

Guide to STATE & LOCAL Energy Performance Regulations

Version 3.0



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INTRODUCTION

To confront climate change, nations around the world are searching for effective policies that reduce greenhouse gas emissions. In the U.S., commercial buildings account for roughly 19% of energy-related carbon dioxide emissions.

Worldwide, commercial building energy rating and disclosure mandates are becoming more common as policymakers target the building sector in energy and climate protection policies. As such, policymakers are becoming more attuned to building energy performance rating and disclosure mandates. These mandates are primarily aimed at existing buildings, which comprise the vast majority of the building stock and present the largest opportunity for reductions in energy and greenhouse gas emissions.

In the past few years, some states and cities have enacted policies requiring performance rating and disclosure for privately owned commercial buildings. With additional rating policy activities underway in more than a half-dozen jurisdictions, a proliferation of rating policies appears likely over the next several years. In the absence of federal policy, states and cities have tailored rating and disclosure policies according to local needs and political considerations. This has resulted both in policy innovation and widely varying requirements among jurisdictions. To date, all U.S. policies leverage ENERGY STAR® software to generate ratings based on building operations data.

One of the key reasons for enacting rating and disclosure mandates is to convey building energy consumption data to real estate consumers, such as tenants, investors and lenders, who may be affected by buying, leasing or financing properties with lower energy costs. With more available energy consumption data, building consumers can begin to factor energy efficiency and costs into their purchasing decisions.

To keep real estate professionals informed, CBRE and IMT have partnered to develop the following summary guide that provides a brief overview of the regulatory mandates in each jurisdiction. For a comprehensive review of existing U.S. building energy rating and disclosure laws, visit buildingrating.org.

AUSTIN

Energy Conservation Audit & Disclosure Ordinance (ECAD)

Policy

The Energy Conservation Audit and Disclosure (ECAD) ordinance requires Austin commercial buildings that receive electricity from Austin Energy to report an energy rating by June 1 annually using EPA ENERGY STAR Portfolio Manager. Benchmarking of nonresidential buildings commences based on the following schedule:

June 1, 2012: Buildings 75,000 square feet and greater

June 1, 2013: Buildings 30,000 square feet to 74,999 square feet

June 1, 2014: Buildings 10,000 square feet to 29,999 square feet

Rating a commercial building and **submitting the rating** to Austin Energy and to prospective buyers during a building sale is required by law. Improving the rating and making the building more efficient is voluntary. Rebates and tax credits can help pay for improvements and lower energy bills.

Multifamily buildings of five or more units are not subject to benchmarking requirements, but energy audits are required once buildings reach 10 years of age, and every 10 years thereafter. Multifamily buildings that use more than 150% of the average energy use of other multifamily buildings in the Austin Energy service area are required to reduce their energy use by 20%. Results of multifamily energy audits must be posted within each building and provided to prospective tenants at the time of lease application.

Reporting and Disclosure

Follow the **How to Benchmark Your Building/Facility Guide** to use Portfolio Manager to benchmark and report required information to Austin Energy. For multifamily buildings, contact a **certified ECAD auditor** to complete the building audit and submit the results to Austin Energy. Benchmarking results and energy audits submitted to Austin Energy remain confidential.

Exemptions

Benchmarking is not required for buildings classified as manufacturing buildings. Multifamily buildings are exempt from energy audits if the owner has completed certain building upgrades through Austin Energy's rebate programs within 10 years.

Violations and Penalties

Non-compliance with the ECAD ordinance is a Class C misdemeanor and subject to a fine of up to \$500. If criminal negligence is determined, a fine of up to \$2,000 may be assessed.

More Information

Visit austinenergy.com

BOSTON

City of Boston Code Ordinances, Chapter VII, Section 7.2.1

Policy

Boston's Energy Reporting and Disclosure Ordinance requires building owners to benchmark commercial and residential buildings by May 15 annually using EPA ENERGY STAR Portfolio Manager and to submit a compliance report to the City of Boston's Air Pollution Control Commission. The initial compliance schedule is as follows:

May 15, 2014: Nonresidential buildings 50,000 square feet and greater

May 15, 2015: Residential buildings 50 Units/50,000 square feet and greater

May 15, 2016: Nonresidential buildings 35,000 square feet to 49,999 square feet

May 15, 2017: Residential buildings 35 Units/35,000 square feet to 49 Units/49,999 square feet

Building owners must complete an energy assessment or action for each building subject to reporting requirements within five years of its first reporting deadline and within every five year period thereafter. The specific requirements, qualifying actions and exemptions for energy assessments and actions are currently being determined by the Air Pollution Control Commission.

Reporting and Disclosure

The Air Pollution Control Commission is currently drafting procedures for the benchmarking and the energy assessment or action requirements.

Exemptions

The Air Pollution Control Commission is determining whether there are any circumstances that qualify for exemption.

Violations and Penalties

Building owners and nonresidential tenants who fail to comply with reporting requirements are subject to the following fines, and each day of non-compliance shall count as a violation:

Non-residential buildings 50,000 square feet or greater: Up to \$200 per violation

Non-residential buildings 35,000 square feet to 49,000 square feet: Up to \$75 per violation

Residential buildings equal to or greater than 50 Units/50,000 square feet: \$200 per violation

Residential buildings 35 Units/35,000 square feet to 50 Units/50,000 square feet: \$75 per violation

The maximum fine per calendar year is \$3,000 per building or tenancy.

More Information

Visit cityofboston.gov

CALIFORNIA

Assembly Bill 1103

Policy

Assembly Bill 1103 requires nonresidential property owners within California to disclose EPA ENERGY STAR Portfolio Manager benchmarking information when entire properties are sold, leased or financed. Building owners are required to begin disclosing benchmarking information during transactions according to the following schedule:

January 1, 2014: Buildings 10,000 square feet and greater

Nonresidential building owners are required to make two separate disclosures to comply with AB 1103. Owners must submit a Compliance Report to the California Energy Commission and a California Building Energy Use Disclosure Package to the following transactional parties:

- Prospective buyer of an entire building, at least 24 hours prior to execution of a sales contract.
- Prospective lessee of an entire building, at least 24 hours prior to execution of a lease.
- Prospective lender financing an entire building, at or before the time a loan application is submitted.

Reporting and Disclosure

Follow the instructions in the [Nonresidential Building Energy Use Disclosure](#) and use Portfolio Manager to record and submit a Compliance Report to the California Energy Commission. The Compliance Report submitted to the California Energy Commission remains confidential. Provide the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist and the Facility Summary to the transactional party.

Exemptions

No exemptions are specified in the policy documents.

Violations and Penalties

California can fine building owners for failing to submit the California Building Energy Use Report to the CEC. The state has limited authority to enforce nondisclosures of energy performance data to prospective counterparties.

More Information

Visit energy.ca.gov

DISTRICT OF COLUMBIA

Clean and Affordable Energy Act of 2008

Policy

The Clean and Affordable Energy Act of 2008 requires nonresidential and multifamily buildings to be annually benchmarked by April 1 using EPA ENERGY STAR Portfolio Manager. The compliance schedule is as follows:

April 1, 2013: Buildings 100,000 square feet and greater

April 1, 2014: Buildings 50,000 square feet to 99,999 square feet

In addition to 2012 data, building owners are required to submit 2010 and 2011 data for certain building sizes by the initial April 1 deadline. For buildings 150,000 square feet and greater, building owners are required to submit data for 2011. For buildings 200,000 square feet and greater, building owners are required to submit 2010 and 2011 data.

Beginning with the second annual ENERGY STAR benchmarking report for each building, the District Department of the Environment (DDOE) will make the data accessible to the public via an online database.

Newly constructed and substantially renovated nonresidential and multifamily buildings filing a first construction permit after January 1, 2012, are required to generate energy performance projections using Target Finder and report that information to DDOE prior to the start of construction. The requirement only affects projects of 50,000 square feet or more.

Reporting and Disclosure

Review the guidance documents available on the DDOE [compliance website](#) and use Portfolio Manager to generate and submit required information to DDOE.

Exemptions

No exemptions are specified in the policy documents.

Violations and Penalties

If a building owner or nonresidential tenant fails to comply with reporting requirements, DDOE will issue a written warning. If the violation is not corrected after 30 days of written notice, DDOE can fine building owners and nonresidential tenants up to \$100 per day. Owners who are unable to get whole-building information will not be penalized for reporting partial benchmarking information, provided they comply with all partial benchmarking requirements.

More Information

Visit ddoe.dc.gov/energybenchmarking

MINNEAPOLIS

Commercial Building Rating and Disclosure Ordinance

Policy

Minneapolis' Commercial Building Rating and Disclosure Ordinance requires building owners to benchmark commercial buildings greater than 50,000 square feet by June 1 annually using EPA ENERGY STAR Portfolio Manager and to submit a compliance report to the City of Minneapolis. The requirement applies to any building that has more than 50,000 square feet of commercial space. The initial compliance schedule is as follows:

June 1, 2014: Buildings 100,000 square feet and greater

June 1, 2015: Buildings 50,000 square feet to 99,999 square feet

Beginning with the second annual benchmarking report for each building, the City of Minneapolis will make the data accessible to the public.

Reporting and Disclosure

The Department of Environmental Services is currently drafting reporting procedures.

Exemptions

Benchmarking is not required for:

- Industrial and residential buildings – when either of these uses accounts for more than 50% of a building's gross square footage
- New buildings – buildings that were issued a certificate of occupancy less than two years before the current reporting deadline
- Unoccupied buildings – buildings, or the commercial areas of mixed-use buildings, that were less than 50% occupied during the year for which reporting is due
- Financial hardship – buildings that are in verifiable financial distress, such as subject to tax lien sales, or currently owned by financial institutions due to borrower default

Violations and Penalties

If an owner or tenant fails to comply with the reporting requirements, the City of Minneapolis can issue a written warning. If the violation is not corrected after 45 days of written notice, the city may impose an administrative fine of \$200 for the first violation and \$250 for subsequent violations, up to a maximum of \$2000 for any 24-month period. The city may also deny, suspend, or revoke an owner's or tenant's certificate of commercial building registration or business license as penalty for noncompliance. Building owners will not be penalized for noncompliance of tenants, provided they comply with all partial benchmarking data requirements.

More Information

Visit minneapolismn.gov/environment

NEW YORK CITY

Local Laws 84 and 87

Policy

Local Laws 84 (benchmarking and disclosure) and 87 (audits and retro-commissioning) are part of the *Greener, Greater Buildings Plan*, a citywide effort to reduce energy consumption in existing buildings.

Local Law 84 requires building owners to annually benchmark nonresidential and multifamily properties over 50,000 square feet by May 1 and submit the data to New York City using EPA ENERGY STAR Portfolio Manager. The City will begin posting benchmarking information for nonresidential buildings on a public website in 2012, followed by multifamily buildings in 2013.

Local Law 87 requires energy audits and retro-commissioning of all properties over 50,000 square feet every 10 years. Phased-in compliance will follow a staggered schedule between 2013 and 2022 based on the last digit of the building's tax block number. Building owners must submit an Energy Efficiency Report to the NYC Department of Buildings by December 31 of the year the building comes due to demonstrate compliance.

Reporting and Disclosure

For benchmarking, follow the instructions found on New York City's [Green Buildings and Energy Efficiency website](#) and use Portfolio Manager to generate and submit the NYC Benchmarking Compliance Report to New York City. A [rule issued March 30, 2011](#) provides more detailed compliance requirements, including how to calculate gross area, how to handle multiple buildings on a lot, change of ownership, etc.

For energy audits and retro-commissioning, review the guidance found on the [LL87: Energy Audits and Retro-commissioning](#) page. Follow the guidelines found in the [Detailed Summary of LL87](#) to select a qualified energy auditing and retro-commissioning team. The required reporting form is scheduled for release in early 2013. The energy audit must meet the ASHRAE Level 2 audit requirements, and detailed information on the retro-commissioning requirements can be found in [LL87](#).

Exemptions

There are no exemptions to the benchmarking requirement. A building is exempted from the energy audit requirement if:

- The building is an EPA ENERGY STAR-labeled building for two of the three years prior to filing.
- The building has been certified in LEED® for Existing Buildings Operations and Maintenance within four years prior to filing.
- The building has been documented by a registered design professional as an ENERGY STAR or LEED certification equivalent.

Retro-commissioning is not required if the building obtains LEED for Existing Buildings certification two years prior to filing an energy efficiency report and has achieved LEED points for Existing Building Commissioning Investigation and Existing Building Commissioning Implementation. Click [here](#) for further details.

Buildings experiencing substantial financial hardship, including those on the Department of Finance's tax lien list, and those exempt from real property taxes under sections 420-a, 420-b, 446 or 462, will be eligible for extensions.

Violations and Penalties

Failure to benchmark will result in a building violation and a penalty of \$500. Continued failure to benchmark will result in an additional penalty of \$500 each quarter, for a maximum penalty of \$2,000 each year.

More Information

Visit nyc.gov

PHILADELPHIA

Bill Number 120428

Policy

Philadelphia's Bill Number 120428 requires building owners to benchmark commercial buildings greater than 50,000 square feet by June 30 annually using EPA ENERGY STAR Portfolio Manager and submit a compliance report to the City of Philadelphia. The commercial space in mixed-use buildings must be benchmarked when at least 50,000 square feet of the building is devoted to commercial uses. The initial compliance schedule is as follows:

October 31, 2013: Buildings 50,000 square feet and greater

June 30, 2014: Buildings 50,000 square feet and greater

Reporting and Disclosure

Follow the [Step by Step Guide to Compliance](#) and use Portfolio Manager to record and submit a Compliance Report to the City of Philadelphia.

Exemptions

Benchmarking is not required for:

- New buildings – buildings that were issued a certificate of occupancy during the year for which reporting is due
- Unoccupied buildings – buildings that were less than 50% occupied for more than 180 days during the year for which reporting is due
- Industrial buildings – buildings primarily used for manufacturing or other industrial purposes for which benchmarking results would predominantly reflect “process loads” rather than building energy use
- Financial hardship – buildings that are experiencing financial distress, or where benchmarking is not found to be in the public interest, as determined by the Mayor's Office of Sustainability

Violations and Penalties

Philadelphia can fine building owners up to \$300 for failing to comply with the reporting deadline during the first 30 days following the compliance deadline. Following the initial 30-day period, building owners can be fined \$100 per day for noncompliance.

More Information

Visit phillybuildingbenchmarking.com

SAN FRANCISCO

Existing Commercial Buildings Energy Performance Ordinance

Policy

The Existing Commercial Buildings Energy Performance Ordinance requires building owners to annually benchmark nonresidential buildings by April 1 using EPA ENERGY STAR Portfolio Manager and report an Annual Energy Benchmark Summary (AEBS) to the San Francisco Department of the Environment (SFDOE) and to existing tenants.

The ordinance also requires nonresidential buildings to receive energy audits. Energy audit compliance is rolled out in three groups, and building owners will be notified when a building becomes subject to the energy audit requirement. Audits will be due every five years after the date of the last completed audit. The initial compliance schedule for audits is as follows:

October 15, 2012: Due date for first group of buildings

April 1, 2013: Due date for second group of buildings

April 1, 2014: Due date for final group of buildings

SFDOE will post benchmarking information to a public website beginning with the second annual disclosure, and building owners must make the AEBS available to all tenants occupying the building. Energy audits are private and building owners do not need to disclose the information contained in building audits to SFDOE.

Reporting and Disclosure

For benchmarking, follow the [Annual Energy Benchmark Summary Instructions](#) and submit the information via Portfolio Manager to SFDOE.

For energy audits, building owners must contract with a [qualified energy auditor](#) to perform the audit, and a Confirmation of Energy Audit must be submitted to SFDOE. Building owners are not required to submit the actual energy audit.

Audits must meet the following minimum standards for the appropriate building size:

ASHRAE Level II Audit: Buildings 50,000 square feet and greater

ASHRAE Level I Audit: Buildings 10,000 square feet to 49,999 square feet

In lieu of audits, building owners may also choose to retro-commission their buildings to satisfy the requirement.

Exemptions

Benchmarking is not required for:

- New buildings – an extension to the date of submittal of an initial AEBS can be filed up to 24 months from the date the Certificate of Occupancy is issued
- Unoccupied buildings – buildings with less than one full-time occupant in the previous 12-month period

Energy audits are not required for:

- New construction – buildings constructed less than five years prior to the date the energy audit is due
- ENERGY STAR – buildings that have received the ENERGY STAR label for at least three of the five years preceding the due date for the energy audit
- LEED – buildings that have been certified under the LEED for Existing Buildings rating system within five years prior to the due date for the energy audit
- Financial distress – as determined by falling under a specific situation

- Unoccupied buildings – buildings with less than one full-time occupant in the previous 12-month period
- Exceptions to the energy audit requirement do not affect the requirements or date when an AEBS report is due.

Violations and Penalties

If an owner fails to file an AEBS report for 30 days or more after the deadline, the SFDOE can issue a written warning. If the violation is not corrected after 45 days of written notice, the SFDOE may impose administrative fines as follows:

Buildings 50,000 square feet or greater: Up to \$100/day for a maximum of 25 days in any 12-month period

Buildings 49,999 square feet or less: Up to \$50/day for a maximum of 25 days in any 12-month period

More Information

Visit sfenvironment.org

SEATTLE

Council Bill 116731

Policy

Seattle's Council Bill 116731 requires nonresidential and multifamily building owners to report an energy rating by April 1 annually using EPA ENERGY STAR Portfolio Manager. Building owners are also required to provide an energy disclosure report upon request to current tenants, prospective tenants, buyers, and lenders.

Building owners are required to submit benchmarking information annually to the City of Seattle. The benchmarking data submitted to the City remains confidential. Owners must also release a Statement of Energy Performance upon request to the below parties:

- A current tenant: within seven days of request
- A prospective tenant negotiating a lease agreement: within seven days of request, and at or before the time the owner presents the lease agreement
- A prospective buyer negotiating a purchase and sale agreement: within seven days of the request, and at or before the time the owner presents a sales contract
- A prospective lender considering a financing or refinancing application involving the sale or lease of an entire building or a separately owned portion of a building (e.g., condominium unit), tenant improvement, or major renovation, and certain other financing activities: within seven days of the request, and at or before the time the owner presents a loan application

Reporting and Disclosure

Follow the directions in the [Energy Benchmarking and Reporting How-To Guide](#) to benchmark the building in Portfolio Manager and release data to the City of Seattle Department of Planning and Development.

Use the [Steps to Create a Statement of Energy Performance](#) to create the Statement of Energy Performance that must be disclosed upon request to the parties described above. The Statement of Energy Performance must reflect the prior year's benchmarking submission.

Sub-Buildings and Owner Benchmarking Responsibilities

In situations where spaces within a single building are separately owned, space owners are encouraged to benchmark their sub-building spaces separately. Benchmarking and reporting by sub-building is permissible if the following conditions apply:

- Each sub-building is under common legal ownership or managed by a single owners' association with reporting responsibility
- Each sub-building is served by a separate building mechanical system
- Each sub-building is separately metered from other portions of the building

If a multi-owner building can't be divided into sub-buildings, and where no owners' association or similar entity exists, the owner of the largest portion of the building's gross square footage is responsible for complying with benchmarking and reporting requirements for the entire building.

Exemptions

Benchmarking is not required for buildings classified under the current Seattle building code in the:

- Factory Industrial Group: this includes buildings used for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair or processing operations.

- High-Hazard Group H: this includes buildings involved in the manufacture, processing, generation or storage of materials that constitute a significant physical or health hazard.

Violations and Penalties

Failure to submit a benchmarking report will result in fines that accrue quarterly, starting 90 days after the reporting deadlines for each year of required building energy data.

Quarterly fines are based on building size:

- Non-residential and multifamily buildings 50,000 square feet or greater: \$1,000 quarterly fine
- Non-residential and multifamily buildings 20,000 square feet to 49,999 square feet: \$500 quarterly fine

A building owner may also be fined for submitting an inaccurate performance report or for failing to disclose energy performance upon request. In addition, a tenant that fails to provide information necessary for a building owner to benchmark may be subject to the fine.

- First violation: \$150 fine
- Subsequent violations: \$500 fine

More Information

Visit seattle.gov and clerk.ci.seattle.wa.us

WASHINGTON

Efficiency First – SB5854

Policy

The Efficiency First ordinance is modeled after California AB 1103 and requires commercial building owners to benchmark buildings 10,000 square feet and greater and to disclose EPA ENERGY STAR Portfolio Manager benchmarking information to prospective buyers, lessees or lenders. Building owners are not required to submit benchmarking data to Washington State.

Reporting and Disclosure

Use Portfolio Manager to generate a benchmarking score for the building. Building owners are required to disclose the Portfolio Manager benchmarking data and rating to prospective buyers, lessees or lenders for the most recent continuously occupied 12-month period.

Violations and Penalties

No compliance or enforcement measures are specified in the policy documents.

More Information

Visit buildingrating.org

REGULATION SNAPSHOT

Jurisdiction	Benchmarking		Reporting	Disclosure					Audits	RCx	
	Non-Residential	Multi-Family		To Local Govt	Web	Tenants	Transactional Counterparties				
							Sale	Lease			Finance
Austin	10k SF+	5+ units	✓	-	-	✓	-	-	✓	-	
Boston	35k SF+	35+ units	✓	✓					✓		
California	10k SF+	-	✓	-	-	✓	✓	✓	-	-	
District of Columbia	50k SF+	50k SF+	✓	✓	-	-	-	-	-	-	
Minneapolis	50k SF+	-	✓	✓	-	-	-	-	-	-	
New York City	50k SF+	50k SF+	✓	✓	-	-	-	-	✓	✓	
San Francisco	10k SF+	-	✓	✓	✓	-	-	-	✓	-	
Philadelphia	50k SF+	-	✓	✓	-	✓	✓	-	-	-	
Seattle	20k SF+	20k SF+	✓	-	✓	✓	✓	✓	-	-	
Washington	10k SF+	-	-	-	-	✓	✓	✓	-	-	

Boulder	Policy Interest
Cambridge	Policy Interest
Chicago	Policy Interest
Orlando	Policy Interest
Portland	Policy Interest

Illinois, Massachusetts	Pilot program in progress
Connecticut, Colorado, Maryland, Michigan, New Mexico, Oregon, Tennessee, Vermont	Legislative Effort

NOTE: Every effort has been made to ensure accuracy and quality of this information at time of publication. Neither CBRE nor the Institute for Market Transformation takes responsibility for the subsequent use of this information, or any errors or omissions it may contain.