

Guidance Document

CBPS Guidance Document 003

Published Date: 9/13/2022

Subject: **Compliance through Conditional Compliance**

Intended Audience: **Building owner, Authorized Representative and General Public**

Purpose

This document can be used to assist building owners in pursuing compliance through conditional compliance.

Reference

[Clean Buildings Performance Standard – integrated document](#)

Background

The Clean Buildings Performance Standard (CBPS) is mandatory for Tier 1 buildings located in Washington state. A Tier 1 building (formerly known as covered commercial building) is a building where the sum of nonresidential, hotel, motel and dormitory floor areas exceeds 50,000 gross square feet, excluding the parking garage area.

Compliance can be achieved by meeting the energy use intensity target (EUI_t) or through the investment criteria. If verification of either of these performance metrics cannot be met by the scheduled compliance date, application for conditional compliance may be pursued to avoid penalty.

Conditional compliance is a temporary compliance method that demonstrates the implementation of energy use reduction strategies required by the CBPS, but full compliance with the CBPS has not been verified.

Conditional compliance allows applicants additional time to verify and document compliance with the CBPS, either through meeting the EUI_t or through the investment criteria. An ASHRAE Level 2 energy audit is required for compliance through conditional compliance.

Compliance Dates

June 1, 2026
More than 220,000 sq. ft.

June 1, 2027
More 90,000 sq. ft. but less than 220,001 sq. ft.

June 1, 2028
More 50,000 sq. ft. but less than 90,001 sq. ft.

All energy efficiency measures (EEMs) identified by the energy audit and the energy management plan including the operations and maintenance program shall be in place by the mandatory compliance date to be eligible for **conditional compliance**.

Annual reporting is required until all conditions of compliance have been verified and completion reporting has been submitted and accepted by Commerce.

Forms

The following outlines the forms required to apply for conditional compliance:

- **Form A** – Shall be used to communicate compliance and reporting progress. It includes documentation of weather normalized energy use intensity (EUI) and the calculated EUI_t for the building. It also requires uploading documentation verifying the implementation of the building energy management plan and O&M program as specified by Commerce. [Download Form A here](#). This is a physical form produced by Commerce that will be filled out, signed and uploaded to the Clean Building Portal with associated supporting documentation.
- **Form B** – Identifies the building activity and energy use intensity target (EUI_t). Log into the [Clean Buildings Portal](#). Fill out the Building Detail and Activity Types pages in the Clean Buildings Portal to fulfill the requirements of Form B.
- **Form C** (If applicable) – Documents the weather normalized EUI in addition to other building characteristics and data. The Washington state specific report within ENERGY STAR Portfolio Manager is known as WA State Clean Buildings EUI Calculations, Form C. [Click on this link and log into your ENERGY STAR Portfolio Manager account](#). Complete this specific report in your account to fulfill the requirements of Form C.

Note: Form C not required for buildings unable to meet Section 5.2 Building Energy Monitoring

- **Form D** – Summarizes energy audits. Energy Audit Report, Form D is a Washington state specific report within the Audit Template form of the U.S. Department of Energy's Energy Asset Score Tool. Visit the [U.S Department of Energy - Building Energy Audit Template website](#). Select the Audit Template tab. Click on Add Audit Report and select WA Commerce CB Report. Fill out the information in the report and submit to fulfill the requirements of Form D.
- **Form F**- Used to perform a life cycle cost analysis (LCCA) of energy efficiency measures, as identified by an ASHRAE Level 2 energy audit ([WAC 194-50-080](#)) in accordance with the investment criteria of Normative Annex X ([WAC 194-50-140](#)). This is physical form produced by Commerce that must be submitted through the Clean Buildings Portal.

Note: Form F is not required for buildings that will meet the EUI_t through conditional compliance.

Guidance

- 1) **Pursue** compliance with the CBPS, either through meeting the EUI_t or through the investment criteria. See guide sheet CBPS 001 for meeting the EUI_t or CBPS 002 for the investment criteria on the [Clean Buildings webpage](#) for further details.

- 2) **Perform** an ASHRAE level 2 energy audit if the EUI is not met, identifying energy efficiency measures (EEMs) that reduce the buildings energy use intensity (EUI) to meet the EUI or are deemed to be cost effective in accordance with the investment criteria of [Normative Annex X](#).
- 3) **Implement** all EEMs identified in the energy audit that reduce energy use to meet the EUI, or as deemed to be cost effective in accordance with the investment criteria of Normative Annex X.
- 4) **Ensure** all mandatory requirements of the CBPS have been implemented. This includes the energy management plan and operations and maintenance (O&M) program.

Note: The O&M program must be implemented 12 months prior to the scheduled compliance date.

- 5) **Apply** for *conditional compliance* no later than 180 days prior to the building's compliance date if measurement and verification of full compliance will not occur prior to compliance date.

a) *Conditional Compliance* applications for buildings that will meet the EUI, require the following documentation:

- Form A
- Form B
- Form C
- Form D

b) *Conditional Compliance* applications for buildings that will meet the investment criteria, require the following documentation:

- Form A
- Form B
- Form C - Not required for buildings unable to measure EUI in accordance with section 5.2 Building energy monitoring.
- Form D
- Form F- Phased implementation schedule for replacement of systems or equipment EEMs shall be documented on Form F. Read section on phased implementation below for more details.

Note: Phased implementation of systems or equipment EEMs shall be documented within the Energy Management Plan and Form D, the Audit Template.

- 6) **Submit** annual reporting; required until compliance is met. Refer to Verification and Reporting section below for more details.



Phased Implementation

Buildings pursuing conditional compliance through the investment criteria may include phased implementation of EEMs such that the building owner is not required to replace a system or equipment before the end of the system or equipment's useful life. Phased implementation does not apply when meeting the EUI_t.

- System or equipment fitting this description shall be included in Form D Audit Template and Normative Annex X - Investment Criteria submission Form F (life cycle cost analysis tool) with a schedule for replacement.
- Phased implementation shall be documented in the energy management plan and capital management plan in accordance with Section 5. Documentation and reporting required for phase implementation are as follows:
 - ASHRAE Level 2 Energy Audit
 - Investment Criteria submission of Annex X life cycle cost analysis tool (Form F) with a schedule for replacement
 - Annual reporting is required until the identified measure has been implemented
- Completion reporting and verification of energy savings is required post implementation in accordance with Section 9.2.

Verification

- Verification of compliance for buildings pursuing the EUI_t through conditional compliance requires:
 - Within 15 months after the implementation of the optimized bundle of EEMs, the weather normalized EUI shall be recalculated by the energy manager (EM) from twelve consecutive months of measured energy use, and Form A shall be resubmitted to Commerce.
 - If the building's post implementation measured EUI is less than or equal to the energy target, the building complies with the CBPS and completion reporting shall be submitted to Commerce per completion reporting requirements listed in the Reporting section below.

- If the building's post implementation measured EUI is greater than the energy target, the building does not comply with the CBPS and the conditional compliance is suspended until either:
 - Additional cost effective EEMs have been implemented that reduce the subsequently measured Weather Normalized EUI to below the energy target and a new Form A is submitted to Commerce; or
 - Commerce revokes conditional compliance.

This process shall continue until verification of full compliance is achieved and Completion Reporting is accepted by Commerce or until the next compliance cycle (five-years from initial compliance date).

Note: Conditional compliance is maintained if continued annual reporting and evaluation of EEMs is sustained.

○ Verification of compliance for buildings pursuing the investment criteria through conditional compliance with a measurable EUI requires:

- Within 15 months of implementation of the optimized bundle of EEMs, building owners with conditional compliance or the qualified person representing the building owner shall submit verification that measured post implementation energy savings meet or exceed 75% of the energy savings projected in the energy audit reported in the application for conditional compliance.
- If the measured post implementation energy savings of the package of EEMs does not meet or exceed 75% of the energy savings projected in the energy audit, the conditional compliance is suspended until either:
 - Additional cost effective EEMs are implemented that reduce the subsequently measured energy savings of the package of EEMs so that it meets or exceeds 75% of the energy savings projected in the energy audit; or
 - Commerce revokes conditional compliance.

Note: If there are no more additional cost effective EEMs identified, conditional compliance is maintained if continued annual reporting and evaluation of EEMs is sustained in accordance with the CBPS.

This process shall continue until verification of full compliance is achieved and Completion Reporting is accepted by Commerce or until the next compliance cycle (five-years from initial compliance date).

○ Verification of compliance for buildings pursuing the investment criteria through conditional compliance without a measureable EUI requires:

- Verification of energy savings shall be performed using the methods of the International Performance Measurement & Verification Protocol, Concepts and Options for Determining Energy and Water Savings Volume I options A through D.
- If the measurement and verification protocol identified any outstanding performance issues, they shall be corrected and the verification protocol shall be repeated to assure savings estimated in the original audit are realized.

Reporting

- **Annual Reporting.** If measurement and verification extends one year or more beyond the compliance date or implementation is extended phased implementation, the following up to date forms shall be submitted to Commerce annually:

- Form A
- Form B
- Form C (if applicable)

Note: Form C is not required if unable to measure building EUI with Section 5.2.

○ **Completion reporting.** The following up to date reports shall be submitted to Commerce when all conditions of compliance have been verified and documented:

- Form A
- Form B
- Form C (if applicable)

Note: Form C is not required if unable to measure building EUI with Section 5.2.

Once Commerce has accepted all completion reporting documentation and has verified, full compliance shall be granted and no further action is necessary until the next compliance cycle.

For additional guidance or questions on how to achieve compliance through conditional compliance, complete the [Customer Support Form](#).