

Department of Energy

§ 436.100

from funds appropriated or otherwise made available to the agency for the payment of energy expenses and related operation and maintenance expenses which would have been incurred without an energy savings performance contract. The amount the agency would have paid is equal to:

(1) The energy baseline under the energy savings performance contract (adjusted if appropriate under § 436.37), multiplied by the unit energy cost; and

(2) Any related operations and maintenance cost prior to implementation of energy conservation measures, adjusted for increases in labor and material price indices.

(b) Federal agencies may incur obligations pursuant to energy savings performance contracts to finance energy conservation measures provided guaranteed energy cost savings exceed the contractor's debt service requirements.

§ 436.37 Annual energy audits.

(a) After contractor implementation of energy conservation measures and annually thereafter during the contract term, an annual energy audit shall be conducted by the Federal agency or the contractor as determined by the contract. The annual energy audit shall verify the achievement of annual energy cost savings performance guarantees provided by the contractor.

(b) The energy baseline is subject to adjustment due to changes beyond the contractor's control, such as—

- (1) Physical changes to building;
- (2) Hours of use or occupancy;
- (3) Area of conditioned space;
- (4) Addition or removal of energy consuming equipment or systems;
- (5) Energy consuming equipment operating conditions;
- (6) Weather (i.e., cooling and heating degree days); and
- (7) Utility rates.

(c) In the solicitation or in the contract, Federal agencies shall specify requirements for annual energy audits, the energy baseline, and baseline adjustment procedures.

§ 436.38 Terminating contracts.

(a) Except as otherwise provided by this subpart, termination of energy savings performance contracts shall be subject to the termination procedures

of the Federal Acquisition Regulation in 48 CFR part 49.

(b) In the event an energy savings performance contract is terminated for the convenience of a Federal agency, the termination liability of the Federal agency shall not exceed the cancellation ceiling set forth in the contract, for the year in which the contract is terminated.

Subparts C–E [Reserved]

Subpart F—Guidelines for General Operations Plans

AUTHORITY: Energy Policy and Conservation Act, as amended, 42 U.S.C. 6361; Executive Order 11912, as amended, 42 FR 37523 (July 20, 1977); National Energy Conservation Policy Act, title V, part 3, 42 U.S.C. 8251 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7254.

SOURCE: 45 FR 44561, July 1, 1980, unless otherwise noted.

§ 436.100 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to provide guidelines for use by Federal agencies in their development of overall 10-year energy management plans to establish energy conservation goals, to reduce the rate of energy consumption, to promote the efficient use of energy, to promote switching for petroleum-based fuels and natural gas to coal and other energy sources, to provide a methodology for reporting their progress in meeting the goals of those plans, and to promote emergency energy conservation planning to assuage the impact of a sudden disruption in the supply of oil-based fuels, natural gas or electricity. The plan is intended to provide the cornerstone for a program to conserve energy in the general operations of an agency.

(b) *Scope.* This subpart applies to all general operations of Federal agencies and is applicable to management of all energy used by Federal agencies that is excluded from coverage pursuant to section 543(a)(2) of part 3 of title V of the National Energy Conservation Policy Act, as amended (42 U.S.C. 8251–8261).

[45 FR 44561, July 1, 1980, as amended at 55 FR 48223, Nov. 20, 1990]