

# Guide to STATE & LOCAL Energy Performance Regulations

Version 1.0

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

# 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 or the Austin Energy Business Energy Analysis rating tool available through Austin Energy. Benchmarking of nonresidential buildings shall comply with the following schedule:

**June 1, 2012:** Buildings 75,000 SF and greater

**June 1, 2013:** Buildings 30,000 SF to 69,999 SF

**June 1, 2014:** Buildings 10,000 SF to 29,000 SF

Rating a building and **submitting the rating** to Austin Energy and to prospective buyers during a building sale transaction 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.

## Reporting and Disclosure

Follow the **ECAD Reporting Form Instructions** and submit the **ECAD Commercial Disclosure Form** to Austin Energy by **email** or by fax at 512.505.3932.

## Exemptions

The building does not need an energy rating if it is classified as a manufacturing building.

## 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](http://austinenergy.com)

# CALIFORNIA

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Assembly Bill 1103

## Policy

The California Energy Commission (CEC) developed regulations for executing the mandates of AB 1103 which require commercial property owners within California to disclose EPA ENERGY STAR Portfolio Manager benchmarking information when entire properties are sold, leased or financed according to the following schedule:

**January 1, 2012 or later\***: Buildings that measure more than 50,000 SF and buildings that measure 1,000 SF and greater that are solely occupied by the owner

**TBD**: Buildings that measure 10,000 to 49,999 SF

**TBD**: Buildings that measure 1,000 to 9,999 SF

\*Schedule subject to change by CEC

Nonresidential building owners or their agents must use Portfolio Manager at least 30 days before a disclosure is required to open an account, receive energy use data, calculate ratings and disclose energy usage data and ratings at the time of the specified real estate transaction. Utilities must provide at least the most recent 12 months of data to a building owner or agent within 15 days of verifying a request for data. For buildings with triple-net leases where tenants are metered directly, the utility company will provide the building owner or agent aggregated data for all tenant meters.

## Reporting and Disclosure

Building owners are required to make two separate disclosures to comply with AB 1103. Owners must disclose to the CEC a California Building Energy Use Report (custom template available in Portfolio Manager for electronic submission), and a California Building Energy Use Disclosure for the most recent 12-month period to any of the following:

- Prospective buyer of an entire building, at or before the time a sales contract is presented.
- Prospective lessee of an entire building, at or before the time a lease is presented.
- Prospective lender financing an entire building, at or before the time a loan application is presented.

This allows the considering party to take energy usage factors into account when making decisions regarding real estate transactions.

## 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](http://energy.ca.gov)

# DISTRICT OF COLUMBIA

Clean and Affordable Energy Act of 2008

## Policy

Privately owned nonresidential and multifamily buildings must be benchmarked annually using EPA ENERGY STAR Portfolio Manager. By April 1 of the following year, benchmarking reports of energy performance for each building must be submitted to the District Department of the Environment (DDOE). Upon receipt of the second annual ENERGY STAR benchmarking report for each building, DDOE will make the data accessible to the public via an online database.

The compliance schedule will be as follows:

**October 1, 2011:** Buildings over 200,000 SF of gross floor area

**April 1, 2012:** Buildings over 150,000 SF of gross floor area

**April 1, 2013:** Buildings over 100,000 SF of gross floor area

**April 1, 2014:** Buildings over 50,000 SF of gross floor area

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 affects projects of 50,000 SF or more. Additionally, those projects must be benchmarked using Portfolio Manager and report benchmarking information to DDOE for the first full calendar year after initial occupancy, and each year thereafter.

## Reporting and Disclosure

Nonresidential tenants are required to provide energy consumption and space use information to the building owner so that the owner can conduct benchmarking. If an owner is unable to submit whole-building benchmarking information to DDOE because of a nonresidential tenant's failure to report information, the owner must submit partial benchmarking information to DDOE accompanied by a Partial Nonresidential Data Explanation Form.

## Violations and Penalties

Building owners and nonresidential tenants who fail to comply with reporting requirements are subject to fines of \$100 per day for each day of noncompliance. Owners will not be penalized for reporting partial benchmarking information, provided they comply with all partial benchmarking requirements.

## More Information

Visit [greendc.gov](http://greendc.gov)

## 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 SF and electronically submit the data to New York City using EPA ENERGY STAR Portfolio Manager. The initial compliance date is August 1, 2011. To increase the transparency of building energy performance, 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 SF every 10 years. Compliance is being phased-in on 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 to demonstrate compliance.

### Benchmarking and Disclosure

By May 1 each year, the owner must submit the benchmarking data from the prior year to the City via a report electronically generated by Portfolio Manager, which is called the NYC Benchmarking Compliance Report. Submission must be made through a web link provided by the **Mayor's Office of Long-Term Planning and Sustainability**. The report must be completed electronically in Portfolio Manager for each lot required to benchmark. Owners must maintain certain records as proof of energy and water benchmarking. The building owner must request information from nonresidential, separately metered tenants detailing space use attributes on the Nonresidential Tenant Information Collection Form. 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. The form and the Rule are posted on the NYC Greener, Greater Buildings Plan (GGBP) website.

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.

### Energy Audits and Retro-Commissioning

By December 31 of the year the building comes due, the owner must submit to the City an Energy Efficiency Report, which includes the audit report and retro-commissioning report. However, there is a 2013 early compliance option available to all buildings. The audit must be an ASHRAE Level 2 audit of the property's base building systems, plus a walkthrough of the tenant spaces. The retro-commissioning also covers the base building systems and is defined in a detailed checklist in the law. The law also covers the specific requirements for qualified auditors and retro-commissioners, including licensing, certification and experience. A Rule to be promulgated by the end of 2011 will specify the compliance requirements and penalties in greater detail.

Extensions to audit and retro-commissioning deadlines may be granted for building owners with financial hardship. An energy audit is not required if, for two of the three years prior to filing: (1) the building is an ENERGY STAR labeled building or demonstrates comparable high performance for buildings ineligible for ENERGY STAR, (2) if the building has been certified in LEED® for Existing Buildings rating system within four years of filing or (3) if the building has only a central heating system and can demonstrate that it has six out of seven high-performance measures installed.

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.

## More Information

Visit [nyc.gov](http://nyc.gov)

# SAN FRANCISCO

## Existing Commercial Buildings Energy Performance Ordinance

### Policy

Building owners must annually benchmark nonresidential buildings 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 in the building according to the following schedule:

**October 1, 2011:** Buildings 75,000 SF and greater

**April 1, 2012:** Buildings 30,000 SF to 69,999 SF

**April 1, 2013:** Buildings 10,000 SF to 29,999 SF

The owner of any nonresidential building shall also conduct a comprehensive energy efficiency audit for each building. Energy efficiency audits shall meet or exceed ASHRAE procedures for Commercial Building Energy Audits (2004) and must be performed by or under the supervision of an energy professional.

**ASHRAE Level II Audit:** Buildings 50,000 SF and greater

**ASHRAE Level I Audit:** Buildings 10,000 SF to 49,999 SF

The Energy Professional shall prepare, sign and deliver to the owner a report of the energy efficiency audit which shall include: the date the audit was performed, a list of all retro-commissioning and retrofit measures available, an estimate of the approximate energy savings and avoided energy costs.

### Reporting and Disclosure

The owner of every nonresidential building greater than 10,000 SF shall annually file with the SFDOE the following reports:

1. AEBS with 12 continuous months of data for each building using Portfolio Manager
2. Confirmation of an energy efficiency audit for each covered building according to the following schedule:
  - Due dates for initial energy efficiency audits for all covered buildings shall be staggered over a three-year rolling deadline, starting no later than 12 months from the effective date of the ordinance, with subsequent energy efficiency audits and audit reports due every five years thereafter.
  - All buildings required to undertake an energy efficiency audit shall be assigned a specific date when a completed audit is due.
  - The SFDOE shall notify the owner of each covered building of the ordinance requirements one year prior to the date an energy efficiency audit is required to be completed.

SFDOE will post benchmarking information to a public website following its receipt of the second annual AEBS from owners. In order to engage building occupants in efforts to save energy, building owners must make the AEBS available to all tenants occupying the building.

### 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 a 12-month period

Energy efficiency audits are not required for:

1. New construction – buildings that were constructed less than five years prior to the date the energy performance summary is due
2. ENERGY STAR – buildings that have received the ENERGY STAR label for at least three of the five years preceding the filing of the energy performance summary
3. LEED – buildings that have been certified under the LEED for Existing Buildings Operations and Maintenance rating system within five years prior to the date the energy performance summary would be due
4. Financial distress – owners may apply for extensions of not more than one year in each instance

Exceptions to energy efficiency audit requirements 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 relevant 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 SF or greater:** Up to \$100 per day for a maximum of 25 days in any 12-month period

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

## More Information

Visit [sfenvironment.org](http://sfenvironment.org)

# SEATTLE

Council Bill 116731

## Policy

Nonresidential and multifamily building owners will be required to annually report and disclose EPA ENERGY STAR Portfolio Manager benchmarking data and performance ratings according to the following schedule:

**October 1, 2011:** Buildings over 50,000 SF

**April 1, 2012:** Buildings over 10,000 SF and multifamily buildings with five or more units

## Reporting and Disclosure

Building owners should follow these steps in ENERGY STAR Portfolio Manager to comply:

1. Review and confirm the accuracy of building information
2. Select the "City of Seattle Energy Disclosure" as an authorized service provider for each building
3. Enter the building identification number provided by the Department of Planning & Development (DPD) into the "City of Seattle Energy Disclosure Building ID" field for each building record. In April of each year, DPD will download annual building records, including aggregate energy consumption data for the previous calendar year. DPD staff will use the data to monitor changes in energy use across the entire portfolio of larger buildings in the city. This information will allow staff to identify market sectors with the greatest energy efficiency opportunities in order to guide development of future policies and incentive programs, and develop data on typical expected energy loads for different building uses.

Building owners are required to release building energy performance information as provided in the Portfolio Manager Statement of Energy Performance upon request to the following parties:

1. A current tenant – within seven days of request
2. A prospective tenant negotiating a lease agreement – within seven days of request, and at or before the time the owner presents the lease agreement
3. 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
4. A prospective lender considering a financing or refinancing application – within seven days of the request, and at or before the time the owner presents a loan application

Lending institutions can request a disclosure report while processing any transaction involving the sale or lease of an entire building or of a separately owned portion of a building (e.g., a condominium unit). A disclosure report can also be requested in conjunction with financing of other activities, such as tenant improvements or a major renovation. The Portfolio Manager Statement of Energy Performance shall be provided as the energy disclosure report and must be based on data from the 12 consecutive months of the previous calendar year.

## Sub-Buildings and Owner Benchmarking Responsibilities

In some cases, DPD is allowing the owners of mixed-use buildings to benchmark two or more space uses separately. Benchmarking and reporting by "sub-building" is permissible if the following conditions apply:

1. Each sub-building is under common legal ownership or managed by a single owners' association with reporting responsibility
2. Each sub-building is served by separate HVAC systems
3. Each sub-building is separately metered from other portions of the building

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

The building does not need an energy rating if it is a:

- Building classified under the current Seattle Building Code as Factory Industrial Group. This includes buildings used for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair or processing operations.
- Building classified under the current Seattle Building Code as 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

A \$150 citation may be issued the first time a building owner fails to prepare or update information in Portfolio Manager. If a Portfolio Manager benchmarking report is not filed within 15 days of the date the citation is issued, the City may issue a notice of violation with a penalty of \$150 per day for the first 10 days of noncompliance, and \$500 per day for each day in violation past the 10th day until compliance is achieved.

If the City determines that a tenant has failed to provide information to a building owner as required, a \$150 citation may be issued for the first violation and a \$500 citation may be issued for the second or any subsequent violation.

## More Information

Visit [seattle.gov](http://seattle.gov) and [clerk.ci.seattle.wa.us](http://clerk.ci.seattle.wa.us)

# WASHINGTON

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Efficiency First – SB5854

## Policy

Ordinance is modeled after California AB 1103 and focuses on energy efficiency in the built environment. All nonpublic nonresidential buildings shall benchmark using EPA ENERGY STAR Portfolio Manager. The rating and energy performance requirements will be phased in as follows:

**January 1, 2011:** Buildings greater than 50,000 SF

**January 1, 2012:** Buildings greater than 10,000 SF

## Reporting and Disclosure

Based on the phased schedule, building owners, operators or agents of nonresidential buildings shall disclose Portfolio Manager benchmarking data and ratings 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 [imt.org](http://imt.org)

## UNDER CONSIDERATION

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Many other state and local governments are in the process of introducing bills related to energy performance reporting, including these locations:

**Colorado**

Connecticut

Maryland

**Massachusetts**

New Mexico

Oregon

**Portland**

**Tennessee**

**Vermont**

# REGULATION SNAPSHOT

	Jurisdiction	Effective	Size Threshold Commercial	Size Threshold Multi-Family	Disclosure Govt	Disclosure Public	Disclosure Transaction	Disclosure Tenants	Additional Elements
Cities	Austin	2012-2014	10,000+ SF	Audits	Yes	No	Buyers	No	Audits and upgrades for multi-family
	District of Columbia	2011- 2014	50,000+ SF	50,000+ SF	Yes	Yes	No	No	-
	New York City	2011-2013	50,000+ SF	50,000+ SF	Yes	Yes	No	No	ASHRAE Level II audits, retro-commissioning
	San Francisco	2011-2013	10,000+ SF	-	Yes	Yes	Buyers, Lessees, Lenders	Yes	ASHRAE Level I or II audits every 5 years
	Seattle	2011-2012	10,000+ SF	5+ units	Yes	No	Buyers, Lessees, Lenders	Yes	-
States	California	2012-2013	1,000+ SF	-	Yes	No	Buyers, Lessees, Lenders	No	Mandatory upgrades (AB 758)
	Washington	2011-2012	10,000+ SF	-	Yes	No	Buyers, Lessees, Lenders	No	Audits for public bldgs. w/ low ratings
	Colorado	2012-2013	-	-	-	-	Buyers, Lessees	-	-
	Connecticut	-	-	-	-	-	-	-	-
Under Consideration	Maryland	-	-	-	-	-	-	-	-
	Massachusetts	-	10,000+ SF	10,000+ SF	-	-	-	-	ASHRAE Level II audits and modeling
	New Mexico	-	-	-	-	-	-	-	-
	Oregon	-	-	-	-	-	-	-	-
	Portland	2011-2013	20,000+ SF	20,000+ SF	Yes	-	-	-	Mandatory upgrades for scores <30
	Tennessee	2011	Audits	-	-	-	-	Yes	Audit results displayed in bldg.
	Vermont	2012	Audits	Audits	-	-	Buyers	-	Modeling proposed

In the absence of a federal policy, rating and disclosure policies have been tailored to suit the needs and political considerations of states and cities. Consult each jurisdiction for specific regulation requirements.

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