

after the date of the enactment of this Act [Oct. 28, 2004], 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, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress 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.”

#### EXTENSION OF AUTHORITY

Pub. L. 109-58, title I, §105(b), Aug. 8, 2005, 119 Stat. 611, provided that: “Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Aug. 8, 2005], shall be considered to have been entered into under that section.”

Pub. L. 108-375, div. A, title X, §1090(g), Oct. 28, 2004, 118 Stat. 2068, provided that: “Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act [Oct. 28, 2004], shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.”

#### ENERGY EFFICIENCY INCENTIVE

Pub. L. 100-456, div. A, title VII, §736, Sept. 29, 1988, 102 Stat. 2066, as amended by Pub. L. 101-189, div. A, title III, §331, Nov. 29, 1989, 103 Stat. 1417, provided that:

“(a) ENERGY CONSERVATION INCENTIVE.—In order to provide additional incentive for the Secretary of a military department to enter into contracts under title VIII of the National Energy Conservation Policy Act (42 U.S.C. 8287 et seq.), the Secretary may use the energy cost savings realized by the United States during the first five years under any such contract in the manner provided in subsection (b). The amount of savings available for use under subsection (b) shall be determined as provided in subsection (c) and shall remain available for obligation until expended.

“(b) AUTHORIZED USES OF SAVINGS.—The energy cost savings realized by the United States in each of the first five years under a contract may be used as follows:

“(1) One-half of the amount of such savings may be used for the acquisition of energy conserving measures for military installations, and such measures may be in addition to any such energy conserving measures acquired for military installations under contracts entered into under title VIII of the National Energy Conservation Policy Act.

“(2) One-half of the amount of such savings may be used for any morale, welfare, or recreation facility or service that is normally provided with appropriated funds, or for any minor military construction project (as defined in section 2805(a) of title 10, United States Code), 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.

“(c) DETERMINATION OF AMOUNT OF SAVINGS.—Not more than 90 days after the end of each of the first five years during which energy savings measures have been in operation under a contract entered into by the Secretary of a military department under title VIII of the National Energy Conservation Policy Act, the Secretary of the military department concerned shall determine the amount of energy cost savings realized by the United States under the terms of the contract during that year by reason of the energy savings measures acquired and installed at that installation pursuant to that contract.”

#### § 8287a. Payment of costs

Any amount paid by a Federal agency pursuant to any contract entered into under this subchapter may be paid only from funds appropriated or otherwise made available to the agency for fiscal year 1986 or any fiscal year thereafter for the payment of energy, water, or wastewater treatment expenses (and related operation and maintenance expenses).

(Pub. L. 95-619, title VIII, §802, as added Pub. L. 99-272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 142; amended Pub. L. 108-375, div. A, title X, §1090(b), Oct. 28, 2004, 118 Stat. 2067.)

#### AMENDMENTS

2004—Pub. L. 108-375 inserted “, water, or wastewater treatment” after “payment of energy”.

#### § 8287b. Reports

Each Federal agency shall periodically furnish the Secretary of Energy with full and complete information on its activities under this subchapter, and the Secretary shall include in the report submitted to Congress under section 8260<sup>1</sup> of this title a description of the progress made by each Federal agency in—

- (1) including the authority provided by this subchapter in its contracting practices; and
- (2) achieving energy savings under contracts entered into under this subchapter.

(Pub. L. 95-619, title VIII, §803, as added Pub. L. 99-272, title VII, §7201(a), Apr. 7, 1986, 100 Stat. 142.)

#### REFERENCES IN TEXT

Section 8260 of this title, referred to in text, was omitted in the general revision of part B (§8251 et seq.) of subchapter III of this chapter by Pub. L. 100-615, §2(a), Nov. 5, 1988, 102 Stat. 3185.

#### § 8287c. Definitions

For purposes of this subchapter, the following definitions apply:

(1) The term “Federal agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.

(2) The term “energy savings” means—

(A) a reduction in the cost of energy, water, or wastewater treatment, 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 in either interior or exterior applications;

<sup>1</sup> See References in Text note below.