

California Energy Commission REVISED DRAFT REGULATIONS



Nonresidential Building Energy Use Disclosure Program

Draft Regulations

Title 20, Division 2, Chapter 4, Article 9, Sections 1680 - 1685

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PREFACE

The staff of the California Energy Commission is releasing draft regulations for implementing Assembly Bill (AB) 1103 (Saldaña, Stats. 2007, ch. 533), and AB 531 (Saldaña, Stats. 2009, ch. 323) for public review and comment. The draft regulations are available online at: <http://www.energy.ca.gov/ab1103/documents/index.html>

On July 15, 2009, the Energy Commission adopted an Order Instituting Rulemaking, opening the proceeding to develop and adopt new regulations for the nonresidential building energy use disclosure program, benchmarking and disclosures required by Public Resources Code section 25402.10. The Efficiency Committee held public workshops on August 13, 2009 and May 17, 2010 to receive public comments on initial drafts of the regulations.

The Energy Commission staff revised the draft regulations in response to comments made at the public workshops and the comments of a working group, which consisted of representatives from utilities, building owner associations, and other stakeholders. The Energy Commission staff is now seeking comments from the public on the draft regulations prior to beginning the formal rulemaking proceeding.

ABSTRACT

The California Energy Commission developed the draft regulations to fulfill the purposes of AB 1103, help carry out the Commission's mission of promoting energy efficiency in California, and to implement, interpret, and make specific the provisions of Public Resources Code, section 25402.10.

The proposed regulations require the owner of a nonresidential property within California, in advance of certain financial transactions, to benchmark the building's energy use using the U.S. EPA Portfolio Manager system and to disclose statements of the building's energy usage to potential buyers, lessees, and lenders. The draft regulations apply only when an entire nonresidential building is about to be bought, leased, or financed.

The proposed regulations also require utilities serving the building to release the most recent 12 months of energy use data for the entire building to an owner's U.S. EPA's Portfolio Manager account, upon request of the owner.

The draft regulations would add Article 9, Sections 1680 through 1685, to the California Code of Regulations, Title 20, Division 2, Chapter 4.

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**DRAFT REGULATIONS
AB 1103 (2007, Saldaña)
Nonresidential Building Energy Use Disclosure Program
Revised August 2011**

California Code of Regulations

Title 20. Public Utilities and Energy

**Division 2. State Energy Resources Conservation and
Development Commission**

Chapter 4. Energy Conservation

**Article 9. Nonresidential Building Benchmarking and
Disclosures**

Section 1680. Purpose

This article implements procedures, pursuant to Public Resources Code section 25402.10, for benchmarking and disclosing energy use data and energy use ratings for nonresidential buildings in California.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code.
Reference: Section 25402.10, Public Resources Code.

Section 1681. Scope

This article applies to all nonresidential buildings in California.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code.
Reference: Section 25402.10, Public Resources Code.

Section 1682. Definitions

The following definitions apply to this article:

- (a) "Building Owner" means a person possessing title to a nonresidential building, or an agent authorized to act on behalf of a person possessing title.
- (b) "Commission" means the California Energy Commission.
- (c) "Compliance Verification Report" is a ESPM report submitted electronically to the Commission that allows the Commission to verify that the required information has been uploaded.

- (d) "Data Checklist" is a standard report generated by ESPM that is designed to provide an at-a-glance summary of a property's physical and operating characteristics
- (e) "Disclosure Summary Sheet" means the Commission document detailing the contents and relevance of disclosures generated by Energy Star Portfolio Manager (ESPM).
- (f) "Energy Use Data" means a record of kilowatt hours, therms, or any other measure of energy, as defined by Section 24109, Public Resources Code, used by a nonresidential building.
- (g) "Energy Use Intensity" means the building's energy use measured in kBtus (kilo British thermal units) per square foot per year.
- (h) "Entire Building" means the portion of the building for which the owner possesses title.
- (i) "EPA" means the U.S. Environmental Protection Agency.
- (j) "Facility Summary" is a standard report generated by ESPM that is designed to summarize the space usage of a building and give a comparison of energy use as compared to national average and target use.
- (k) "Nonresidential Building" means a building of occupancy type A, B, E, I-1, I-2, M, R1, S, and type U parking garages, as defined in the California Building Code, title 24, section 302 et seq. (2007).
- (l) "Portfolio Manager" means the EPA's ENERGY STAR® program online tool for managing building energy use data.
- (m) "Portfolio Manager Energy Performance Rating" means an EPA energy efficiency measurement represented as a score from 1 to 100, normalized for a building's characteristics, operations, and regional weather.
- (n) "Square Feet" means total gross square footage of a building.
- (o) "Statement of Energy Performance" is a standard report generated by ESPM that is designed to communicate information about a building's energy performance in a format that is both understandable and easy-to-use in business transactions.
- (p) "Utility" means an entity providing energy to a nonresidential building owner or tenant.

Note: Authority cited: Section s 25213, 25218 (e), 25402.10, Public Resources Code.
 Reference: Section 24109, 25402.10, Public Resources Code; Sections 302 et seq., Title 24, California Building Code.

Section 1683. Schedule of Implementation

A building owner shall comply with this article according to the following schedule:

- (a) On or after July 1, 2012, for a building with total floor space measuring more than 50,000 square feet.
- (b) On or after January 1, 2013, for a building with a total floor space measuring more than 10,000 square feet and up to 50,000 square feet.
- (c) On or after July 1, 2013 for a building with a total floor space measuring at least 5,000 square feet and up to 10,000 square feet.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code.
Reference: Section 25402.10, Public Resources Code.

Section 1684. Disclosures

- (a) According to the implementation schedule established in Section 1683, a building owner shall disclose the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and the Facility Summary to:
 - (1) a prospective buyer of the entire building, as soon as practicable before execution of the sales contract; or
 - (2) a prospective lessee of the entire building, as soon as practicable before execution of the lease; or
 - (3) a prospective lender financing the entire building, as soon as practicable before submittal of the loan application.
- (b) An owner may supplement the above disclosure with forms from other sources, such as the ASTM International (formerly known as the American Society for Testing and Materials) checklist E2797-11 (2011), the Standard Practice for Building Energy Performance Assessment for a Building Involved in a Real Estate Transaction.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code.
Reference: Section 25402.10, Public Resources Code.

Section 1685. Benchmarking, Data Releases, Report

- (a) On or after the dates specified in Section 1683 and at least 30 days before a disclosure is required by Section 1684, a building owner shall open an account at the EPA's ENERGY STAR® program Portfolio Manager website, and within the account:

- (1) provide the owner name and the owner e-mail address;
 - (2) provide the building name, the building street address, city and zip code, and the year in which the building was constructed;
 - (3) identify all active utility meters and utility accounts serving the building;
 - (4) provide space use characteristics as specified by Portfolio Manager for the building type, if the type is available;
 - (5) request all utility companies serving the building to release energy use data for the entire building from the most recent 12 months to the owner's Portfolio Manager account; or, manually enter all energy use data for the entire building from the most recent 12 months to the owner's Portfolio Manager account.
- (b) Within 15 days of receiving a request from a building owner to release a building's energy use data, a utility company shall upload at least most recent 12 months of the entire building's energy use data to the building owner's Portfolio Manager account. If a utility serves more than one customer within a building, the utility shall aggregate data before release. A utility may verify a request or ask for clarification before releasing data.
- (c) After all utility companies serving a building have uploaded a building's energy use data, and in sufficient time to comply with the schedule specified in section 1683, a building owner shall access the Commission's AB 1103 compliance website, and
- (1) download the Disclosure Summary Sheet;
 - (2) select the link to Portfolio Manager and log on to the owner's account
 - (3) complete and submit the Compliance Verification Report
 - (4) Download the building's Statement of Energy Performance, Data Checklist, and Facility Summary from that building's ESPM data;
- (d) The Commission shall treat an individual Compliance Verification Report as confidential, but may aggregate data from individual Reports for use in public documents. Aggregation shall be sufficient to mask detection of individual building energy use.
- (e) In lieu of any missing information in the disclosure, if the owner has made a reasonable effort to ascertain the missing information, the owner may use an approximation of the information, provided that the approximation is identified as such, is reasonable, is based on the best information available to the owner, and is not used for the purpose of circumventing or evading this article.

Note: Authority cited: Sections 25213, 25216.5(d), 25218(e), 25320, 25402.10, Public Resources Code. Reference: Sections 25402.10, Public Resources Code.