sense of Congress that no purchase of supplies, other than for the construction, alteration, or repair of any public building or public work in the United States, should be made from a person or entity found in violation of a certificate

provided by the person or entity pursuant to the Buy American Act (41 U.S.C. 10a-10c).

## TITLE IV—FEDERAL WORKERS

### SEC. 401. TELECOMMUTING STUDY.

(a) **STUDY REQUIRED.**—The Secretary, in consultation with the Commission, the Director of the Office of Personnel Management, the Administrator of General Services, and the Administrator of NTIA, shall conduct a study of the energy conservation implications of the widespread adoption of telecommuting by Federal employees in the United States.

(b) **REQUIRED SUBJECTS OF STUDY.**—The study required by subsection (a) shall analyze the following subjects in relation to the energy saving potential of telecommuting by Federal employees:

- (1) Reductions of energy use and energy costs in commuting and regular office heating, cooling, and other operations.
- (2) Other energy reductions accomplished by telecommuting.
- (3) Existing regulatory barriers that hamper telecommuting, including barriers to broadband telecommunications services deployment.
- (4) Collateral benefits to the environment, family life, and other values.

(c) **REPORT REQUIRED.**—The Secretary shall submit to the President and the Congress a report on the study required by this section not later than 6 months after the date of the enactment of this Act. Such report shall include a description of the results of the analysis of each of the subjects described in subsection (b).

(d) **DEFINITIONS.**—As used in this section:

- (1) **SECRETARY.**—The term “Secretary” means the Secretary of Energy.
- (2) **COMMISSION.**—The term “Commission” means the Federal Communications Commission.
- (3) **NTIA.**—The term “NTIA” means the National Telecommunications and Information Administration of the Department of Commerce.
- (4) **TELECOMMUTING.**—The term “telecommuting” means the performance of work functions using communications technologies, thereby eliminating or substantially reducing the need to commute to and from traditional worksites.
- (5) **FEDERAL EMPLOYEE.**—The term “Federal employee” has the meaning provided the term “employee” by section 2105 of title 5, United States Code.

### SEC. 402. ELIMINATION OF PENSION OFFSET.

Section 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201) is amended by adding at the end the following:

“y. exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.”.

## PURPOSE AND SUMMARY

H.R. 1346, as amended, would authorize the use of performance contracts as a cost-effective tool for improving federal agency efficiency; set standards for the procurement of federal vehicles, such as fuel requirements; set standards for energy consuming products purchased by the federal government; and make it easier for former civil servants with skills critical to energy conservation to re-enter the federal workforce as needed.

## BACKGROUND AND NEED FOR THE LEGISLATION

The Government Reform Committee has jurisdiction over government management (including the management of federal property such as buildings and vehicles), federal procurement policy and civil service policy. These issues are critical to any comprehensive energy policy legislation considered by the Congress. As such, leadership requested that the Government Reform Committee, in addition to all other congressional committees with legislative responsi-

bility over energy policy, submit its energy policy provisions in preparation for a comprehensive bill.

#### HEARINGS

On March 12, 2003, the Government Reform Committee held a hearing entitled “Energy Efficiency Improvements in Federal Buildings and Vehicles.” The purpose of the hearing was for the Committee to gain a better understanding of the government’s progress in reducing energy consumption and achieving more efficient use of energy in federal facilities and vehicles. Witnesses at the hearing included The Honorable David Garman, Assistant Secretary, Energy Efficiency and Renewable Energy, United States Department of Energy; Paul Lynch, Assistant Commissioner, Business Operations, Public Buildings Service, United States General Services Administration; and William Rivers, Director, Federal Vehicles Policy Division, Office of Government-wide Policy, United States General Services Administration.

#### COMMITTEE CONSIDERATION

On March 20, 2003, the Committee met in open session and ordered favorably reported the bill, H.R. 1346, as amended, by voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) or rule XIII of the Rules of House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### PERFORMANCE GOALS AND OBJECTIVES

H.R. 1346 does not authorize funding. Therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is inapplicable.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to H.R. 1346, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, April 7, 2003.

Hon. TOM DAVIS,  
 Chairman, Committee on Government Reform,  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1346, the Federal Government Energy Management Improvement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
 Director.

Enclosure.

*H.R. 1346—Federal Government Energy Management Improvement Act*

Summary: H.R. 1346 would amend several standards for energy efficiency and conservation throughout the federal government. Such standards would apply to federal buildings, vehicle fleets, and equipment procurement. The bill also would provide permanent authorization to use energy savings performance contracts (ESPCs) and would expand their use. The expansion would allow agencies to use an ESPC to construct replacement buildings by committing to pay private contractors a portion of the budget savings expected from reduced operations, maintenance, and energy costs at such new buildings. Additionally, the bill would require three new studies for the Congress.

CBO estimates that the indefinite authorization and expansion of ESPCs would increase direct spending by about \$75 million in 2004 and \$2.8 billion over the 2004–2013 period. Additionally, CBO estimates that, assuming appropriation of the necessary amounts, implementing H.R. 1346 would cost \$80 million in 2004 and \$400 million over the 2004–2008 period.

H.R. 1346 contains no intergovernmental mandates or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs incurred by state, local, or tribal governments would result from complying with conditions of federal aid.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1346 is shown in the following table. The costs of this legislation fall within budget functions 270 (energy) and 800 (general government).

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Electricity Metering at Federal Buildings:					
Estimated Authorization Level .....	80	80	80	80	80
Estimated Outlays .....	80	80	80	80	80
CHANGES IN DIRECT SPENDING					
Permanent Authorization of ESPCs:					
Estimated Budget Authority .....	75	104	107	109	111
Estimated Outlays .....	64	100	106	109	111

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
Expansion of ESPCs:					
Estimated Budget Authority .....	35	70	105	140	175
Estimated Outlays .....	11	42	77	112	147
Total Estimated Direct Spending Under H.R. 1346:					
Estimated Budget Authority .....	110	174	212	249	286
Estimated Outlays .....	75	142	183	221	258

Note.—ESPCs = Energy Savings Performance Contracts.

Basis of estimate: For this estimate, CBO assumes H.R. 1346 will be enacted by the end of fiscal year 2003. We assume that the necessary amounts will be appropriated for each year, and that outlays will occur at historical rates for similar programs.

#### *Spending subject to appropriation*

H.R. 1346 would establish energy conservation goals and requirements for the government, including, where practical, hourly electricity metering in all federal buildings by 2010. The bill also would require that three studies for the Congress be performed by various agencies. CBO estimates that implementing H.R. 1346 would cost \$80 million in 2004 and \$400 million over the 2004–2008 period, assuming appropriation of the necessary funds.

Energy Conservation at Federal Agencies. H.R. 1346 would amend several energy conservation goals and requirements for the federal government. Most of those goals, such as reducing energy use by 2 percent per year relative to 2000 consumption and purchasing energy-efficient products when economical, are being done under current executive orders. Where practical, the bill would require that hourly electricity meters be installed at all federal buildings by 2010. Such meters would provide data at least once daily and measure hourly consumption of electricity. The data would be available to facility energy managers.

Based on information from the Department of Energy (DOE), we assume that it would only be economical to meter 20 percent of the government's inventory of 500,000 buildings and that installing meters would cost, on average, \$4,000 per building. We assume that meters would be installed in 20,000 buildings per year until 2008, when the project would be complete. Thus, we estimate that implementing the metering provisions of H.R. 1346 would cost \$80 million in 2004 and \$400 million over the 2004–2008 period.

Based on experience in the private sector, metering the hourly electricity use of buildings can lead to reduced energy consumption and reduce costs enough to recoup the cost of installing meters within two to four years. It is impossible that this requirement could lead to a future reduction in appropriations for federal building energy use, but any such savings would depend on how metering information is used by federal agencies. Additionally, metering can reveal where energy use is high, but capital investment and other changes in how federal buildings consumer energy would likely be needed to achieve savings. In any case, any savings are not likely to be significant over the next five years because most of the new metering and required capital investment would not be completed until the end of the period or after 2008.

Studies by Federal Agencies. H.R. 1346 would require three separate studies for the Congress. Specifically it would require:

- DOE to study the energy conservation effects of telecommuting;
- The General Services Administration (GSA) to study the effects of reducing petroleum consumption in federal fleets; and
- The General Accounting Office (GAO) to study the participation of small business in the construction of oil and gas pipelines.

CBO estimates that it would cost about \$150,000 per study and that all the studies would take one year to complete. Thus, we estimate that implementing those studies would cost about \$450,000 in 2004, assuming the availability of appropriated funds.

#### *Direct spending*

H.R. 1346 would provide permanent authorization for the use of energy savings performance contracts and expand their use. Overall, CBO estimates that those provisions would increase direct spending by \$75 million in 2004 and \$2.8 billion over the 2004–2013 period.

**Permanent Authorization of ESPCs.** Currently, federal agencies can enter into an ESPC, a specific type of long-term contract, for the purchase of energy efficiency equipment, such as new windows and lighting. Using such equipment can reduce the energy costs for a facility. When using an ESPC, the savings from reduced energy bills are used to pay for the purchase of the new equipment over several years. The commitment to make such payments is made when the ESPC is entered into. Thus, consistent with government-wide accounting principles, CBO believes that the budget should reflect that commitment as new obligations at the time that an ESPC is signed. Currently, agencies can use ESPCs to purchase new equipment over a 25-year period without an appropriation for the full amount of the purchase price.

DOE estimates that agencies entered into ESPCs valued over \$800 million since 1988. CBO estimates that, because the federal building inventory is aging, those contracts would continue to be used over time at roughly the same rate currently used, or \$75 million in 2004 and increasing after that. Thus, we estimate that extending the authorization for ESPCs would increase direct spending by about \$64 million in 2004 and \$1.1 billion over the 2004–2013 period.

**Expanding ESPCs for Building Construction.** H.R. 1346 would expand the use of such contracts to cover the purchase of a new building if the cost of the new building is less than the present value of estimated savings from lower costs of operations, maintenance, and energy consumption.

A November 2000 report from GSA's Office of the Inspector General estimates that it would take several billion dollars to bring the federal building inventory up to appropriate operations, maintenance, and energy efficiency standards. Thus, we assume that the opportunity of cost savings that could be generated from reduced operations, maintenance, and energy expenses at new buildings would be significant. We expect that the new authority provided by the bill would be used only in a few cases in the first few years but that, as buildings continue to deteriorate and requirements for energy efficiency continue to increase, the authority would be used at an increasing rate.

DOE has plans to use the new authority under this provision to build a new facility in New Mexico at an estimated cost of \$35 million. While the precise number of new facilities planned for construction that could qualify for funding under the authority that would be provided by the bill cannot be determined at this time, CBO estimates that this new authority would be used at least 15 times over the next five years at an estimated cost of about \$400 million over the 2004–2008 period. We expect that the use of the funding mechanism would grow after 2008 and that total spending over the 2004–2013 period would be about \$1.7 billion.

Estimated impact on state, local, and tribal governments: H.R. 1346 contains no intergovernmental mandates as defined in UMRA. Section 302 of H.R. 1346 might impose some costs on recipients of federal grants by encouraging the increased use of certain recycled materials in federally funded construction projects that use cement or concrete, including highway construction projects. Since this provision would apply only to projects that receive federal funding, it is a condition of federal aid rather than a mandate.

CBO cannot determine the exact costs or savings that states might realize as a result of this provision because of uncertainties in how the federal government would implement the new language. However, we do not expect federal agencies would make substantial changes to existing policies regarding the use of recycled materials, so the impact probably would be small. Those federal policies already encourage states to use recycled materials, and at least half of the states already have policies in place providing for their use in highway and construction projects. According to industry and government sources, states without such policies either already routinely use the materials or do not have a readily available source for the materials.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Lisa Cash Driskill; Impact on State, Local, and Tribal Governments: Greg Waring; and Impact on the Private Sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, Clauses 1 and 18 of the United States Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

##### *Section 1. Short title; table of contents*

This Act may be cited as the “Federal Government Energy Management Improvement Act.”

## TITLE I—FEDERAL FACILITIES

*Section 101. Energy management requirements*

This section would establish percentage reductions in energy consumption by federal buildings for fiscal years 2004 through 2013. In FY 2004, all federal buildings would have to consume 2% less energy per gross square foot, using FY2001 as a baseline. The percentage reduction would increase 2% every year through FY2013, the last year specified, when buildings would be required to consume 20% less than the FY2001 baseline.

This section would provide a waiver for agency heads who determine that compliance with the requirements would be impracticable.

Finally, this section would allow agencies to retain appropriated funds that were not expended due to energy savings. Such funds would only be available for energy conservation purposes.

*Section 102. Energy use measurement and accountability*

This section would require all federal buildings to meter their energy consumption on an hourly basis by October 1, 2010. Six months after date of enactment of this Act, the Secretary would have to issue guidelines to agencies on how to meter energy consumption, and then agency heads would be required to submit their plans six months after the Secretary's issuance of the guidelines.

*Section 103. Energy savings performance contracts*

This section would repeal the October 1, 2003, sunset on the use of energy savings performance contracts.

This section would also clarify that the computation of energy savings in an energy savings performance contract can include energy savings accomplished through replacing existing facilities with new, more energy efficient facilities (rather than only energy savings due to better use of existing facilities). The Committee believes that savings resulting from the costs of operation, maintenance, or improvements must be based on life cycle costs. Without this definition, savings could be defined in many different and inconsistent ways. Using life cycle as the basis would allow for energy savings performance contracts to establish the baseline costs of existing buildings for facilities using the same life-cycle assessment method used to determine the future cost of proposed modifications, thus providing consistency. Life-cycle assessment and its application are defined as addressed in E.O. 13101, E.O. 13123 and E.O. 13148 and is the standard methodology of calculating energy costs and savings.

Finally, this section would require the Secretary of Energy to review the energy savings performance contract program within six months after date of enactment.

The Committee believes that government facilities represent a significant opportunity for our country to meet national energy goals by improving aging and inefficient buildings and facilities. To help address these needs, and provide a financial mechanism to avoid large capital outlays for Federal agencies, Congress included "performance contracts" as part of the Energy Policy Act of 1992. Energy Savings Performance Contracts are an important and inno-

vative tool for government agencies to fund energy efficiency measures. This contracting program allows energy and facility upgrades to be paid for through cost savings obtained through energy and operating improvements. Unfortunately, not all Federal agencies are using this program, as the program is considered cumbersome to utilize. Agencies need to promote and leverage the flexibility of this program and recognize the distinctions between this contracting program and traditional contracting programs. In addition, there needs to be additional education of senior level Federal managers about this program. Like many Federal programs, we have learned that “one size does not fit all”, and in addition the program is complex which adds to the costs. It is hoped that the thorough expedited review required to be conducted by the Secretary of Energy will identify obstacles and barriers to use of the program by Federal agencies, and that changes will allow the program to be more accessible and implemented more fully.

*Section 104. Federal agency participation in demand reduction programs*

This section would encourage federal agencies to participate in State and regional demand side reduction programs.

TITLE II—FEDERAL FLEETS

*Section 201. Waivers of alternative fueled vehicle fueling requirement*

This section would restate the requirement that federal dual fuel vehicles be run on the alternative fuel rather than gasoline. This section also would authorize the Secretary of Energy to waive this requirement for federal vehicles located in particular geographic areas if the alternative fuel is not reasonably available or the alternative fuel is cost prohibitive.

In determining whether an alternative fuel is cost prohibitive, both the per-gallon (or gallon-equivalent) price, as well as the energy content of the alternative fuel, should be considered.

*Section 202. Study on reducing petroleum consumption*

This section would task the Administrator of General Services, in cooperation with the Secretary of Energy, to conduct a study to consider the merits of establishing performance measures to guide the reduction of petroleum consumption by federal fleets.

*Section 203. Hybrid vehicles*

This section would permit federal agencies to count acquisitions of future technology vehicles, such as fuel-efficient hybrid electric vehicles or other vehicles, such as fuel cell vehicles, as defined by the Secretary, against alternative fuel vehicle acquisition targets. It also would restrict the use of dual fuel or bifuel vehicles in meeting agencies’ alternative fuel vehicle acquisition targets where an agency is currently operating such vehicles on gasoline pursuant to a waiver under section 201, provided that future technology vehicles are available to the agency. The Committee understands that in many instances agencies acquire dual fuel vehicles to meet the alternative fuel vehicle acquisition requirements, but then run the vehicles on gasoline. This defeats the purposes of the requirement

to promote the development and use of alternative vehicles, fuels, and infrastructure, and to reduce the use of gasoline. This section further would direct that the incremental cost of alternative fuel and future technology vehicles be distributed across the fleet of vehicles acquired. This section would include a definition of qualified hybrid motor vehicle to ensure that the federal government promotes development of advanced vehicles that not only use hybrid or other advanced technologies but also achieve significant reductions in air emissions and oil use, compared to otherwise available vehicles.

#### TITLE III—FEDERAL PROCUREMENT

##### *Section 301. Procurement of energy efficient products*

This section would require agency heads to purchase products that meet the energy efficiency criteria established by either the Energy Star program or the Federal Energy Management Program of the Department of Energy, unless the approved product is not reasonably available or is cost prohibitive.

##### *Section 302. Increased use of recovered mineral components in federally funded projects involving procurement of cement and concrete*

This section would establish guidelines intended to increase agencies' use of recovered mineral components in cement or concrete projects (recycled cement and concrete). This section also would require the Administrator of the Environmental Protection Agency to conduct a study of the energy savings benefits of these procurement requirements.

##### *Section 303. Participation of small business concerns*

This section would encourage sponsors of the Alaska pipeline project to maximize, to the maximum extent practicable, small businesses in contracting work. It would also authorize a GAO study on the use of small businesses in the pipeline project.

##### *Section 304. Amendment to the Buy Indian Act*

This section would permit agencies to purchase Indian energy products and energy by-products.

##### *Section 305. Buy American*

This section would provide a sense of the Congress that no purchases of supplies should be made from persons or entities found in violation of the Buy American Act.

#### TITLE IV—FEDERAL WORKERS

##### *Section 401. Telecommuting study*

This section would task the Secretary with initiating a study of the energy conservation implications of telecommuting by federal employees.

##### *Section 402. Elimination of pension offset*

This section would allow the Nuclear Regulatory Commission to re-hire former employees that have critical skills without reducing the employees' annuity payments as a result of the re-employment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**NATIONAL ENERGY CONSERVATION POLICY ACT**

\* \* \* \* \*

TITLE V—FEDERAL ENERGY INITIATIVES

\* \* \* \* \*

PART 3—FEDERAL ENERGY MANAGEMENT

Sec. 541. Findings.

\* \* \* \* \*

Sec. 552. *Federal procurement of energy efficient products.*

\* \* \* \* \*

**TITLE V—FEDERAL ENERGY INITIATIVE**

\* \* \* \* \*

**PART 3—FEDERAL ENERGY MANAGEMENT**

\* \* \* \* \*

**SEC. 543. ENERGY MANAGEMENT REQUIREMENTS.**

(a) ENERGY PERFORMANCE REQUIREMENT FOR FEDERAL BUILDINGS.—(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, [its Federal buildings so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1995 is at least 10 percent less than the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 1985 and so that the energy consumption per gross square foot of its Federal buildings in use during the fiscal year 2000 is at least 20 percent less than the energy consumption per gross square foot of its Federal buildings in use during fiscal year 1985.] *the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2004 through 2013 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2001, by the percentage specified in the following table:*

<i>Fiscal Year</i>	<i>Percentage reduction</i>
2004 .....	2
2005 .....	4
2006 .....	6
2007 .....	8
2008 .....	10
2009 .....	12
2010 .....	14
2011 .....	16

2012 .....	18
2013 .....	20.
* * * * *	

(3) *Not later than December 31, 2012, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2014 through 2023.*

\* \* \* \* \*

(c) EXCLUSIONS.—(1) **[An agency may exclude, from the energy consumption requirements for the year 2000 established under subsection (a) and the requirements of subsection (b)(1), any Federal building or collection of Federal buildings, and the associated energy consumption and gross square footage, if the head of such agency finds that compliance with such requirements would be impractical. A finding of impracticability shall be based on the energy intensiveness of activities carried out in such Federal buildings or collection of Federal buildings, the type and amount of energy consumed, the technical feasibility of making the desired changes, and, in the cases of the Departments of Defense and Energy, the unique character of certain facilities operated by such Departments.]**(A) *An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—*

- (i) compliance with those requirements would be impracticable;*
  - (ii) the agency has completed and submitted all federally required energy management reports;*
  - (iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive Orders, and other Federal law; and*
  - (iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.*
- (B) *A finding of impracticability under subparagraph (A)(i) shall be based on—*
- (i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or*
  - (ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.*

(2) Each agency shall identify and list, in each report made under section 548(a), the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the **[impracticability]** standards for exclusion set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse **[a finding of impracticability]** the exclusion. In the case of any such reversal, the agency shall comply with the energy consumption requirements for the building concerned.

(3) *Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).*

\* \* \* \* \*

(e) **METERING OF ENERGY USE.**—

(1) **DEADLINE.**—*By October 1, 2010, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered or submetered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility energy managers.*

(2) **GUIDELINES.**—

(A) **IN GENERAL.**—*Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, national laboratories, universities, and Federal facility energy managers, shall establish guidelines for agencies to carry out paragraph (1).*

(B) **REQUIREMENTS FOR GUIDELINES.**—*The guidelines shall—*

(i) *take into consideration—*

(I) *the cost of metering and submetering and the reduced cost of operation and maintenance expected to result from metering and submetering;*

(II) *the extent to which metering and submetering are expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and*

(III) *the measurement and verification protocols of the Department of Energy;*

(ii) *include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;*

(iii) *establish priorities for types and locations of buildings to be metered and submetered based on cost-effectiveness and a schedule of one or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and*

(iv) *establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.*

(3) **PLAN.**—*No later than 6 months after the date guidelines are established under paragraph (2), in a report submitted by*

*the agency under section 548(a), each agency shall submit to the Secretary a plan describing how the agency will implement the requirements of paragraph (1), including (A) how the agency will designate personnel primarily responsible for achieving the requirements and (B) demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices, as defined in paragraph (1), are not practicable.*

\* \* \* \* \*

**SEC. 546. INCENTIVES FOR AGENCIES.**

(a) \* \* \*

\* \* \* \* \*

(c) UTILITY INCENTIVE PROGRAMS.—(1) \* \* \*

\* \* \* \* \*

*(6) Federal agencies are encouraged to participate in State or regional demand side reduction programs. The availability of such programs, including measures employing onsite generation, and the savings resulting from such participation, should be included in the evaluation of energy options for Federal facilities.*

\* \* \* \* \*

*(e) RETENTION OF ENERGY SAVINGS.—An agency may retain any funds appropriated to that agency for energy expenditures, at buildings subject to the requirements of section 543(a) and (b), that are not made because of energy savings. Except as otherwise provided by law, such funds may be used only for energy efficiency or unconventional and renewable energy resources projects.*

\* \* \* \* \*

**SEC. 548. REPORTS.**

(a) \* \* \*

(b) REPORTS TO THE PRESIDENT AND CONGRESS.—The Secretary shall report, not later than April 2 of each year, with respect to each fiscal year beginning after the date of the enactment of this subsection, to the President and Congress—

(1) \* \* \*

\* \* \* \* \*

**SEC. 550. SURVEY OF ENERGY SAVING POTENTIAL.**

(a) \* \* \*

\* \* \* \* \*

(d) REPORT.—As soon as practicable after the completion of the project carried out under this section, the Secretary shall transmit a report of the findings and conclusions of the project to the Committee on Energy and Natural Resources and the Committee on Governmental Affairs of the Senate, the Committee on Energy and Commerce, the Committee on Government Operations, and the Committee on Public Works and Transportation of the House of Representatives, and the agencies who own the buildings involved in such project. Such report shall include an analysis of the probability of each agency achieving [the 20 percent reduction goal established under section 543(a) of the National Energy Conservation

Policy Act (42 U.S.C. 8253(a)).] each of the energy reduction goals established under section 543(a).

\* \* \* \* \*

**SEC. 552. FEDERAL PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.**

(a) **DEFINITIONS.**—In this section:

(1) **ENERGY STAR PRODUCT.**—The term “Energy Star product” means a product that is rated for energy efficiency under an Energy Star program.

(2) **ENERGY STAR PROGRAM.**—The term “Energy Star program” means the program established by section 324A of the Energy Policy and Conservation Act.

(3) **EXECUTIVE AGENCY.**—The term “executive agency” has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(4) **FEMP DESIGNATED PRODUCT.**—The term “FEMP designated product” means a product that is designated under the Federal Energy Management Program of the Department of Energy as being among the highest 25 percent of equivalent products for energy efficiency.

(b) **PROCUREMENT OF ENERGY EFFICIENT PRODUCTS.**—

(1) **REQUIREMENT.**—To meet the requirements of an executive agency for an energy consuming product, the head of the executive agency shall, except as provided in paragraph (2), procure—

- (A) an Energy Star product; or
- (B) a FEMP designated product.

(2) **EXCEPTIONS.**—The head of an executive agency is not required to procure an Energy Star product or FEMP designated product under paragraph (1) if the head of the executive agency finds in writing that—

- (A) an Energy Star product or FEMP designated product is not cost-effective over the life of the product taking energy cost savings into account; or
- (B) no Energy Star product or FEMP designated product is reasonably available that meets the functional requirements of the executive agency.

(3) **PROCUREMENT PLANNING.**—The head of an executive agency shall incorporate into the specifications for all procurements involving energy consuming products and systems, including guide specifications, project specifications, and construction, renovation, and services contracts that include provision of energy consuming products and systems, and into the factors for the evaluation of offers received for the procurement, criteria for energy efficiency that are consistent with the criteria used for rating Energy Star products and for rating FEMP designated products.

(c) **LISTING OF ENERGY EFFICIENT PRODUCTS IN FEDERAL CATALOGS.**—Energy Star products and FEMP designated products shall be clearly identified and prominently displayed in any inventory or listing of products by the General Services Administration or the Defense Logistics Agency. The General Services Administration or the Defense Logistics Agency shall supply only Energy Star products or FEMP designated products for all product categories covered by the Energy Star program or the Federal Energy Management Pro-

gram, except in cases where the agency ordering a product specifies in writing that no Energy Star product or FEMP designated product is available to meet the buyer's functional requirements, or that no Energy Star product or FEMP designated product is cost-effective for the intended application over the life of the product, taking energy cost savings into account.

(d) *DESIGNATION OF ELECTRIC MOTORS.*—In the case of electric motors of 1 to 500 horsepower, agencies shall select only premium efficient motors that meet a standard designated by the Secretary. The Secretary shall designate such a standard within 120 days after the date of the enactment of this section, after considering the recommendations of associated electric motor manufacturers and energy efficiency groups.

(e) *REGULATIONS.*—Not later than 180 days after the date of the enactment of this section, the Secretary shall issue guidelines to carry out this section.

\* \* \* \* \*

## TITLE VIII—ENERGY SAVINGS PERFORMANCE CONTRACTS

### SEC. 801. AUTHORITY TO ENTER INTO CONTRACTS.

(a) *IN GENERAL.*—(1) \* \* \*

\* \* \* \* \*

(3)(A) *In the case of an energy savings contract or energy savings performance contract providing for energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities, benefits ancillary to the purpose of such contract under paragraph (1) may include savings resulting from reduced costs of operation and maintenance at such replacement buildings or facilities when compared with costs of operation and maintenance at the buildings or facilities being replaced, established through a methodology set forth in the contract.*

(B) *Notwithstanding paragraph (2)(B), aggregate annual payments by an agency under an energy savings contract or energy savings performance contract referred to in subparagraph (A) may take into account (through the procedures developed pursuant to this section) savings resulting from reduced costs of operation and maintenance as described in that subparagraph.*

\* \* \* \* \*

[(c) *SUNSET AND REPORTING REQUIREMENTS.*—The authority to enter into new contracts under this section shall cease to be effective on October 1, 2003.]

\* \* \* \* \*

### SEC. 804. DEFINITIONS.

For purposes of this title, the following definitions apply:

(1) \* \* \*

[(2) The term “energy savings” means a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, utilized in an existing federally owned

building or buildings or other federally owned facilities as a result of—

【(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or

【(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities.

【(3) The terms “energy savings contract” and “energy savings performance contract” mean a contract which provides for the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations. Such contracts—

【(A) may provide for appropriate software licensing agreements; and

【(B) shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).

【(4) The term “energy conservation measures” has the meaning given such term in section 551(4).】

(2) *The term “energy savings” means—*

(A) *a reduction in the cost of energy or water, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—*

*(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;*

*(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or*

*(iii) the increased efficient use of existing water sources; or*

(B) *in the case of a replacement building or facility described in section 801(a)(3), a reduction in the cost of energy, from a base cost established through a methodology set forth in the contract, that would otherwise be utilized in one or more existing federally owned buildings or other federally owned facilities by reason of the construction and operation of the replacement building or facility.*

(3) *The terms “energy savings contract” and “energy savings performance contract” mean a contract (including a utility energy services contract) which provides for—*

*(A) the performance of services for the design, acquisition, installation, testing, operation, and, where appropriate, maintenance and repair, of an identified energy or water conservation measure or series of measures at one or more locations; or*

(B) energy savings through the construction and operation of one or more buildings or facilities to replace one or more existing buildings or facilities.

Such contracts shall, with respect to an agency facility that is a public building as such term is defined in section 13(1) of the Public Buildings Act of 1959 (40 U.S.C. 612(1)), be in compliance with the prospectus requirements and procedures of section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606).

(4) The term "energy or water conservation measure" means—

(A) an energy conservation measure, as defined in section 551(4) (42 U.S.C. 8259(4)); or

(B) a water conservation measure that improves water efficiency, is life cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.

\* \* \* \* \*

**SECTION 400AA OF THE ENERGY POLICY AND CONSERVATION ACT**

**SEC. 400AA. ALTERNATIVE FUEL USE BY LIGHT DUTY FEDERAL VEHICLES.**

(a) DEPARTMENT OF ENERGY PROGRAM.—(1) \* \* \*

\* \* \* \* \*

(3)(A) \* \* \*

\* \* \* \* \*

[(E) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that operation on such alternative fuels is not feasible.]

(E)(i) Dual fueled vehicles acquired pursuant to this section shall be operated on alternative fuels unless the Secretary determines that an agency needs a waiver of such requirement for vehicles in the fleet of the agency in a particular geographic area where—

(I) the alternative fuel otherwise required to be used in the vehicle is not reasonably available to retail purchasers of the fuel, as certified to the Secretary by the head of the agency; or

(II) the cost of the alternative fuel otherwise required to be used in the vehicle is unreasonably more expensive compared to gasoline, as certified by the head of the agency.

(ii) The Secretary shall monitor compliance with this subparagraph by all such fleets and shall report annually to the Congress on the extent to which the requirements of this subparagraph are being achieved. The report shall include information on annual reductions achieved of petroleum-based fuels and the problems, if any, encountered in acquiring alternative fuels.

\* \* \* \* \*

**ENERGY POLICY ACT OF 1992**

\* \* \* \* \*

## TITLE III—ALTERNATIVE FUELS— GENERAL

### SEC. 301. DEFINITIONS.

For purposes of this title, title IV, and title V (unless otherwise specified)—

(1) \* \* \*

\* \* \* \* \*

(13) the term “motor vehicle” has the meaning given such term under section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)); [and]

(14) the term “replacement fuel” means the portion of any motor fuel that is methanol, ethanol, or other alcohols, natural gas, liquefied petroleum gas, hydrogen, coal derived liquid fuels, fuels (other than alcohol) derived from biological materials, electricity (including electricity from solar energy), ethers, or any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits[.];

(15) the term “future technology vehicle” means, for the fiscal years 2004 through 2009, a qualified hybrid motor vehicle, and for fiscal years after 2009, a vehicle—

(A) that represents emerging technology that does not yet have substantial market penetration;

(B) for which Federal Government acquisitions can lead the market;

(C) that achieves significant reductions in air emissions and oil use compared to new vehicles that do have substantial market penetration; and

(D) that in no event achieves reductions in air emissions and oil use that are less than a qualified hybrid motor vehicle,

as defined by the Secretary through guidance;

(16) the term “qualified hybrid motor vehicle” means a passenger automobile, light duty truck, or medium duty passenger vehicle as defined in regulations issued by the Administrator—

(A) which draws propulsion energy from—

(i) an internal combustion or heat engine using combustible fuel; and

(ii) a rechargeable onboard energy storage system which operates at no less than 100 volts and which provides a percentage of maximum available power of at least 5 percent;

(B) which has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator under section 202(i) of the Clean Air Act for that make and model year vehicle; and

(C) which achieves at least 140 percent of the average 2002 model year city fuel economy for passenger automobiles in the same vehicle inertia weight class, if the vehicle is a passenger automobile, or for light duty trucks in the same vehicle inertia weight class, if the vehicle is a light

*duty truck, or for medium duty passenger vehicles, if the vehicle is a medium duty passenger vehicle, as determined by the Environmental Protection Agency according to the following vehicle inertia weight classes: 1,500 and 1,750 lbs (calculated based on the 1,750 lbs weight class), 2,000 lbs, 2,250 lbs, 2,500 lbs, 2,750 lbs, 3,000 lbs, 3,500 lbs, 4,000 lbs, 4,500 lbs, 5,000 lbs, 5,500 lbs, 6,000 lbs, 6,500 lbs, 7,000 to 8,500 lbs, and 8,500 to 10,000 lbs;*

*(17) the term “percentage of maximum available power” means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the sum of such maximum power and the SAE net power of the internal combustion or heat engine; and*

*(18) the term “vehicle inertia weight class” has the same meaning as when defined in regulations prescribed by the Administrator for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).*

\* \* \* \* \*

**SEC. 303. MINIMUM FEDERAL FLEET REQUIREMENT.**

(a) \* \* \*

(b) PERCENTAGE REQUIREMENTS.—(1) Of the total number of vehicles acquired by a Federal fleet, at least—

- (A) 25 percent in fiscal year 1996;
- (B) 33 percent in fiscal year 1997;
- (C) 50 percent in fiscal year 1998; and

[(D) 75 percent in fiscal year 1999 and thereafter, shall be alternative fueled vehicles.]

*(D) 75 percent in fiscal years 1999 through 2003, shall be alternative fueled vehicles. For fiscal years 2004 and thereafter, of the total number of vehicles acquired by a Federal fleet, at least 75 percent shall be alternative fueled vehicles or future technology vehicles.*

\* \* \* \* \*

*(4) For the period for which a Federal fleet is operating under the exemption provided in section 400AA(a)(3)(E) of the Energy Policy and Conservation Act (42 U.S.C. 6374(a)(3)(E)), and where future technology vehicles are available that would meet the agency’s operational requirements for such fleet but the agency chooses not to acquire such vehicles, acquisitions of dual fueled vehicles for that fleet shall not count toward satisfaction of the requirements in this subsection.*

[(c) ALLOCATION OF INCREMENTAL COSTS.—The General Services Administration and any other Federal agency that procures motor vehicles for distribution to other Federal agencies may allocate the incremental cost of alternative fueled vehicles over the cost of comparable gasoline vehicles across the entire fleet of motor vehicles distributed by such agency.]

*(c) ALLOCATION OF INCREMENTAL COSTS.—The General Services Administration and any other Federal agency that procures motor vehicles for distribution to other Federal agencies shall allocate the incremental cost of alternative fueled vehicles and future technology vehicles over the cost of comparable internal combustion gasoline ve-*

hicles across the entire fleet of motor vehicles distributed by such agency in any fiscal year.

\* \* \* \* \*

**SOLID WASTE DISPOSAL ACT**

\* \* \* \* \*

Subtitle F—Federal Responsibilities

Sec. 6001. Application of Federal, State, and local law to Federal facilities.

\* \* \* \* \*

Sec. 6005. Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete.

\* \* \* \* \*

Subtitle F—Federal Responsibilities

\* \* \* \* \*

**INCREASED USE OF RECOVERED MINERAL COMPONENT IN FEDERALLY FUNDED PROJECTS INVOLVING PROCUREMENT OF CEMENT OR CONCRETE**

SEC. 6005. (a) DEFINITIONS.—In this section:

(1) AGENCY HEAD.—The term “agency head” means—

(A) the Secretary of Transportation; and

(B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) CEMENT OR CONCRETE PROJECT.—The term “cement or concrete project” means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

(A) involves the procurement of cement or concrete; and

(B) is carried out in whole or in part using Federal funds.

(3) RECOVERED MINERAL COMPONENT.—The term “recovered mineral component” means—

(A) ground granulated blast furnace slag;

(B) coal combustion fly ash; and

(C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) IMPLEMENTATION OF REQUIREMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete in-

corporating recovered mineral component in cement or concrete projects.

(2) *PRIORITY.*—In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) *CONFORMANCE.*—The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

(c) *FULL IMPLEMENTATION STUDY.*—

(1) *IN GENERAL.*—The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which current procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) *MATTERS TO BE ADDRESSED.*—The study shall—

(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

(B) identify all barriers in procurement requirements to fuller realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) *REPORT.*—Not later than 30 months after the date of enactment of this section, the Administrator shall submit to the Committee on Appropriations, Committee on Environment and Public Works, and Committee on Governmental Affairs of the Senate and the Committee on Appropriations, Committee on Energy and Commerce, Committee on Transportation and Infrastructure, and Committee on Government Reform of the House of Representatives a report on the study.

(d) *ADDITIONAL PROCUREMENT REQUIREMENTS.*—Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, within 1 year of the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered min-

eral component in the construction and maintenance of cement or concrete projects, so as to—

(1) realize more fully the energy savings and environmental benefits associated with increased substitution; and

(2) eliminate barriers identified under subsection (c).

(e) EFFECT OF SECTION.—Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).

\* \* \* \* \*

**SECTION 23 OF THE ACT OF JUNE 25, 1910**

**Chap. 431.**—AN ACT To provide for determining the heirs of deceased Indians, for the disposition and sale of allotments of deceased Indians, for the leasing of allotments, and for other purposes.

\* \* \* \* \*

SEC. 23. That hereafter the purchase of Indian supplies shall be made in conformity with the requirements of section thirty-seven hundred and nine of the Revised Statutes of the United States: *Provided*, That so far as may be practicable Indian labor shall be employed, and purchases of the products (including, but not limited to printing, *energy products, and energy by-products*, notwithstanding any other law) of Indian industry may be made in open market in the discretion of the Secretary of the Interior. All Acts and parts of Acts in conflict with the provisions of this section are hereby repealed. Participation in the Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note) or receipt of assistance pursuant to any developmental assistance agreement authorized under such program shall not render Indian labor or Indian industry ineligible to receive any assistance authorized under this section. For the purposes of the section—

(1) \* \* \*

\* \* \* \* \*

**SECTION 161 OF THE ATOMIC ENERGY ACT OF 1954**

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. \* \* \*

\* \* \* \* \*

*y. exempt from the application of sections 8344 and 8468 of title 5, United States Code, an annuitant who was formerly an employee of the Commission who is hired by the Commission as a consultant, if the Commission finds that the annuitant has a skill that is critical to the performance of the duties of the Commission.*