VOLUME 12, CHAPTER 12: "IDENTIFICATION, RETENTION, AND USE OF ENERGY AND WATER CONSERVATION SAVINGS"

SUMMARY OF MAJOR CHANGES

All changes are denoted by blue font.

Substantive revisions are denoted by an (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by ***bold, italic, blue, and underlined font***.

The previous version dated June 2014 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks, email addresses, and format to comply with current guidance.	Revision
120403	Added a subparagraph B to include new guidance on reporting.	Addition

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CHAPTER 12

IDENTIFICATION, RETENTION, AND USE OF ENERGY AND WATER CONSERVATION SAVINGS

1201 GENERAL

120101. Purpose

This chapter prescribes financial management policy for the identification, retention, and use of energy and water cost savings. The Congress has enacted several measures pertaining to energy security within the Department of Defense (DoD), to provide instruction and guidance for the receipt and use of incentives and water cost savings from utilities for water conservation; the availability and use of energy cost savings; energy savings contracts and activities; energy conservation construction projects; the use of renewable forms of energy and energy efficient products in military construction and facility repair and renovation projects; the sale of electricity from alternate energy and cogeneration production facilities; and for the DoD activities' participation in programs for management of energy demand or reduction of energy usage during peak periods.

120102. Authoritative Guidance

A. Title 10, United States Code, section 2866 (***10 U.S.C. § 2866***) "Water Conservation at Military Installations," provides that funds attributable to water cost savings realized under the provisions of that section must be used as prescribed in subparagraphs 120103.B.1 and 2, provided that such use under subparagraph 120103.B.1 is for water conservation activities. Neither 10 U.S.C. § 2866 nor any provision in the Department's appropriations acts, however, provide for the extended availability of such funds. Accordingly, such funds are available only for the period for which they were originally appropriated.

B. ***10 U.S.C. § 2912***, "Availability and Use of Energy Cost Savings," provides that an amount of funds appropriated to DoD for a fiscal year that is equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts pursuant to ***10 U.S.C. § 2913***, "Energy Savings Contracts and Activities," must remain available for obligation until expended, without additional authorization or appropriation. The amount that remains available for obligation must be used as follows:

1. One-half of the amount must be used for the implementation of additional energy conservation and energy security measures, including energy resilience and energy conservation construction projects, for buildings, facilities, or installations of the DoD, or related to vehicles and equipment of the DoD, which are designated, in accordance with regulations prescribed by the Secretary of Defense, by the head of the department, agency, or instrumentality that realized the savings; and

2. One-half of the amount must be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for (a) improvements to existing military family housing units; (b) any unspecified minor construction project that will enhance the quality of life of personnel; or (c) any Morale, Welfare, and Recreation (MWR) facility or service.

C. 10 U.S.C. § 2913 provides that the Secretary of Defense must develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of DoD as well as the private sector. The Secretary may provide for the direct negotiation (by departments, agencies, and instrumentalities of DoD) of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

D. ***10 U.S.C. § 2914***, "Energy Resilience and Conservation Construction Projects," provides that the Secretary of Defense may carry out a military construction project for energy resilience, energy security, or energy conservation, which has not been previously authorized, using funds appropriated or otherwise made available for that purpose. When a decision is made to carry out a project under this section, the Secretary of Defense must notify the appropriate congressional committees of the decision. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by such committees in an electronic medium.

E. ***10 U.S.C. § 2915***, "Facilities: Use of Renewable Forms of energy and Energy Efficient Products," provides that the Secretary of Defense must encourage the use of energy systems using solar energy or other renewable forms of energy as a source of energy for military construction projects for energy resilience, energy security, or energy conservation (including military family housing projects), and facility repairs and renovations, and ensure, to the maximum extent practicable, the use of energy efficient products in facility construction, repair, and renovation. The Secretary concerned must require that the design for the construction, repair, or renovation of facilities (including family housing and back-up power generation facilities) must include consideration of energy systems using solar energy or other renewable forms of energy, and require such energy systems be installed if consistent with the energy performance goals and energy performance master plan for the Department and is shown to be cost effective. Additionally, the Secretary of a military department may grant exceptions to otherwise applicable square foot and cost per square foot limitations.

F. ***10 U.S.C. § 2916***, "Sale of Electricity from Alternate Energy and Cogeneration Production Facilities," provides that the Secretary of a military department may sell, contract to sell, or authorize the sale by a contractor to a public or private utility company of electrical energy generated from alternate energy or cogeneration type production facilities which are under the jurisdiction (or produced on land which is under the jurisdiction) of the Secretary concerned. The sale of such energy must be made under such regulations, for such periods, and at such prices as the Secretary concerned prescribes consistent with the Public Utility Regulatory

Policies Act of 1978, and ***16 U.S.C. § 2601***, "Findings: Public Utility Regulatory Policies." (Revenues from the sale of electricity must be deposited and utilized in accordance with section 1204.)

G. ***10 U.S.C. § 2919***, "Department of Defense Participation in Programs for Management of Energy Demand or Reduction of energy Usage During peak Periods," provides that the Secretary of Defense, the Secretaries of the military departments, the heads of the Defense Agencies, and the heads of the other instrumentalities of the Department are authorized to participate in demand response programs for the management of energy demand or the reduction of energy usage during peak periods conducted by any of the following: an electric utility; an independent system operator; a State agency; or a third party entity (such as a demand response aggregator or curtailment service provider) implementing demand response programs on behalf of an electric utility, independent system operator or State agency. Financial incentives received from such entity must be (a) received as a cost reduction in the utility bill for a facility; or (b) deposited into a fund established under 10 U.S.C. § 2919(c) for use, to the extent provided for in an appropriations Act, by the military department, Defense Agency, or instrumentality receiving such financial incentive for energy management initiatives.

1202 DEFINITIONS

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

120201. Energy Savings Performance Contracts

An Energy Savings Performance Contract (ESPC) is a contract between the Federal government and an energy service company (ESCO) that allows agencies to accomplish energy projects for their facilities without up-front capital costs and without Congressional appropriations to pay for the improvements. The ESCO designs, implements, and arranges financing for an energy savings project that meets the Federal agency's needs. The ESCO guarantees that the improvements will generate savings sufficient to pay for the project over the term of the contract (up to 25 years). If the energy conservation measures installed by the ESCO do not deliver the guaranteed energy savings, the agency pays only an amount equal to the verified, not guaranteed, savings for that period. The ESCO must immediately determine the reasons for the under achieved energy savings during that period. If it is determined that the ESCO-installed and maintained equipment and controls malfunctioned, then the ESCO must immediately correct the malfunction. If it is determined that the ESCO-installed and government-maintained equipment and controls malfunctioned, the government may be required to pay the guaranteed savings to the ESCO for that period. After the contract ends, any additional cost savings accrue to the agency. The additional savings are transferred to an extended availability account, in accordance with section 1203 for use as indicated in subparagraph 120103.B. An ESPC is an alternative financing tool to reduce energy use, modernize aging equipment, reduce maintenance costs, and deploy energy efficiency and renewable energy technologies. See ***DoD Instruction 4170.11***, Installation Energy Management, for further details on ESPC.

120202. Energy Cost Savings

Energy cost savings, for the purposes of 10 U.S.C. § 2912, are savings realized as the result of a reduction in the cost of energy as measured against budget documentation, which is determined by metering (if available) or by other methodology, such as professionally acceptable engineering models and estimates, as determined appropriate by the Component Head. The Component Head or designee may define the types of energy commodities to be included in their programs (water is not included as a commodity for this purpose, per subparagraph 120103.A). Energy cost savings could refer to funding remaining after an energy bill is paid or to additional unobligated funding made available in an amount equivalent to avoided cost from energy not consumed during the previous fiscal year.

120203. Extended Availability of Funds

Except as stated in subparagraph 120103.A, pursuant to 10 U.S.C. § 2912, savings realized by DoD and transferred to an extended availability account, including financial benefits, remain available for obligation until expended in accordance with subparagraph 120103.B, without additional authorization or appropriation.

120204. Cost Effectiveness

An energy system using solar energy or other renewable forms of energy is considered cost effective if the cost difference between the original investment cost of that energy system, and the original investment cost of an energy system not using renewable energy sources can be recovered over the expected life of the facility.

120205. Extended Availability of Funds Account

This is an account established for each appropriation to which identified energy cost savings and unobligated balances resulting from such energy cost savings, or a portion thereof, are transferred. The balances in this account remain available for obligation until expended. The Military Department realizing the savings must retain, until expended, an equivalent amount of funding in the extended year account, using appropriately established financial management accounting codes to separate the funding (50 percent of the savings amount for the military department and 50 percent for the installation) to ensure use in accordance with subparagraph 120103.B.

120206. Component Head or Designee

The Secretary of a military department, the Director of a defense agency, 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 ENERGY SAVINGS AND INCENTIVES RECEIVED FROM UTILITIES

120301. Extended Availability from Energy Savings

Energy savings amounts having an extended availability must be transferred to extended availability accounts for execution.

A. An extended availability account must 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 extended availability accounts must be made by a Standard Form ***(SF) 1151***, "Nonexpenditure Transfer Authorization," or other authorized Service-specific method that incorporates all SF 1151 requirements (see Volume 14, Chapter 1**,** subparagraph 010206.B.6). Reprogramming actions will not be required in the case of such transfers.

C. Accounting, appropriate controls, and oversight for amounts in extended availability accounts must be established at the level that use the accounts; this will be at the installation, Military Department, Defense Agency, and/or Office of the Secretary of Defense level.

120302. Financial Incentives

Financial incentives received from gas or electric utilities under 10 U.S.C. § 2913 are not considered energy cost savings. These incentives are credited to the installation's accounts used for operations and maintenance and remain available for the same purposes and the same period as the appropriation to which they are credited. Such incentives are refunds or rebates received as a check and deposited in the accounts used for operations and maintenance; they are not credits to the utility bill.

1204 REVENUES FROM THE SALE OF ELECTRICITY

120401. Sale of Electricity

Proceeds from sales of electricity from alternate energy and cogeneration production facilities under 10 U.S.C. § 2916 must be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy. The Secretary concerned or designee determines the accounts to which such proceeds must be credited. (See Treasury's Federal Account Symbols and Titles: ***The FAST Book*** for current accounts.) In the case of proceeds from the sale of electrical energy generated from any geothermal energy resource, 50 percent must be credited to the appropriation account, and 50 percent must be deposited in a special account per the guidelines that are described in 10 U.S.C. § 2916(b)(3).

120402. Use of Proceeds from the Sale of Electricity

Subject to the availability of appropriations for this purpose, proceeds credited may be used to carry out military construction projects for energy resilience, energy security, or energy conservation, under the energy performance plan developed by the Secretary of Defense under ***10 U.S.C § 2911(b)***, "Energy Policy of the Department of Defense," including minor military construction projects for energy resilience, energy security, or energy conservation, authorized under ***10 U.S.C. § 2805***, "Unspecified Minor Construction," which are designed to increase energy conservation.

*120403. Congressional Notification

A. Before carrying out an unspecified minor military construction project for energy resilience, energy security, or energy conservation, described in paragraph 120402 using proceeds from sales under paragraph 120401, the Secretary concerned must notify the appropriate committees of Congress of the project. For energy conservation projects, the notification must include the justification and cost estimate, the expected savings-to-investment ration, payback estimates, and the project's measurement and verification cost estimate. For energy resilience or energy security, the notification must include the rationale for the project, and known vulnerabilities. The project may then be carried out only after the end of the 14-day period beginning on the date the notification is received by Congress in an electronic medium pursuant to ***10 U.S.C. § 480***, "Reports to Congress: Submission in Electronic Form."

B. In accordance with the reporting parameters detailed in 10 U.S.C. § 2914, not later than 90 days after the end of each fiscal year (beginning with fiscal year 2017), the Secretary of Defense must submit to the appropriate committees of Congress a report on the status of the planned and active projects carried out (including completed projects).

1205 BUDGETING FOR ENERGY COST SAVINGS

The portion of the guaranteed savings due to the contractor for payment under ESPCs must be included in each military department's utility requirements submitted in budget requests for the length of the ESPCs entered into by that military department. The entire amount of guaranteed savings provided in ESPCs (including amounts for contract payments and amounts to be retained by installations) must be included in total utility requirements submitted as part of budget requests for the first five years of ESPCs. The total of the amounts requested must not exceed those that would have been requested in the absence of ESPCs. The Secretary concerned, or designee, must specify the procedures for identification of such amounts by installations, facilities, or operating locations at which ESPCs for that military department are in existence. In accordance with the Office of Management and Budget ***(OMB) Circular A-11, Appendix B***, "Budgetary Treatment of Lease-Purchases and Leases of Capital Assets," the costs of ESPCs may be scored on an annual basis, consistent with the guidance provided in OMB Memorandum M-98-13, "Federal Use of Energy Savings Performance Contracting," and OMB Memorandum M-12-21, "Addendum to OMB Memorandum M-98-13 on Federal Use of Energy Savings Performance Contracts and Utility Energy Service Contracts."

1206 CAPTURING BALANCES AVAILABLE FOR USE RESULTING FROM ENERGY CONSERVATION MEASURES

120601. Installation Commanders

A. When carrying over unobligated balances resulting from energy conservation, Installation Commanders or their designees must ensure energy cost savings amounts carried over for use beyond the fiscal year for which they were originally appropriated are authorized to be used only for funding initiatives specified by ***10 U.S.C. § 2912*** (see subparagraph 120103.B). Installation Commanders must also:

B. 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 based on the most current available consumption data and represent actual unobligated funds remaining in the appropriation accounts.

C. Ensure that the unobligated energy cost savings balances at year-end are carried forward for use beyond the fiscal year by transferring the funds to the extended availability of funds account.

D. 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.

E. Implement additional energy conservation initiatives approved by the Component Head, or designee and other projects as specified.

120602. Component Heads

The Component Head or designee must 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 must also ensure that procedures are established to provide sufficient time to compute the energy cost savings and identify the savings amounts to be transferred to the extended availability of funds account.

1207 ACCOUNTING FOR ENERGY COST SAVINGS

120701. Title 10, United States Code, Section 2912

The energy cost savings amounts realized in accordance with 10 U.S.C. § 2912 remain as unobligated balances available for obligation at the end of the fiscal year.

120702. Unobligated Balance Transfers

Unobligated balances covered by paragraph 120701 must be transferred to extended availability accounts on an SF 1151 or other authorized Service-specific method that incorporates all SF 1151 requirements (see paragraph 120301). The authority to be cited for the transfer is 10 U.S.C. § 2912. No further adjustments to the amounts carried forward are permitted once the balance is established in the extended availability account.

1208 REPORTING REQUIREMENTS

The standardized Service-specific reporting methods (e.g., the Army's General Fund Enterprise Business System) or the following requirements must be used to report the status of extended availability accounts:

120801. Accounting Report (Monthly) 1002

The following special procedures have been established for reporting extended availability obligated and unobligated balances on the Accounting Report (Monthly), (AR(M)) 1002, Appropriation Status by Fiscal Year Program and Subaccounts:

A. Normal Availability Obligated and Unobligated Balances

Identify and report as usual.

B. Extended Availability Unobligated Balances

Identify, in column F (Cumulative Unobligated Balance), unobligated extended availability amounts resulting from energy cost savings at the end of the normal availability period (e.g., FY 200X/200X+1 or FY 200X/200X+2, +3, and so on) and available unobligated amounts (that is, FY 2018/2019, FY 2018/2020, FY 2018/2021 for the FY 2018 account). The stub entry, column a (Budget Activity) identifies the unobligated extended availability amount as "Extended Availability - Energy Cost Savings." The amount reported must agree with line 2201 of the SF 133, "Report on Budget Execution" (see paragraph 120802).

C. Extended Availability Obligated Balances

Identify, in column e, obligations incurred against the extended availability account. The stub entry must identify those obligations as to the purpose for which the obligations were incurred. The reporting categories for the extended availability accounts must be continued for all fiscal years with remaining obligated balances against the extended availability account.

120802. Standard Form 133

At the end of the first fiscal year, use line 2201, "Unob(ligated) Bal(ance): Apportioned: Avail(able) in the current period" 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).