

Missing Data Protocols Under California's AB1103 Energy Use Disclosure Rule and Other Important Facts You Need to Know

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Many commercial property owners have approached us with questions about missing data protocols, how to properly comply with AB 1103 (and the consequences of non-compliance) and what buildings are affected. Here is what you need to know.

Currently, a **non-residential building owner or operator** of a building in excess of 10,000 square feet **must comply with AB 1103 and produce a Data Verification Checklist** if: (i) the ENTIRE non-residential building is offered for sale, lease, finance or refinance; and (ii) the building is classified as any of the following:^[1]

- Assembly
- Business
- Education
- Institutional-assisted living or non-ambulatory
- Mercantile-retail
- Residential-transient (hotels/motels)
- Storage
- Utility-parking garage

AB 1103 does not apply to mixed use buildings involving a residential component, such as an apartment or condominium complex with retail or office space.

If a building owner or manager is unable to obtain the required data to generate the Data Verification

Checklist needed to comply with AB 1103, the legislation does allow a building owner or manager to provide reasonable approximate energy use data. There are several methods of providing such reasonable approximate energy use data that have been accepted by the California Energy Commission. These include use of default values on the Energy Star Portfolio Manager Website, building energy models, or use of one tenant's data as an approximation for the remainder of the building based upon the relevant square footages. Note, however, that if the Data Verification Checklist report is produced using either approximate data or Energy Star Portfolio Manager default values, a building owner or manager must include a signed statement revealing which Missing Data Protocols were used in order to fully comply with AB 1103.

In order to further comply with AB 1103, a building owner or operator must take the following actions:

- Confirm that the building manager or owner has an Energy Star Portfolio Manager account;
- Obtain energy use data for the prior 12-month period from the relevant utilities or tenant(s);
- Benchmark the building's energy use through the Portfolio Manager website for at least 30 days prior to a relevant transaction;
- Produce a Data Verification Checklist report through the Portfolio Manager website;
- Disclose the Data Verification Checklist to a prospective buyer, tenant or lender at least 24 hours prior to a signature agreement; and
- Submit the Data Verification Checklist to the Energy Commission at ab1103report@energy.ca.gov within 30 days of producing the report.

Keep in mind that the Data Verification Checklist report expires 30 days after it has been generated, so if there is a delay or postponement in the closing of your transaction, you may need to provide an updated Data Verification Checklist. There is no stated penalty for noncompliance with AB 1103; however, practically speaking, lenders, buyers, tenants and title companies will require evidence of compliance as a condition to consummating a transaction involving affected buildings. Thus, if you fail to timely comply with the requirements of AB 1103, you may face delays or postponements in the closing of your transaction, which may financially impact the economics of your transaction.

We recommend that commercial building owners include in their leases specific provisions that (i) allow the expenses of compliance, including installation of meters, retaining of consultants and filing of necessary documents, to be included in operating expenses passed through to tenants; and (ii) confirm the tenant's recognition of landlord's compliance with this and similar programs and obtain their obligation to cooperate as necessary. Taking these steps now will help to streamline the process of compliance with AB 1103 when a transaction arises that triggers compliance.

Finally, please note that AB 1103 has been postponed for buildings between 5,000 and 10,000 square feet. The reporting requirements will not extend to buildings in excess of 5,000 square feet until July 1, 2016. The postponement was necessary due to concerns expressed throughout the industry in complying with the new legislation.

We will continue to monitor the progress of this legislation and will issue updates as necessary.

^[1] Building classifications may be found by reviewing the zoning codes for the local municipality in which the building is located. As well, in most municipalities, this information should be present on the certificate of occupancy for the building.

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