

One Minute Memo[®]



Nonresidential Building Energy Use Disclosure Law To Take Effect September 1, 2013

Who is Affected?

Starting **September 1, 2013**, owners of commercial nonresidential buildings¹ located in California in excess of 50,000 square feet will be required to disclose energy use data at each building in connection with any sale, leasing or financing transaction of an *entire* building. Phased implementation of Assembly Bill 1103 (codified as California Public Resources Code [§ 25402.10](#)) (“AB 1103”) will be extended to buildings in excess of 10,000 square feet starting January 1, 2014 and buildings in excess of 5,000 square feet starting July 1, 2014.

Background

AB 1103 was enacted in 2007 in order to promote energy conservation in California by establishing a benchmarking system which allows prospective tenants, purchasers and lenders to compare the energy consumption of similar commercial buildings. The objective was to motivate building owners to take action to improve their building’s energy consumption.

In 2009, Assembly Bill 531 (“AB 531”) was enacted, which allowed the California Energy Commission to set a schedule (as set forth above) for compliance with the energy disclosure requirements.

While the implementation of AB 1103 has been postponed several times, starting **September 1, 2013**, owners of affected commercial nonresidential buildings will be required to comply with certain energy disclosure requirements. *Regulations* implementing AB 1103 and AB 531 were adopted by the California Energy Commission on December 12, 2012, and the final adopted regulations can be found on the California Energy Commission website (or by clicking [here](#)).

Disclosure Requirements

California Public Resources Code §25402.10(d), requires an owner or operator of a nonresidential building to disclose the benchmarking data and ratings for the most recent 12-month period to (i) a prospective buyer of the building, no later than 24 hours prior to execution of a purchase and sale agreement, (ii) a prospective lessee of the *entire* building, no later than 24 hours prior to execution of the lease and (iii) a prospective lender financing the *entire* building, upon submittal of the loan application.

In order to comply, commercial property owners must do the following:

- Create an Energy Star Portfolio Manager account at least 30 days prior to the required disclosure date (**NOTE: In order to comply with September 1, 2013 deadline, property owners need to create an account and input the required information by August 1, 2013**). To create an Energy Star Portfolio Manager account click [here](#) or go to <http://www.energystar.gov> and click on the “Buildings & Plants” tab, then navigate to the Portfolio Manager Login under “Quick Links”.

¹ “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).

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There is no fee for registration through the Energy Star Portfolio Manager program. A useful “Portfolio Manager Quick Start Guide” can be found [here](#).

- Use Portfolio Manager account to authorize utility providers servicing the affected building to upload energy use data for the most recent 12 months to the account, or enter such information manually. The utility provider may verify the request before releasing the data, but must upload the data within 30 days of the original request.
- After the requested energy use information has been uploaded, building owners must (i) complete a compliance report through the Energy Star Portfolio Manager (go to <http://www.energy.ca.gov/ab1103/> and select the “Disclosure Report Form at Energy Star Portfolio Manager” under “New”), and (ii) download and complete the necessary disclosure documents from the Energy Star Portfolio Manager website (sample forms available [here](#)), which will be provided to prospective buyers, lessees or lenders, as applicable:
 1. Disclosure Summary Sheet,
 2. Statement of Energy Performance,
 3. Data Checklist, and
 4. Facility Summary.

Recommended Action

Owners of the affected nonresidential properties are encouraged to create an account and become familiar with the Energy Star Portfolio Manager website as soon as possible. Since utility providers have up to 30 days to upload the requested energy use data to the building owner’s Energy Star Portfolio Manager account, owners contemplating a sale, lease or finance of an entire building in excess of 50,000 square feet should commence compliance right away in order to prevent any delays.

Neither California Public Resources Code §25402.10 nor the regulations of the California Energy Commission set forth any penalties for failure to comply with the disclosure requirements. However, per California Public Resource Code, Division 15,² it appears that the California Energy Commission may initiate investigative proceedings if it receives a complaint of noncompliance. The Commission will first seek voluntary compliance through non-punitive measures, but may pursue a formal investigation if the building owner intentionally fails to disclose the energy usage data. A formal investigation may consist of an administrative proceeding in front of the California Energy Commission and/or a civil judicial proceeding in order to compel compliance, which may result in injunctive relief, negotiated settlements, and/or possible payment of penalties.

Please contact Seyfarth Shaw LLP if you would like more information regarding compliance with the reporting requirements.

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²CAL. PUB. RES. CODE §§ 25210, 25218, 25221, 25531, 25900.