



Frequently Asked Questions (FAQ)

The California Nonresidential Building Energy Use Disclosure Program implements Energy Commission regulations found at California Code of Regulations, title 20, sections 1680 through 1684 (“Regulations”). The regulations implement, interpret, and make specific Assembly Bill 1103 (Stats. 2007, Chapter 533) as amended by AB 531 (Stats. 2009, Chapter 323), which is codified at Public Resources Code section 25402.10 (Statute).

The Statute and the Regulations require an owner of a nonresidential building to benchmark the building’s energy use data and disclose the energy use data prior to the sale of the building, or the lease or financing of the entire building. The Statute and the Regulations require a building owner to use the U.S. Environmental Protection Agency’s (EPA) ENERGY STAR® Portfolio Manager (“Portfolio Manager”) tool to benchmark and disclose the building’s energy use data. Portfolio Manager must be accessed via the EPA Portfolio Manager [website](#). Questions concerning the use of Portfolio Manager should be directed to the EPA.

Questions concerning the Statute and Regulations should be sent to the California Energy Commission through the contact information available on the [AB 1103 Disclosure Regulations website](#). Before contacting the Energy Commission, please review the frequently asked questions below.

Q1. Am I required to generate a disclosure report for my transaction?

A. If you answer YES to ALL of the following questions, then you must generate a disclosure report.

- a. Is the nonresidential building being offered for sale or is the entire building subject to a lease with a new lessee or to new financing or refinancing?
- b. Is the gross square footage of the nonresidential building at least 10,000 square feet for transactions occurring on or after January 1, 2014 or 5,000 square feet for transactions occurring on or after July 1, 20142016?
- c. Is the nonresidential building one of the following types?
 - Assembly (A)
 - Business (B)
 - Educational (E)

- Institutional – Assisted Living (I-1)
- Institutional – Nonambulatory (I-2)
- Mercantile (M)
- Residential – Transient (R-1) (for example, a hotel)
- Storage (S)
- Utility – Parking Garage (U)

The building occupancy permit lists the building occupancy type. These occupancy types are defined in the California Building Standards Code at California Code of Regulations, title 24, Section 302 and following.

http://publicecodes.cyberregs.com/st/ca/st/b200v07/st_ca_st_b200v07_3_sec002.htm

Q2. What building occupancy types are not subject to the Statute and Regulations?

A. The following types are not subject to the Statute and Regulations:

- Factory and Industrial (F-1, F-2)
- High Hazard (H-1, H-2, H-3, H-4, H-5)
- Institutional (I-3, I-4)
- Residential (R-2, R-2.1, R-3, R-3.1, R-4)
- ~~Laboratory (L)~~ Updated 2-11-14. Please note this category was previously listed in error. Laboratories for testing and research are part of Business Group B, which is one of the occupancy types for which compliance is required. Please refer to Q1 above.

Q3. My building is a mixed use building. Do I need to make a disclosure?

A. If part of a mixed use building is residential such as condominiums or apartments, the owner does not have to disclose. However, note that the Statute and Regulations do apply to residential building type R-1 (hotels, motels), and to a nonresidential building that contains a mix of nonresidential and R-1 use.

Q4. How do I submit my disclosure to the Energy Commission?

A. Electronically submit your disclosure to the this address AB1103report@energy.ca.gov

Q5. If Portfolio Manager is not operational during the time I must disclose or if I have missing data and I need to make a disclosure for my transaction, what should I do?

A. Regulation Section 1684(e) allows the building owner, in the event that actual energy use data cannot be acquired, to use a reasonable approximation to replace the missing data without delaying the transaction. Section 1684(e) states:

If there is information missing from a disclosure, and if the owner has made a reasonable effort to ascertain the missing information, the owner may then 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 [these Regulations].

Additionally, a building owner may use forms from other sources, such as the ASTM International checklist E2797-11, to supplement the required disclosures.

Q6. How may I present missing data?

A. As described above, if you have made reasonable efforts to receive the data, but it is not available, you may substitute approximate energy use data. You may offer a separate statement for the disclosure, fill in any missing data on the Data Verification Checklist within Energy Star Portfolio Manager, or add approximated data directly onto the hard copy of the Data Verification Checklist. You must identify the data as approximated, and you must disclose the best information available.

Q7. What if I do not have any data to approximate?

A. When you have no energy use data and where other measures are not reasonably suitable for your building, you may use the default values provided by Energy Star Portfolio Manager for your building type (some of which are found at this [link](#)).

Q8. What if I have partial data?

A. When you have partial data, you may use the data that you have to fill in the missing data. For example, use the data from one tenant for another, or use the partial year data from one tenant to represent the whole of the rest of the building.

Q9. I own a shopping mall and I have data for some, but not all the store fronts. Can I use building energy models to estimate the missing energy use data?

A. Yes, you may use building energy models to estimate the missing energy use data.

Q10. What if the building was vacant for some portion of the previous year?

A. Portfolio Manager has the ability to evaluate spaces that have been vacant. Indicate any vacant spaces in Portfolio Manager for the appropriate period.

Q11. I understand that ENERGY STAR® generates energy performance scores for buildings, what do I do if my building is not eligible to receive an ENERGY STAR® energy performance score?

A. You are required to make all of the required disclosures even if your building is not eligible to receive an energy performance score.

Q12. My building uses propane instead of natural gas. Do I have to include my propane consumption?

A. Yes.

Q13. How long is a disclosure valid?

A. The Disclosure Report expires 30 days after it is generated.

Q14. Do I need to have an engineer or architect stamp my Portfolio Manager reports?

A. No.

Q15. If I receive energy use data from utilities meeting their obligations under the Statute and the Regulations, can I use this data for purposes other than my compliance with the Statute and the Regulations?

A. No.

Q16. What enforcement action may the Energy Commission take if a building owner does not comply with the Statute or Regulations?

A. The Energy Commission's enforcement actions may include:

- Investigating noncompliance allegations (which can involve issuing subpoenas, compelling testimony, and convening investigative hearings).
- Initiating administrative proceedings before the full Energy Commission for an order compelling compliance.
- Initiating a civil judicial proceeding to enforce an Energy Commission order.
- Initiating a civil judicial proceeding to obtain injunctive relief.
- Settling enforcement actions through negotiated settlements that impose reasonable and appropriate requirements, including possible payment of penalties.

Q17. What can I do if I want to initiate action by the Energy Commission to investigate someone's noncompliance with the Statute or Regulations or to consider holding hearings to determine whether someone failed to comply with the Statute or Regulations?

A. You may file a complaint with the Energy Commission alleging a violation of the Statute or Regulations, or you may file a request for investigation with the Energy Commission. The requirements and process for filing a complaint or request for investigation are located at California Code of Regulations, title 20, section 1230 and following.

Q18. How long is the Data Verification Checklist valid?

A. The checklist expires 30 days after it is generated.

Q19. Do K-12 schools have to issue a Data Checklist when obtaining financing via bonds?

A. School bonds generally do not fall under the triggering events for AB 1103. Please contact the Energy Commission if you have specific questions.

Q20. What are the requirements for disclosure of the Data Verification Checklist to tenants?

A. Disclosure is required to a prospective lessee of the entire building.

Q21. If a building is 12,000 square feet but divided into six 2000 square feet condominiums, is this tracking or benchmarking required?

A. If all of the condominiums are nonresidential, the benchmarking requirement of AB 1103 would apply only when the entire building is sold, leased, or financed. If one or more of the condominiums is residential, the building would not be subject to the benchmarking requirement of AB 1103.