



DEPARTMENT OF ENERGY

10 CFR Part 436

RIN 1901-AB63

Energy Savings Performance Contract Procedures and Methods Technical Amendment

AGENCY: Federal Energy Management Program, Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The U.S. Department of Energy (DOE) is publishing this technical amendment to remove a regulatory provision specifying that the energy savings performance contract (ESPC) regulations apply only to ESPCs awarded on or before September 30, 2003. DOE’s technical amendment to remove the regulatory sunset date will make the regulations consistent with the statutory authority.

DATES: The effective date of this technical amendment is [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

Section 155(a) of the Energy Policy Act of 1992 (EPAAct 1992, Pub. L. 102-486) directed DOE, with the concurrence of the Federal Acquisition Regulatory Council, to “establish procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy

service contractors.” On April 10, 1995, DOE published a final rule implementing the current ESPC regulations (the 1995 Final Rule) (60 FR 18326), which included the sunset date originally in section 155 of the Energy Policy Act of 1992 (Pub. L. 102-486). Specifically, section 155(c)(1) of EAct 1992 provided, “The authority to enter into new contracts under this section shall cease to be effective five years after the date procedures and methods are established. . .”. The statutory sunset date was subsequently extended several times¹ until the ESPC statutory authority was permanently reauthorized by section 514 of the Energy Independence and Security Act of 2007 (Pub. L. 110-140), which removed the sunset language from 42 U.S.C. 8287. In this rule, DOE is removing from 10 CFR 436.30(a) the provision specifying that subpart B applies only to ESPCs awarded on or before September 30, 2003. DOE’s removal of the regulatory sunset date will make the regulations consistent with the statutory authority.

II. Need for Correction

Currently, 10 CFR 436.30(a) specifies that subpart B applies only to ESPCs awarded on or before September 30, 2003. This provision is not consistent with current ESPC statutory authority, which was permanently reauthorized by EISA section 514. The regulatory amendment in this final rule makes the regulations consistent with statutory authority and therefore is technical in nature. DOE has historically updated the sunset language in the regulations to mirror the statutory language. (65 FR 39784; June 28, 2000). This final rule similarly updates the regulatory language to be consistent with statutory authority.

III. Procedural Issues and Regulatory Review

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), DOE finds that there is good cause not to issue a separate notice to solicit public comment on the change made by this rule. Issuing a separate notice to solicit public comment is unnecessary. This rule makes a non-substantive change to the regulations and simply provides consistency between the

¹ Energy Conservation Reauthorization Act of 1998 (Pub. L. 105-388); Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375); Energy Policy Act of 2005 (Pub. L. 109-58).

regulation and statutory authority. Providing prior notice and an opportunity for public comment on such a change serves no useful purpose.

As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule; technical amendment.

List of Subjects in 10 CFR Part 436

Energy conservation; Energy Savings Performance Contracts, Federal buildings and facilities, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on March 13, 2024, by Mary Sotos, Director of the Federal Energy Management Program, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Signed in Washington, DC, on March 14, 2024.

Treena V. Garrett,

Federal Register Liaison Officer,

U.S. Department of Energy.

For the reasons set forth in the preamble, DOE amends part 436 of chapter II, of title 10 of the Code of Federal Regulations, as set forth below:

PART 436 – FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS

The authority citation for part 436 is revised to read as follows:

Authority: 42 U.S.C. 7101 et seq.; 42 U.S.C. 8254; 42 U.S.C. 8258; 42 U.S.C. 8259b; 42 U.S.C. 8287, et seq.

2. Amend § 436.30 by revising paragraph (a) to read as follows:

§ 436.30 Purpose and scope.

(a) *General.* This subpart provides procedures and methods which apply to Federal agencies with regard to the award and administration of energy savings performance contracts. This subpart applies in addition to the Federal Acquisition Regulation at Title 48 of the CFR and related Federal agency regulations. The provisions of this subpart are controlling with regard to energy savings performance contracts notwithstanding any conflicting provisions of the Federal Acquisition Regulation and related Federal agency regulations.

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