

# California Energy Commission PROPOSED REGULATIONS

## NONRESIDENTIAL BUILDING ENERGY USE DISCLOSURE PROGRAM

Proposed Regulations

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



CALIFORNIA  
ENERGY COMMISSION

Edmund G. Brown Jr., Governor

MARCH 2012

CEC-400-2010-004-SD3

# CALIFORNIA ENERGY COMMISSION

Martha Brook  
*Program Senior Mechanical Engineer*

Justin Regnier  
*Project Manager/Mechanical Engineer*

Craig Hoellwarth  
*Supervisor*

Bill Pennington  
*Office Manager*  
*High Performance Buildings and Standards  
Development Office*

Panama Bartholomy  
*Deputy Director*  
*Efficiency and Renewable Energy Divisions*

Robert P. Oglesby  
*Executive Director*

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## PREFACE

The California Energy Commission is releasing proposed 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 proposed regulations are available online at: <http://www.energy.ca.gov/ab1103/rulemaking/documents/index.html>

On July 15, 2009, the Energy Commission adopted an Order Instituting Rulemaking, opening the public process to develop and adopt new regulations for the nonresidential building energy use 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, and staff held a workshop on September 12, 2011 to receive public comments on initial drafts of the regulations. Throughout this process, the Energy Commission received and considered comments from stakeholders and the public, including public- and investor-owned utilities, building owner associations and individual owners, energy efficiency organizations, Realtors, and environmental organizations.

The Energy Commission now releases the proposed regulations and is issuing a Notice of Proposed Action (NOPA), to be published on March 30, 2012, which begins a formal rulemaking proceeding. Under the NOPA, the Energy Commission invites comments from the public. The Lead Commissioner for Energy Efficiency will hold a hearing to receive oral comments on April 9, 2012.

## ABSTRACT

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

The proposed regulations require the owner of a nonresidential building within California, in advance of the sale, lease, or and financing of the building , to benchmark the building's energy use using the U.S. Environmental Protection Agency (EPA) Portfolio Manager system and to disclose statements of the building's energy usage to potential buyers, lessees, and lenders.

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.

Once final, the regulations will be codified in Article 9, Sections 1680 through 1685, to the California Code of Regulations, Title 20, Division 2, Chapter 4.

**Keywords:** Benchmarking, disclosure, commercial, nonresidential, ENERGY STAR, portfolio manager, compliance report, data checklist, disclosure summary sheet, energy use data, EUI, facility summary, utility, statement of energy performance, data release, aggregate, AB 1103, AB 531, Saldaña

Regnier, Justin, Martha Brook. 2012. *Nonresidential Building Energy Use Disclosure Program Proposed Regulations; Title 20, Division 2, Chapter 4, Article 9, Sections 1680 – 168.5*. California Energy Commission, Efficiency and Renewable Energy Division. Publication Number: CEC-400-2010-004-SD3.

**TABLE OF CONTENTS**

**PREFACE** ..... i

**ABSTRACT** ..... ii

Section 1680. Purpose ..... 1

Section 1681. Scope ..... 1

Section 1682. Definitions ..... 1

Section 1683. Schedule of Implementation ..... 2

Section 1684. Disclosures ..... 3

Section 1685. Benchmarking, Data Releases, Report ..... 3



**PROPOSED REGULATIONS**

**AB 1103 (2007, Saldaña)**

**Nonresidential Building Energy Use  
Disclosure Program**

**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 Disclosure**

**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 Report" means an electronic submission of a copy of the data used for generating disclosure documents, submitted within the Portfolio Manager system from the building owner's account to the Commission's account.
- (d) "Data Checklist" means a report generated by Portfolio Manager that summarizes a property's physical and operating characteristics.

- (e) "Disclosure Summary Sheet" means the Commission document detailing the contents and relevance of disclosures generated by Portfolio Manager.
- (f) "Energy Provider" means any non-electric and gas utility entity providing energy, as defined by Section 25109, Public Resources Code, used by a nonresidential building.
- (g) "Energy Use Data" means a record of kilowatt hours, therms, or any other measure of energy used by a nonresidential building.
- (h) "Entire Building" means a building for which the owner possesses title.
- (i) "EPA" means the U.S. Environmental Protection Agency.
- (j) "Facility Summary" means a report generated by Portfolio Manager that summarizes the space usage of a building and compares a building's energy use to national averages.
- (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" means a report generated by Portfolio Manager that supplies data about a building's energy performance, and if available, the building's energy use rating.
- (p) "Utility" means an entity providing electricity or natural gas to a nonresidential building owner or tenant.

Note: Authority cited: Section s 25213, 25218 (e), 25402.10, Public Resources Code. Reference: Sections 25109, 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 January 1, 2013, for a building with total floor area measuring more than 50,000 square feet.
- (b) On or after July 1, 2013, for a building with a total floor area measuring more than 10,000 square feet and up to 50,000 square feet.
- (c) On or after January 1, 2014, for a building with a total floor area 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 sources of energy use data for the entire building, such as active and inactive utility meters, onsite generation, district thermal energy, or fuel(s) serving the building, for at least the most recent 12 months.
  - (4) Provide space use characteristics as specified by Portfolio Manager for the building type, if the type is available.
  - (5) Request all utility and energy provider 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, the owner may 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 the most recent 12 months of the entire building's energy use data for the specified utility meters or utility accounts to the building owner's Portfolio Manager Account. If a building has more than one account, a utility shall aggregate or use other means to reasonably protect each account holder's data from uses other than compliance with Public Resources Code, section 25402.10. A utility may verify a request or ask for clarification before releasing data.
- (c) After all utility and energy provider companies serving a building have uploaded and/or provided 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 Report.
  - (4) Download the building's Statement of Energy Performance, Data Checklist, and Facility Summary. The Statement of Energy Performance, Data Checklist, and Facility Summary shall expire 30 days after they are generated.
- (d) The Energy Commission shall treat an individual Compliance 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.