



Guidelines Establishing Criteria for Excluding Buildings

from the
Energy Performance Requirements
of Section 543 of the
National Energy Conservation Policy Act
as amended by the
Energy Policy Act of 2005
January 27, 2006



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Federal Energy Management Program

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January 27, 2006

These guidelines and accompanying criteria fulfill the requirement under Section 543(c)(3) of the National Energy Conservation Policy Act (NECPA) as amended by the Energy Policy Act of 2005 (EPACT). Section 543(c)(3) states that the Secretary of Energy shall issue guidelines that establish criteria for exclusions from the energy performance requirement for a fiscal year, any Federal building or collection of Federal buildings, within the statutory framework provided by the law. The purpose of these guidelines is to clarify and explicate, as necessary, the statutory framework for excluding buildings. This framework is summarized in the table below.

Type of Building/Structure	Criteria for Goal Exclusion	Reporting Requirement
Non-Federal Building where tenant agency receives no energy bills (No Expectation to Report)	None required	None
Assumed Excluded Structures and Processes Not Qualified as Federal Buildings	None required	<ul style="list-style-type: none"> • Identity of Building/Structure • Energy consumption & costs • Square footage (if applicable)
Federal Buildings Excluded from Energy Performance Requirements	<ol style="list-style-type: none"> 1. Impracticability due to energy intensiveness or national security function 2. Completed energy management reports 3. Compliance with all energy efficiency requirements 4. Implementation of all cost-effective energy projects in the building 	<ul style="list-style-type: none"> • Identity of Building • Energy consumption & costs • Square footage

BUILDINGS FOR WHICH THERE IS NO EXPECTATION TO REPORT ENERGY DATA OF ANY KIND

Agencies are not required to identify or report information on non-Federal buildings and building space for which the Government does not directly pay for energy used, such as:

- **Buildings that are privately owned but happen to be co-located on Federal lands or military installations.** For example, fast food restaurants, credit union buildings, and privatized family housing on military bases are not considered part of the Federal building inventory, therefore it is not expected that information be reported on these buildings.
- **Buildings with Fully-Serviced Leases.** DOE assumes that agencies will not list or report energy consumption in buildings with fully-serviced leases, where the landlord is responsible for paying energy bills. In these cases, the agency has little control over building operations and cannot implement energy efficiency measures.

ASSUMED EXCLUSION OF STRUCTURES AND PROCESSES NOT QUALIFIED AS FEDERAL BUILDINGS

Some clarification is needed to limit the broad class of structures controlled by Federal agencies to those that are appropriately defined as buildings and address necessary reporting contingencies for buildings under construction or renovation and for certain types of leased space. Therefore, the following structures/buildings are assumed to already be excluded from the energy performance requirements of Section 543:

- **Structures such as outside parking garages which consume essentially only lighting energy, yet are classed as buildings.** While great opportunity exists for energy efficiency measures in such structures, the relatively lower energy use per square foot of the unconditioned space should not be counted as “building” space. Energy used for airport and street lighting not directly associated with a building may also be assumed to be excluded from goals.

- **Federal ships that consume “Cold Iron Energy,”** (energy used to supply power and heat to ships docked in port) and airplanes or other vehicles that are supplied with utility-provided energy.
- **Buildings where energy usage is skewed significantly due to reasons such as: buildings entering or leaving the inventory during the year, buildings down-scaled operationally to prepare for decontamination, decommissioning and disposal, and buildings undergoing major renovation and/or major asbestos removal.** These buildings may be excluded only during the fiscal year when energy usage is skewed. Energy efficiency measures should be considered for down-scaled buildings awaiting disposal if the measures pay for themselves prior to building demolition.
- **Assumed exclusions for certain types of leased space.** This applies to leased space where the Government may pay for some energy but not all, the space comprises only part of a building, or the expiration date of the lease limits the ability to undertake energy conservation measures.
- **Separately-metered energy-intensive loads that are driven by mission and operational requirements, not necessarily buildings, and not influenced by conventional building energy conservation measures.** Examples would include training simulators, health-care equipment, facilities which generate and/or transmit electricity or steam, waterway shipping locks, and transmitters and other types of electronic installations.



FOUR FINDINGS NECESSARY FOR EXCLUDING BUILDINGS FROM ENERGY REQUIREMENTS

Section 543 of NECPA requires each agency seeking to exclude buildings from the energy performance requirements to annually list these buildings in their annual report required under Section 548(a) of NECPA. For each building (or collection of buildings) listed, the head of the agency must demonstrate four critical findings:

- 1) Energy requirements are impracticable;
- 2) All Federally required energy management reports have been completed and submitted;
- 3) Agency has achieved compliance with all energy efficiency requirements; and
- 4) Implementation of all practicable, life cycle cost-effective projects at the excluded building(s).

The sections below describe what constitutes an eligible finding for each of the four.

1) Impracticability

The statute specifically states that a finding of impracticability shall be based on one of two criteria:

- the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; **or**
- the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.

A finding of **impracticability based on energy intensiveness** shall apply to buildings and facilities in which conventional performance measures are rendered meaningless by an overwhelming proportion of process-dedicated energy. Facilities with energy-intensive processes where agencies can clearly demonstrate that process-dedicated energy overwhelms other building energy consumption, and the fluctuation in the operation of the process would significantly impact meeting the energy performance requirements, may be excluded. Agencies must provide a justification that explains why process-dedicated energy in these facilities may impact the agency's ability to meet the goals.

A finding of **impracticability based on performance of a national security function** shall apply to buildings and facilities in which national security is overwhelmingly the primary function of the buildings and this either 1) prevents the implementation of energy efficiency measures or 2) prohibits reporting of energy

consumption, costs, or square footage data on the subject buildings because it would pose a demonstrated security risk.

2) Completion of Energy Management Reports

To comply with this finding, the head of the agency must demonstrate that the agency has completed and submitted to the Department of Energy the annual reports required to-date under Section 548(a) of NECPA and Executive Order 13123. Currently, the annual reporting requirement includes the following components:

- Agency Annual Report on Energy Management. This includes the Annual Energy Management Data Report spreadsheet with energy; consumption and cost data and required narrative.
- Federal Agency Energy Scorecard (as required by the Office of Management and Budget); and
- Agency Energy Management Implementation Plan as required under Executive Order 13123.

3) Compliance with Energy Efficiency Requirements

To meet the terms of this finding, the head of the agency must demonstrate that the agency is in compliance with the energy efficiency requirements of current law and applicable Executive Orders. For the initial fiscal year 2006 reporting period, evidence of compliance will be the FY 2005 Agency Energy Scorecard submitted to the Department of Energy. Agencies will be considered in compliance as long as each Scorecard item is completed along with explanations for items in which performance falls short. Any changes in the required evidence of compliance for subsequent years will be included in the Annual Agency Energy Reporting Guidance package issued by the Department of Energy.

4) Implementation of All Life Cycle Cost-Effective Projects

To satisfy this finding, the head of the agency must demonstrate that for the building(s) being excluded, all practicable energy and water conservation measures have been installed with payback periods of less than 10 years, as determined by using the methods and procedures developed pursuant to NECPA Section 544, Establishment and Use of Life Cycle Cost Methods and Procedures. Evidence of this finding may include an energy audit conducted within the last five years identifying no potential cost-effective energy efficiency measures or a list of energy efficiency measures implemented in cases where an energy audit does identify potential measures.



GUIDANCE FOR AGENCIES TO REPORT PROPOSED EXCLUSIONS

These criteria and guidelines will be incorporated into the annual DOE Reporting Guidance for the *Annual Report to Congress on Federal Government Energy Management* for FY 2006. In subsequent years, these criteria will be subject to change as implementation issues arise and are addressed.

Although buildings found to be excluded according to the previously-stated criteria are not subject to the energy performance requirements of Section 543 of NECPA, DOE will continue to collect energy consumption data for these buildings under the reporting category of “Excluded Buildings.” This ensures that accurate reporting on overall Federal energy consumption is maintained.

Agencies should report aggregate energy consumption in excluded buildings for each energy type in the reporting units listed below:

Electricity	(Megawatt Hours)
Fuel Oil	(Thousands of Gallons)
Natural Gas	(Thousand Cubic Feet)
LPG/Propane	(Thousands of Gallons)
Coal	(Short Ton)
Purchased Steam	(Billion Btu)
Other	(Billion Btu)

Each agency will submit to DOE its aggregate annual costs for each fuel type consumed in its excluded buildings as well as the aggregate gross square footage of the excluded buildings.





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