

**CALIFORNIA ENERGY COMMISSION**

1516 Ninth Street  
Sacramento, California 95814

Main website: [www.energy.ca.gov](http://www.energy.ca.gov)



In the matter of the	)	Docket No. 14-EUDP-01
	)	
Nonresidential Building Energy Use	)	STAFF WORKSHOP
Disclosure Program	)	
	)	RE: AB 1103
California Code of Regulations, Title 20,	)	
Sections 1680 through 1684	)	

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## Notice of Staff Workshop

California Energy Commission staff will conduct a public workshop to seek comments from interested parties regarding the proposed changes to regulations for the Nonresidential Building Energy Use Disclosure Program (also known as the AB 1103 Program). Commissioner Andrew McAllister and Commissioner Karen Douglas may be in attendance at the workshop. Other Energy Commissioners may attend the workshop. The workshop will be held on:

**Friday, February 20, 2015**

9:00 a.m.

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

First Floor, Art Rosenfeld Hearing Room

Sacramento, California

Wheelchair Accessible

Remote Access Available by Computer or Phone via WebEx™  
(See instructions on page 3 and 4)

### Background

Public Resources Code section 25402.10 (Assembly Bill 1103, Saldana, Chapter 533, Statutes 2007) requires electricity and gas utilities to maintain records of the energy consumption data of all nonresidential buildings to which they provide service in the state, and requires the disclosure of benchmarking data to prospective buyers, lessees, or lenders of commercial property. The Energy Commission's regulations implement the Nonresidential Building Energy Use Disclosure Program, including the established schedule for compliance, is set forth in California Code Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680 et seq.

On July 2, 2014, the Energy Commission conducted a staff workshop under an Order Instituting an Informational Proceeding (OII) on the Nonresidential Energy Use Disclosure Program. The purpose of the workshop was to evaluate program implementation efficacy, and identify barriers to compliance.

## **Purpose and Agenda**

Based on comments received in connection with the OII and staff workshop, Energy Commission staff will present proposed regulatory changes and rationale addressing the following sections:

- Section 1681. Definitions
- Section 1682. Schedule of Implementation
- Section 1683. Disclosures
- Section 1684. Data Releases, Report
- Section 1685. Exemption from Disclosure (Proposed new section)

Discussion and comment time will follow the presentation of each section.

## **Public Comment**

Oral comments: Staff will accept oral comments during the workshop. Comments may be limited to three minutes per speaker. Any comments will become part of the public record in this proceeding.

Written comments: Written comments should be submitted to the Dockets Unit **by 4:00 p.m. on Friday March 6, 2015**. Written comments will be also accepted both before and at the workshop, however, the Commission may not have time to fully review them before the conclusion of the workshop. For additional information, see Standing Order re: Proceedings and Confidentiality Procedural Requirements for Filing, Service, and Docketing Documents with the Energy Commission, available at: [www.energy.ca.gov/commission/chief\\_counsel/docket.html](http://www.energy.ca.gov/commission/chief_counsel/docket.html).

Additionally, written comments may be posted to the Energy Commission's website for the proceeding. Please note that your written and oral comments, attachments, and associated contact information (e.g. your address, phone, email, etc.) become part of the viewable public record. This information may become available via Google, Yahoo, and any other search engines.

The Energy Commission encourages stakeholders to submit comments by e-mail. Please include your name and any organization name in the e-mail and comment.

Comments should be in a downloadable, searchable format such as Microsoft® Word (.doc) or Adobe® Acrobat® (.pdf). Please include the docket number 14-EUDP-01 and indicate "AB 1103" in the subject line. Send comments to:

[docket@energy.ca.gov](mailto:docket@energy.ca.gov)

If you prefer, you may send a paper copy of your comments to:

California Energy Commission  
Dockets Office, MS-4  
Re: Docket No. 14-EUDP-01  
1516 Ninth Street  
Sacramento, CA 95814-5512

## **Public Adviser and Other Commission Contacts**

The Energy Commission's Public Adviser's Office provides the public assistance in participating in Energy Commission proceedings. If you want information on how to participate in this forum, please contact Alana Mathews, Public Adviser, at [PublicAdviser@energy.ca.gov](mailto:PublicAdviser@energy.ca.gov) or (916) 654-4489 or toll free at (800) 822-6228.

If you have a disability and require assistance to participate, please contact Lou Quiroz at [Lou.Quiroz@energy.ca.gov](mailto:Lou.Quiroz@energy.ca.gov) or (916) 654-5146 at least five days in advance.

Media inquiries should be sent to the Media and Public Communications Office at [mediaoffice@energy.ca.gov](mailto:mediaoffice@energy.ca.gov) or (916) 654-4989.

If you have questions on the subject matter of this workshop, please contact Daniel Johnson at (916) 651-3746, or by e-mail at [Daniel.Johnson@energy.ca.gov](mailto:Daniel.Johnson@energy.ca.gov).

## **Remote Attendance**

You may participate in this meeting through WebEx, the Energy Commission's online meeting service. Presentations will appear on your computer screen, and you may listen to audio via your computer or telephone. Please be aware that the meeting may be recorded. The WebEx information is provided below:

### **To join the workshop:**

VIA COMPUTER: Go to <https://energy.webex.com> and enter the meeting numbers: **929 876 805**.

When prompted, enter your name and the following meeting password: **meet@9am**

The "Join Conference" menu will offer you a choice of audio connections:

1. To call into the meeting: Select "I will call in" and follow the on-screen directions.

2. International Attendees: Click on the "Global call-in number" link.
3. To have WebEx call you: Enter your phone number and click "Call Me."
4. To listen over the computer: If you have a broadband connection, and a headset or a computer microphone and speakers, you may use VoIP (Internet audio) by going to the Audio menu, clicking on "Use Computer Headset," then "Call Using Computer."

VIA TELEPHONE ONLY (no visual presentation): Call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the unique meeting number for the appropriate WebEx provided on page 3. International callers may select their number from <https://energy.webex.com/energy/globalcallin.php>

VIA MOBILE ACCESS: Access to WebEx meetings is now available from your mobile device. To download an app, go to [www.webex.com/overview/mobile-meetings.html](http://www.webex.com/overview/mobile-meetings.html).

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239.

### **Subscribing to E-mail Listserver**

Interested parties who would like to follow or participate in this proceeding should subscribe to the Energy Commission's "AB 1103" Listserver found at: [www.energy.ca.gov/efficiency/listservers.html](http://www.energy.ca.gov/efficiency/listservers.html). By subscribing to this listserver, interested parties are consenting to receive information, notices, and other communications, including information associated with the Energy Commission's efficiency-related rulemaking proceedings, by electronic mail.

February 10, 2015



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Dave Ashuckian  
Deputy Director

Mail Lists: AB 1103, Existing Buildings, Efficiency List Servers

# 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-~~4684~~1685

**XXX Date, 2015**

## Section 1680. Purpose

This article implements procedures, pursuant to Public Resources Code Section 25402.10, for disclosing energy use data and ENERGY STAR® Scores 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. Definitions

The following definitions apply to this article:

- a) “Building Operator” means a person authorized to act on behalf of a building owner regarding decisions related to building operations, including release of information related to the building.  
*Rationale: The term Building Operator is currently used in regulation but not defined.*
- b) “Building Owner” means a person possessing title to a nonresidential building, or an agent authorized to act on behalf of a person possessing title.
- c) “Complete calendar month” means a period of time corresponding to one month of the calendar, starting on the first day of the month and ending on the last day of the month.  
*Rationale: Portfolio Manager requires 12 complete calendar months of data to benchmark a building. Billing cycles often do not coincide with the beginning and end of a calendar month.*
- d) “Data Verification Checklist” means a report generated by Portfolio Manager that summarizes a property’s physical and operating characteristics.
- e) “Energy Provider” means an entity providing sources of energy other than electricity or natural gas that are recognized by Portfolio Manager.

- f) "ENERGY STAR® Score" means an energy efficiency measurement created by Portfolio Manager, represented on a scale from 1 to 100 and normalized for a building's characteristics, operations, and regional weather.
- g) "Energy Use Data" means a record of kilowatt hours, therms, or any other measure of energy recognized by Portfolio Manager.
- h) "Nonresidential Building" means a building of occupancy type A, B, E, I-1, I-2, M, R1, S, or Type U parking garages, as defined in the California Building Code, Title 24, Section 302 et seq. (2007 2013).
- i) "Portfolio Manager" means the U.S. Environmental Protection Agency's ENERGY STAR® program online tool for managing building energy use data.
- j) "Prospective buyer" means a person ~~who has submitted a written offer to purchase a building, whose offer to purchase a building has been accepted by the building owner.~~  
*Rationale: Redefining prospective limits the provision of building energy use information to those parties engaged in a bonafide transaction.*
- k) ~~"Prospective lender" means a person who has received an owner's application to finance an entire building.~~
- l) "Prospective lessee" means a person ~~who has submitted an~~ whose application to lease an entire building has been accepted by the building owner.  
*Rationale: Redefining prospective lessee limits the provision of building energy use information to those parties engaged in a bonafide transaction.*
- m) "Utility" means an entity providing electricity or natural gas to a nonresidential building owner or tenant.
- n) "Virtual meter" means a representative meter which aggregates energy use data per month across multiple electricity meters or meters of the same fuel type serviced by the same utility.  
*Rationale: The Energy Commission is requiring the utilities to aggregate energy use data for all meters into a single 'virtual meter' before uploading into Portfolio Manager.*

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

Reference: Sections 25402.10, Public Resources Code.

## **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, 2016, for a building with a total gross floor area measuring at least 5,000 square feet and up to 10,000 square feet.~~

*Rationale: Buildings smaller than 10,000 square feet represent a very small percentage of California commercial floor space. Exempting these buildings would eliminate the reporting burden for smaller property owners.*

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

### Section 1683. Disclosures

- a) A building owner or operator shall generate the Data Verification Checklist, or other disclosure forms approved by the Energy Commission from Portfolio Manager, which includes information specified in Section 1684(a) and Section 1684(b). The building owner or operator shall disclose this information to:

*Rationale: If in future, Portfolio Manager introduces other formats that may be more suitable for disclosure reporting, the Energy Commission may approve them for satisfying the requirements of this section.*

- (1) A prospective buyer of the building no later than ~~24 hours prior to execution of the sales contract~~ three days after signing of the purchase and sale agreement.

*Rationale: There has been inconsistent interpretation of the phrase 'execution of the sales contract', and whether it refers to the beginning of the due diligence period or the close of escrow.*

*Comments received during the Informational Proceeding stated that disclosure is currently made too late to be useful for decision-making.*

- (2) A prospective lessee of the building no later than ~~24 hours prior to execution of the lease~~ three days after signing of the lease agreement.

*Rationale: There has been inconsistent interpretation of the phrase 'execution of the lease', and whether it refers to the beginning of the due diligence period or the close of escrow.*

*Comments received during the Informational Proceeding stated that disclosure is currently made too late to be useful for decision-making.*

- (3) ~~A prospective lender financing the entire building, no later than~~ submittal of the loan application.

*Rationale: The timelines and processes for finance and refinance transactions are significantly different than those for sale and lease. As a*

*result, subjecting them to the same requirements is difficult to implement. Further, building energy use information has little or no value to prospective lenders.*

- (b) Nothing in these regulations permits an owner to use tenant energy use data for purposes other than compliance with Public Resources Code, Section 25402.10. Any business that receives or has access to energy use data provided pursuant to Public Resources Code section 25402.10, including but not limited to, a building owner, operator, prospective buyer, prospective lessee, an agent or broker, may be obligated to protect the confidentiality of that data pursuant to Civil Code section 1798.98. At the time of disclosure as specified in Section 1683(a), the building owner or operator shall notify the prospective buyer or lessee of this obligation.

*Rationale: Reinforces the Energy Commission's position that this is a private disclosure between two parties; and makes both parties explicitly aware of their obligations.*

- (c) A building 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 1684. Data Releases, Report**

- (a) At least 30 days before a disclosure is required by Section 1683, or no later than the first date that the property is available for sale or lease, a building owner or operator shall open an account or update an existing account for the same building on ~~EPA's ENERGY STAR program~~ the Portfolio Manager website, and within the account, the building owner or operator shall:

*Rationale: Allows building owners or operators to request the data before the start of the transaction to provide ample time to obtain the data.*

- 1) Provide the owner name and the owner e-mail address;
- 2) Provide 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, for at least the most recent 12 complete calendar months; and

*Rationale: Portfolio Manager requires 12 complete calendar months of data to benchmark a building. Billing cycles can be mid-month to mid-*

*month, so 12 billing cycles often do not provide a complete calendar year of data.*

- 4) Provide space use characteristics as specified by Portfolio Manager for all space types in the building.
- 5) Request all utilities and energy providers serving the building to release energy use data for the entire building from at least the most recent 12 complete calendar months for specified meters or accounts to the owner's or operator's Portfolio Manager Account; or, the owner or operator may manually enter all energy use data for the entire building from at least the most recent 12 complete calendar months to the owner's or operator's Portfolio Manager account. The energy use data can be used for disclosure pursuant to Section 1683(a) for up to 1 year from the date of request.

*Rationale: Reduces the burden on building owners or operators if a property transaction takes longer than anticipated.*

- (b) As soon as practicable and no later than 30 days after receiving a request under subdivision (a) of this section, a utility or energy provider shall upload all energy use data for the entire building from at least the most recent 12 complete calendar months to the building owner's Portfolio Manager Account. Utilities and energy providers shall not require tenant consent to provide energy use data to the building owner or operator. Where a building has multiple tenants, the utility shall upload the energy use data for the building, aggregated by electricity usage and/ or fuel type into a virtual meter for each fuel type. If a building has a utility or energy provider account for which the owner is not the customer of record, the utility or energy provider shall aggregate or use other means to reasonably protect the confidentiality of the customer. A utility or energy provider may verify a request or ask for clarification before releasing data.

*Rationale: The Energy Commission is requiring the utilities to aggregate energy use data for all meters into a single 'virtual meter' before uploading into Portfolio Manager. However, there is no threshold for the number of meters that a building must have to be subjected to aggregation. Public Resources Code Section 25402.10 requires energy use data to be disclosed between private parties during a transaction.*

- (c) After all utilities and energy providers serving a building have complied with subdivision (b) of this section, and ~~before~~ after the building owner has made the disclosure required pursuant to Section 1683, the building owner shall ~~generate the building's Data Verification Checklist~~ submit the building's data to the Energy Commission ~~from~~ through Portfolio Manager via the reporting link provided on the Energy Commission program website. ~~and electronically submit the Data Verification Checklist. The Data Verification~~

Checklist shall expire 30 days after it is generated.

*Rationale: The 'Custom Report Template' feature provides an easier way for owners and operators to submit data to the Energy Commission. Building owners will no longer be required to email the Data Verification Checklist to the Energy Commission.*

- (d) In the event that the Energy Commission accesses ~~the data~~ energy consumption data submitted pursuant to subdivision (c) of this Section, the Energy Commission shall ~~not~~ determine whether the data as is confidential, in a manner consistent with section 2505 of this Division. ~~state and federal laws.~~ Disclosure of any such records shall be made in a manner consistent with Section 2507 of this Division.

*Rationale: Defines how the Energy Commission will determine, upon any access, if submitted data is confidential.*

- (e) 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 this article.

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

Reference: Sections 25216.5(d), 25320, 25402.10, Public Resources Code.

### **Section 1685. Exemption from Disclosure**

When a building subject to disclosure pursuant to Public Resources Code, Section 25402.10 is scheduled to be demolished one year or less from the date of signing of the purchase and sales agreement or lease agreement, the building owner may, in lieu of disclosing energy use, submit to the Energy Commission a copy of the approved demolition permit from the local jurisdiction, and submit to the prospective buyer or lessee a copy of these regulations and a copy of the approved demolition permit.

*Rationale: Comments received regarding situations where a building is scheduled for demolition by the building owner as part of the sales agreement, or is being leased for a short period prior to the demolition date, energy use data is of little use.*