

CHAPTER 12

**IDENTIFICATION, RETENTION, AND USE OF
ENERGY AND WATER CONSERVATION SAVINGS**1201 OVERVIEW

120101. Purpose. This chapter prescribes financial management policy and procedures for the identification, retention, and use of energy cost savings as specified in Title 10, United States Code (U.S.C.), sections 2865, 2866 and 2867, and Section 736 of the National Defense Authorization Act for Fiscal Year 1989, as amended (42 U.S.C. 8287 note).

★120102. General. The Congress has enacted several measures to encourage efficient energy production and energy conservation. 10 U.S.C. 2865 and 2866 concern energy savings and water conservation, respectively, at military installations. 10 U.S.C. 2867 concerns electricity sales to a public or private company and authorizes revenues from certain sales of electricity to be used for purposes specified in that section. Section 736 of the National Defense Authorization Act for Fiscal Year 1989, as amended, (42 U.S.C. 8287 note) provides incentives with respect to Energy Savings Performance Contracts (ESPC) entered into under the provisions of 42 U.S.C. 8287. Each of the foregoing statutes provides for the utilization of part or all of the amounts realized as the result of covered activities. In addition, 10 U.S.C. 2865 and 10 U.S.C. 2866 authorize the acceptance and use of incentive payments from utility companies.

★120103. Following are summaries of the statutory provisions relating to funding.

★A. 10 U.S.C. 2865 provides that two thirds of the appropriated funds that remain available at the end of a fiscal year as a result of energy cost savings remain available for obligation through the end of the fiscal year following the fiscal year for which the funds were appropriated. In accordance with the restriction contained in the annual appropriations acts for the Department of Defense (DoD) that no part of any appropriation provided by those acts may remain available for obligation beyond a current fiscal year unless expressly so provided in those acts, an annual recurring provision in the DoD appropriations acts provides that appropriations that remain available at the end of a current fiscal year as the result of such energy cost savings realized by the Department are available for obligation for the next fiscal year to the extent, and for the purposes, provided in 10 U.S.C. 2865. Under 10 U.S.C. 2865, such funds may be used as follows:

★1. Under regulations to be prescribed by the Secretary of Defense, one third may be used for additional energy conservation measures and for water conservation activities at such buildings, facilities, or installations of the DoD as designated by the head of the department, agency or instrumentality that realized such savings.

★2. One third of such savings shall be used at the installation where the savings were realized, as determined by the commanding officer of such installation, for (i) improvements to existing family housing units; (ii) any unspecified minor construction project

that will enhance the quality of life of personnel; or (iii) any morale, welfare, or recreation facility or service.

★B. Title 10 U.S.C. 2866 provides that funds attributable to water cost savings realized under the provisions of that section shall be used as prescribed in paragraph 120103. A. 1 and 2, above. Neither 10 U.S.C. 2866 nor any provisions in the Department's appropriations acts, however, provide for the extended availability of such funds. Accordingly, such funds are available only for the time period for which they were originally appropriated.

★C. Both 10 U.S.C. 2865 and 10 U.S.C. 2866 authorize the acceptance of financial incentives from utilities related to energy and water conservation measures as specified by 10 U.S.C. 2865 (d)(2) or 10 U.S.C. 2866 (a)(2). Such incentives are to be credited to appropriations designated for such purposes and are to be merged with, and be available for, the same purposes and time period as the appropriation to which they are credited. Detailed procedures are in Section 1203 of this chapter.

★D. Title 10 U.S.C. 2867 provides that proceeds from sales of electricity, generated by alternate energy or cogeneration type production facilities, to a public or private utility company shall be credited to the appropriation account currently available to the Military Department concerned for the supply of electrical energy. Such proceeds may be used to fund military construction projects under energy performance plans developed pursuant to the provisions of 10 U.S.C. 2865(a), including minor construction projects authorized under 10 U.S.C. 2805 that are designed to increase energy conservation. Detailed procedures are in Section 1204 of this chapter.

★E. Section 736 of the National Defense Authorization Act for Fiscal Year 1989, as amended, (42 U.S.C. 8287 note), provides that energy cost savings realized by the Military Departments during each of the first 5 years of an ESPC shall remain available until expended. Unlike the case with respect to savings covered by 10 U.S.C. 2865, however, no provision of an appropriations act provides for such an extended period of availability. Accordingly, such funds are available only for the time period for which they were originally appropriated. They may be used as follows:

★1. One-half of the amount of such energy cost savings may be used for the acquisition of any appropriate energy conserving measure for military installations. Such measures may be in addition to energy conserving measures acquired under ESPCs.

★2. One-half of the amount of such energy cost savings may be used for any morale, welfare, or recreation facility or service that normally is provided with appropriated funds, or for any minor military construction project (as defined in 10 U.S.C. 2805(a)) that will enhance the quality of life of members of the Armed Forces at the military installation at which the energy cost savings were realized. Detailed procedures are in Section 1205 of this chapter.

1202 DEFINITIONS

The following definitions apply with respect to the identification, retention, and use of energy conservation cost savings:

★120201. Energy Cost Savings. There are two definitions of energy cost savings:

★A. Energy or water cost savings for the purposes of 10 U.S.C. 2865 and 2866, are those savings realized as the result of a reduction in the cost of energy or water from a baseline cost, determined by metering, if available, or by professionally acceptable engineering models and estimates.

★B. Energy cost savings for the purposes of Section 736 of the National Defense Authorization Act for Fiscal Year 1989, as amended, (42 U.S.C. 8287 note), are those savings realized as the result of a reduction in the cost of energy from a base cost established through a methodology set forth in an ESPC, utilized in an existing DoD-owned building or facility as a result of (1) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services; or (2) the increased efficient use of existing energy sources by cogeneration or heat recovery.

★120202. Energy Savings Performance Contract. An ESPC is a contract entered into under the provisions of 42 U.S.C. 8287. It is a contracting procedure under which a private contractor evaluates, designs, finances, acquires, installs and maintains energy saving equipment for a DoD Component, and receives as partial compensation a share of any energy savings resulting from implementation during the term of the contract (not to exceed 25 years, including options). The contract terms shall establish a guaranteed savings amount and determine the level of compensation to be paid the contractor, with the remainder of the savings retained by the DoD.

★120203. Guaranteed Savings. The minimum energy savings amount, established by the terms of an ESPC, realized by the performance of contractor-installed, energy saving equipment over an extended period of time. Guaranteed savings are divided between an amount to be paid the contractor, and an amount to be retained by the government, in accordance with the contract terms.

★120204. Extended Availability. The additional period of availability for obligation, through the end of the fiscal year following the fiscal year for which the funds were appropriated, of unobligated balances at the end of a fiscal year for funds realized as a result of energy cost savings as provided for by 10 U.S.C. 2865 and an annual recurring provision in the DoD appropriations acts.

★120205. Extended Availability Account. An account established at the installation level for each appropriation for which energy cost savings have been identified, and to which unobligated balances resulting from such energy cost savings or a portion thereof, are transferred.

★120206. Component Head or designee. The Secretary of a military department or the Director of a Defense Agency or an individual designated to act for the Secretary of a military department or the Director of a Defense Agency for the purposes of executing the duties, functions, and responsibilities set forth in this chapter. When a provision is applicable only to the military departments, reference is made to the Secretary concerned, or designee.

★1203 PROCEDURES CONCERNING ENERGY OR WATER COST-SAVINGS AMOUNTS AND INCENTIVES RECEIVED FROM UTILITIES UNDER 10 U.S.C. 2865 AND 2866

★120301. Energy savings amounts having an extended availability shall be transferred to extended availability accounts for execution.

★A. An extended availability account shall be established for each appropriation for which energy cost savings have been identified and for which a period of extended availability is to be established.

★B. Transfers to the extended availability accounts shall be made by a SF 1151. Reprogramming actions will not be required in the case of such transfers.

★C. Accounting, appropriate controls, and oversight for amounts in extended availability accounts shall be established at the level of the facilities that use the accounts. Normally this will be at the installation level.

★120302. The cognizant Component Head or designee shall determine the appropriation which shall be credited with any financial incentives received from utilities under 10 U.S.C. 2865 (d)(2) or 10 U.S.C. 2866 (a)(2). The amounts so credited shall be merged with, and be available for, the same purposes and time period as the appropriation to which they are credited.

★120303. One-third of the amount of energy or water cost savings resulting from conservation measures (i.e., one-half of the two-thirds amount available to the Department) under 10 U.S.C. 2865 and 2866 will be used only to implement additional energy conservation measures and water conservation activities at DoD buildings, facilities, or installations. Such energy conservation measures will be determined by the appropriate Component Head or designee in accordance with conservation project suitability guidance issued by the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

★120304. As determined by the commanders of military installations, at which energy or water cost savings were realized, the remaining one-third of the amount of energy or water cost savings resulting from conservation measures shall be used only for the purposes specified in paragraph 120103. A. 2 of this chapter.

★1204 PROCEDURES CONCERNING REVENUES FROM THE SALE OF ELECTRICITY UNDER 10 U.S.C. 2867

★120401. Proceeds from the sale of electricity under 10 U.S.C. 2867 shall be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy. The Secretary concerned or designee shall determine the accounts to which such proceeds shall be credited.

★120402. Amounts so credited may be used for:

★A. Military construction projects under energy performance plans developed pursuant to the provisions of 10 U.S.C. 2865(a); and

B. Minor military construction projects authorized under 10 U.S.C. 2805 that are designed to increase energy conservation.

★120403. Before utilization of the amounts credited under paragraph 120401 for projects specified in paragraph 120402, not later than 21 days before such projects are to be carried out, the Secretary concerned or designee shall notify the Congress in writing of the project along with:

★A. The justification for the project; and

★B. The estimated cost of the project.

★1205 PROCEDURES CONCERNING ENERGY COST SAVINGS UNDER SECTION 736 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1989, AS AMENDED (42 U.S.C. 8287 note)

★120501. The portion of the guaranteed savings due to the contractor for payment under ESPCs shall be included in each military department's utility requirements submitted as part of budget requests for the length of the ESPCs entered into by that military department. The entire amount of guaranteed savings provided for in ESPCs (including amounts for contract payments and amounts to be retained by installations) shall be included in total utility requirements submitted as part of budget requests for the first 5 years of ESPCs. Under no circumstances shall the total of the amounts requested exceed those that would have been requested in the absence of ESPCs. The Secretary concerned, or designee, shall specify the procedures for identification of such amounts by installations, facilities, or operating locations at which ESPCs for that military department are in existence.

★120502. Not more than 90 days after the end of each of the first 5 years during which energy savings measures have been in operation under an ESPCs, the Secretary concerned, or designee, shall determine the amount of energy cost savings attributed to, and realized under, energy savings measures acquired and installed under ESPCs at installations under the Secretary's jurisdiction. These savings shall be reported in accordance with guidance

issued by the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

★120503. Energy cost savings realized under ESPCs and identified as indicated in the preceding paragraph may be utilized as described in paragraph 120103. E of this chapter.

★1206 CARRYOVER OF UNOBLIGATED BALANCES UNDER 10 U.S.C. 2865 RESULTING FROM ENERGY CONSERVATION MEASURES

★120601. Installation Commanders. Installation commanders or their designees shall ensure that energy cost savings amounts that are carried over to the year following the fiscal year for which they were originally appropriated are authorized to be used only for funding energy conservation initiatives approved by the Component Head or designee or for the purposes specified in paragraph 120304, above. Installation commanders also shall:

★A. Ensure that unobligated fund balances available at the end of the normal period of appropriation availability that are the direct result of energy conservation measures are identified. Such funds to be carried forward to the following fiscal year shall be based on the most current available consumption data and represent actual unobligated funds and not based on estimates.

★B. Ensure that the unobligated energy cost savings balances at year-end are carried forward into the following fiscal year, and designate the original appropriation as an extended availability account.

★C. Submit to the Component Head or designee proposed energy savings projects for a given fiscal year that are projected to cost more than the amount of funds available to the Commander for that purpose.

★D. Implement additional energy conservation initiatives approved by the Component Head, or designee and other projects as specified in paragraph 120304, above.

★120602. Component Head or Designee. The Component Head or designee shall receive and evaluate savings measures submitted by installation commanders, and authorize funding for those other energy savings measures as the Component Head or designee deems appropriate. The Component Head or designee shall also ensure that procedures are established to provide sufficient time to compute the energy cost savings, and identify the unobligated amounts to carry over to the following fiscal year.

1207 ACCOUNTING FOR ENERGY COST SAVINGS

★120701. Energy cost savings amounts. The energy cost savings amounts realized in accordance with 10 U.S.C. 2865 shall be either the lesser of (1) two-thirds of identified energy cost savings, or (2) the unobligated balances of such cost savings remaining available for obligation at the end of a fiscal year.

★120702. Extended availability accounts. Amounts covered by the preceding paragraph shall be identified in, and transferred to, extended availability accounts. Transfers shall be made on an SF 1151, and properly labeled (e.g., FY 1998/1999 for a FY 1998 account). The authority to be cited for the transfer is 10 U.S.C. 2865. No further adjustments shall be made to the amounts carried forward once the balance is established in the extended availability account.

★120703. Refunds or Rebates. Refunds or rebates paid by a utility company as a result of completion of a utility-approved conservation action (typically a facility project) shall be credited to the same account from which the conservation action originally was funded. Such amounts may be extended for obligation, in accordance with the procedures specified in the preceding paragraph.

★120704. Cancellation of Appropriation.

★A. Amounts contained in extended availability accounts established in accordance with paragraph 120702 above, shall remain available for expenditure (i.e., liquidation of obligations) for 5 years following the year in which the funds expired for obligation at the end of the year of extended availability.

★B. Under no circumstances shall funds, extended under 10 U.S.C. 2865 remain available for expenditure beyond the end of the sixth year following the year in which the funds would have expired, had the period of availability not been extended. (For example, if an O&M appropriation normally would expire at the end of FY 1998, the extended availability account would expire at the end of FY 1999. The extended availability account would be available for expenditures until the end of FY 2004, at which time any remaining obligated and unobligated balances would be canceled.)

1208 REPORTING REQUIREMENTS

The following reporting requirements shall be used to report the status of extended availability accounts:

120801. Acct Rpt (M) 1002. Special procedures have been established for reporting extended availability obligated and unobligated balances on the Acct Rpt (M) 1002 (Appropriation Status by Fiscal Year Program and Subaccounts).

These procedures are as follows:

A. Normal Availability Obligated and Unobligated Balances. Identify and report as normal.

B. Extended Availability Unobligated Balance. Identify, in column i. (Total Unobligated Balance), unobligated extended availability amounts resulting from energy cost savings at the end of the normal availability period (e.g., FY 199X/199X+1 or FY 199X/199X+2, +3, and so on) available unobligated amounts (that is, FY 1996/1997,

FY 1996/1998, etc., for the FY 1996 account). The stub entry shall identify the unobligated extended availability amount as “Extended Availability - Energy Cost Savings.” The amount reported shall agree with the amount reported on line 9.A.1. of the SF 133 (formerly DD Form 1176), “Report on Budget Execution” (see subsection 120702, below).

★C. Extended Availability Obligated Balance. Identify, in column e, obligations incurred against the extended availability account. The stub entry shall identify those obligations as to the purpose for which the obligations were incurred. Those purposes are “Energy Conservation Measures” (covered by paragraph 120303 of this Chapter) and “Other Purposes” (covered by paragraph 120304 of this Chapter). The reporting categories for the extended availability accounts are to be continued for all applicable fiscal years.

120802. SF 133 (Report on Budget Execution). At the end of the first fiscal year, use line 9.A.1, “Balance Currently Available” on the SF 133, to identify the amount of available unobligated funds that are available for energy savings investments (or other authorized purposes) in the following fiscal year(s)

120803. Acct Rpt (TFM) 2108. Transactions reported on the Acct Rpt (TFM) 2108 (Year-End Closing Statement) will be treated in the same manner as a multi-year appropriation.