

STATE OF CALIFORNIA  
ENERGY RESOURCES  
CONSERVATION AND DEVELOPMENT COMMISSION

Nonresidential Building	)	Docket No. 15-OIR-03
Energy Use Disclosure Program	)	
	)	Order Number: 15-0408-1a
_____	)	

**[PROPOSED] ORDER ADOPTING  
AMENDMENT TO THE COMPLIANCE SCHEDULE FOR THE NONRESIDENTIAL  
BUILDING ENERGY USE DISCLOSURE PROGRAM**

**I. INTRODUCTION**

The California Energy Commission (Energy Commission) hereby adopts the proposed amendment to subdivision (c) of section 1682 of title 20 of the California Code of Regulations (Section 1682(c)). The amendment changes from July 1, 2014 to July 1, 2016 the date after which the disclosures specified by Public Resources Code (PRC) section 25402.10 must be made by owners and operators of nonresidential buildings with total gross square footage measuring at least 5,000 square feet and up to 10,000 square feet to prospective buyer, lessee of the entire building, or lender that would finance the entire building.

The Energy Commission previously adopted this amendment through an emergency regulation pursuant to Government Code section 11346.1 on July 22, 2014, which was approved by the Office of Administrative Law on September 2, 2014, and effective on that date. The Energy Commission readopted the emergency regulation pursuant to Government Code section 11346.1(h) on February 25, 2015, to extend the emergency regulation for 90 days to allow time for the emergency regulation to be certified and made permanent. The Office of Administrative Law approved readoption on March 4, 2015. The purpose of this rulemaking is to certify and adopt the emergency regulation on a permanent basis, pursuant to Government Code section 11346.1(e).

The proposed action is taken under the authority of Public Resources Code section 25213,<sup>1</sup> which generally authorizes the Energy Commission to adopt rules and regulations as necessary to carry out the provisions of Division 15 of the PRC, and section 25402.10. The Energy Commission's regulations implementing section 25402.10 are set forth in sections 1680 through 1684 of Title 20 of the California Code of Regulations, and the schedule for compliance in section 1682. PRC section 25402.10 together with the implementing regulations are commonly referred to as the Nonresidential Building Energy Use Disclosure Program.

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<sup>1</sup> All section references are to the Public Resources Code unless otherwise noted.

## **II. PUBLIC NOTICE**

The Energy Commission published a Notice of Proposed Action (NOPA) for the proposed regulation in the California Notice Register on February 13, 2015. The Energy Commission also made available to the public the Express Terms of the proposed regulations, and an Initial Statement of Reasons (ISOR) that summarized and explained the rationale for the proposed regulation, and prepared the legally-required fiscal and economic analysis of the proposed regulations.

The NOPA was provided to every person on the Energy Commission's Listservs for AB 1103, the Building Standards, and Efficiency. Through this action the Energy Commission provided notice to a representative number of small business enterprises or representatives, and to every person who had requested notice of such matters, including the Secretary of Natural Resources. The NOPA, the ISOR, and the Express Terms were also posted on the Commission's website on February 13, 2015. The NOPA specified a hearing date of April 8, 2015, and provided for a comment period of 45 days.

## **III. FINDINGS**

Based on the entire record for Docket No. 15-OIR-03, the Energy Commission finds as follows:

### **A. The adopted regulation:**

- (1) amends the schedule for compliance set forth in 1682(c) of the California Code of Regulation, to change the date by which nonresidential buildings measuring at least 5,000 square feet and up to 10,000 square feet must comply with the Nonresidential Building Energy Use Disclosure Program from July 1, 2014 to July 1, 2016;
- (2) is consistent with the requirement that the Energy Commission establish a schedule of compliance by which an owner or operator is required to meet the requirements of PRC section 25402.10(d), as required by section 25402.10(d)(2);
- (3) certifies and makes permanent the amendment to section 1682(c) of the California Code of Regulations, adopted by the Energy Commission as an emergency regulation effective September 2, 2104.

### **B. In addition, the adopted regulations:**

- (1) are not inconsistent or incompatible with existing state regulations;
- (2) are not inconsistent or incompatible with existing federal law;
- (3) will impose no direct costs, or direct or indirect requirements or mandates, on

state agencies, local agencies, or school districts, including but not limited to costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code;

- (4) will result in no costs or savings in federal funding to the State of California;
- (5) will result in no costs or savings to any state agency;
- (6) will result in no nondiscretionary costs or savings to local agencies or school districts;
- (7) will have no impact on housing costs;
- (8) will have no significant, statewide adverse effect on businesses in general or small businesses in particular;
- (9) will have no cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the regulations;
- (10) will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars;
- (11) will have no impact on the creation or elimination of jobs within the state;
- (12) will have no impact on the creation of new businesses or the elimination of existing businesses;
- (13) will have no impact on the expansion of businesses currently doing business within the state;
- (14) will not require any additional mandatory data reporting;
- (15) have no alternatives that would be more effective in carrying out the purposes of the Warren-Alquist Act, that would be as effective and less burdensome to affected private persons in carrying out those purposes, or that would be more cost effective to affected private persons and equally effective in implementing those purposes; and
- (16) will provide increased clarity to the regulated community.

#### **IV. EXEMPTION FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.; see also CEQA Guidelines, Cal. Code Regs., tit. 14, § 15000 et seq.) requires that state agencies consider the environmental impact of their discretionary decisions. However, an activity is not

subject to CEQA if: (1) The activity does not involve the exercise of discretionary powers by a public agency, (2) The activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, or (3) the activity is not a “project” as defined in section 15378 of the regulations. (Cal. Code Regs., tit. 14, §§ 15060(c) & 15378(a).) Furthermore, the requirements of CEQA only apply to projects that have the potential for causing a significant effect on the environment. (Cal. Codes Regs., tit. 14, § 15061(b)(3).) A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself. (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.)

Section 1682(c) only changes the date by which owners and operators of nonresidential buildings must comply with the disclosure requirements in PRC section 25402.10. There is no possibility that the adoption of Section 1682(c) would have a significant effect on the environment, or result in a physical change to the environment, and nothing in the record suggests otherwise. Accordingly, the Energy Commission finds that the adoption of Section 1682(c) is not subject to the California Environmental Quality Act because of the “common sense” exemption under sections 15061(b)(3) of title 14 of the California Code of Regulations.

#### **V. ADOPTION OF PROPOSED AMENDMENT TO SECTION 1682(c)**

The Energy Commission, after considering the entire record, including but not limited to the statement of exemption from the California Environmental Quality Act, and all relevant public comments, hereby adopts the proposed Section 1682(c), attached hereto as Exhibit A.

#### **VI. DELEGATION OF AUTHORITY AND DIRECTIVES TO EXECUTIVE DIRECTOR**

The Energy Commission delegates the authority and directs the Executive Director to take on behalf of the Energy Commission all actions reasonably necessary to have the adopted Section 1682(c) go into effect.

CERTIFICATION

The undersigned Secretariat to the California Energy Commission does hereby certify that the foregoing is a full, true, and correct copy of an approved RESOLUTION duly and regularly adopted at a meeting of the California Energy Commission held on April 8, 2015:

AYE: [*List Commissioners*]

NAY: [*List Commissioners*]

ABSENT: [*List Commissioners*]

ABSTAIN: [*List Commissioners*]

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*Harriet Kallemeyn,  
Secretariat*

**ORDER NUMBER: 15-0408-1a**

**Exhibit A**

**Express Terms for the  
Nonresidential Building Energy Use Disclosure Program**

**California Code of Regulations  
Title 20, Section 1682(c)**

# **Express Terms for the 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  
Sections 1680-1684**

## **Section 1682. Schedule of Implementation**

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

- (a) On and after July 1, 2013, for a building with total gross floor area measuring more than 50,000 square feet.
- (b) On and after January 1, 2014, for a building with a total gross floor area measuring more than 10,000 square feet and up to 50,000 square feet.
- (c) On and after July 1, ~~2014~~2016, for a building with a total gross 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.