

CALIFORNIA ENERGY COMMISSION1516 Ninth Street
Sacramento, California 95814Main website: www.energy.ca.gov

In the matter of: AB 1103 Commercial)	Docket No. 12-AB1103-01
Building Energy Use Disclosure Program)	
Rulemaking, California Code of)	Order No. 12-0711-08
Regulations, Title 20, Sections 1680-1685)	
_____)	

Order Adopting Regulations and Directing Additional Rulemaking Activities

The California Energy Commission hereby adopts regulations for the Nonresidential Building Energy Use Disclosure Program (California Code of Regulations, Title 20, Sections 1680 - 1685). The Commission takes this action under the authority of, and to implement, interpret, and make specific, Sections 25213, 25216.5(d), 25218(e), 25320, and 25402.10 of the Public Resources Code.

Background

AB 1103 and AB 531. Assembly Bill (AB) 1103 (Saldaña, Stats. 2007, ch. 533), codified at Public Resources Code, Section 25402.10, requires nonresidential building owners throughout the state to benchmark their building's energy use in advance of major financial transactions, namely, the sale, leasing, or financing of the entire building.

AB 531 (Saldaña, Stats. 2009, ch. 323) amended Public Resources Code, Section 25402.10, to delegate the scheduling of compliance to the Energy Commission.

Proposed Regulations. The California Energy Commission developed the proposed regulations to fulfill the purposes of AB 1103, carry out the Commission's mission of promoting energy efficiency in California, and to implement, interpret, and make specific the provisions of Public Resources Code, Section 25402.10.

The proposed regulations require an owner of a nonresidential building within California, in advance of the sale, lease, or and financing of the building, to benchmark the building's energy use via the U.S. Environmental Protection Agency (EPA) ENERGY STAR® Portfolio Manager system and to disclose documents regarding the building's energy usage (the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary) to potential buyers, lessees, and lenders.

The proposed regulations also require utilities serving the building to release the most recent 12 months of the entire building's energy use data for the specified utility meters or accounts to an owner's Portfolio Manager account.

The proposed regulations require the owner to electronically report the benchmarking data to the Energy Commission, and require the Commission to keep individual data confidential while allowing aggregation of data for reports. Additionally, the proposed regulations set a schedule for compliance, according to building size. Owners of large buildings (more than 50,000 gross square feet) must comply starting on January 1, 2013; owners of medium-sized buildings (more than 10,000 to 50,000 gross square feet) comply starting on July 1, 2013; and owners of small buildings (more than 5,000 to 10,000 gross square feet) comply starting on January 1, 2014. Once a building qualifies for compliance under the schedule, an owner must benchmark and disclose in advance of a sale, leasing, or financing of the entire building.

Once final, the regulations will add Article 9, Sections 1680 through 1685, to the California Code of Regulations, Title 20, Division 2, Chapter 4 ("Energy Conservation").

Portfolio Manager. The statute and the proposed regulations require nonresidential building owners to benchmark using the U.S. Environmental Protection Agency's ("EPA") ENERGY STAR® Portfolio Manager benchmarking system. Portfolio Manager is an interactive energy management tool that allows building managers to track and assess the energy consumption of one or more buildings in a secure online environment. Portfolio Manager can help set investment priorities, identify under-performing buildings, verify efficiency improvements, and receive EPA recognition for superior energy performance. Use of Portfolio Manager is free. The EPA states that energy efficiency is the "fastest, cheapest, and largest untapped solution for saving energy, saving money, and preventing greenhouse gas emissions."

Proceeding History

Pre-Formal Rulemaking. Per requirements of the Administrative Procedure Act, the Warren-Alquist Act, and Energy Commission policy, Commission Staff developed the regulations in consultation with investor-owned and publicly-owned utilities, the California Public Utilities Commission, building owners and owner associations, realtors, energy efficiency consultants, environmental groups, other interested stakeholders, and members of the public.

On July 15, 2009, the Energy Commission adopted an Order Instituting Rulemaking, opening the public process to develop and adopt new regulations for the nonresidential building energy use benchmarking and disclosures required by Public Resources Code Section 25402.10.

Per Government Code, Section 11346.45, the Commission conducted public workshops regarding proposals for the regulatory language on August 13, 2009, May 17, 2010, and September 12, 2011. Staff also periodically met with an AB 1103 working group made up of interested stakeholders, benchmarking experts, staff from the California Public Utilities Commission, staff from the Office of Assemblywoman Saldaña, and staff from the U.S. EPA's Portfolio Manager program. Throughout this period, Commission Staff

made presentations, received informal feedback and comments, and exchanged ideas with stakeholders regarding implementation of the statute and drafts of regulatory language.

45-Day Language.

On March 23, 2012, the Energy Commission published a Notice of Proposed Action (“NOPA”) for the AB 1103 proposed regulations in the California Regulatory Notice Register. The Commission published the NOPA, the express terms of the proposed regulations (“45-day language”), and the Initial Statement of Reasons explaining the necessity for each regulation on the Commission’s website. Additionally, in further efforts to make the NOPA, the 45-day language, and the statement of reasons available, subscribers to the AB 1103 Listserve received e-mail notice of the postings. Staff also sent several e-mails with the NOPA attached to persons who had been members of the working group or otherwise had expressed a long-term interest in the proposed regulations. Per the mailing requirement in Government Code, Section 11346.4, Staff also mailed the NOPA to persons who had requested notice, as well as to representative small businesses and municipal utilities.

Commission Staff also prepared the required analysis of potential economic and fiscal impacts of the proposed regulations.

On April 9, 2012, pursuant to Government Code, Section 11346.8, the Lead Commissioner on Efficiency Matters conducted a hearing to collect oral and written comment on the proposed regulations. The Energy Commission published a transcript and a WebEx recording of the hearing on the Commission’s website.

The NOPA announced a hearing date of May 9, 2012 for Commission consideration and possible adoption of the proposed regulations. On May 1, 2012, pursuant to Government Code section 11346.8(b), the Commission issued a Notice of Postponement of Hearing for Consideration and Possible Adoption, announcing that the proposed amendments would not be considered for adoption on May 9th and that the future date for such a hearing would be noticed in compliance with applicable law. The Notice of Postponement was distributed and published by the Commission in the same manner as the NOPA.

The Energy Commission received comments on the proposed regulations throughout the 45-day comment period, which ended on May 9, 2012. The Commission then incorporated several suggested edits and added further clarifications to the proposed regulations to create substantially-related changes to the proposed regulations.

15-Day Language.

On June 25, 2012, pursuant to Government Code, Section 11346.8(c), the Energy Commission published a Notice of Hearing of Possible Adoption, Notice of Changes to Proposed Regulations and Additional Documents Relied Upon, and of a 15-Day

Comment Period. The Commission published the Notice and the full text of the proposed regulations with the changes clearly indicated (15-day language) to its website. The Commission e-mailed notice of the postings to AB 1103 Listserve subscribers and to all persons who made comments during the 45-day comment period. The Commission also mailed the Notice to the same persons that received the mailing of the NOPA.

The changes made in the 15-Day Language included clarifying a building owner's duty to not use tenant energy use data beyond compliance with Public Resources Code, Section 25402.10; adding flexibility for utilities in releasing the data; clarifying technical aspects of Portfolio Manager; and making non-substantive or solely grammatical changes.

The comment period ended on July 11, 2012.

The Notice set a hearing date of July 11, 2012 for consideration and possible adoption of the proposed regulations.

No Further Changes. No comments and no material in the record justify further changes to the proposed regulations, as they were published on June 25, 2012.

Findings

Based on the entire record for Docket No. 12-AB1103-01, the Energy Commission finds as follows:

A. The Warren-Alquist Act. The adopted regulations:

- (1) implement procedures for utility release of nonresidential building energy use data to an owner's ENERGY STAR Portfolio Manager account, owner benchmarking, and owner disclosures to prospective buyers, lessees, and lenders in advance of major financial transactions, with reasonable protections of the energy use data;
- (2) set a schedule for compliance,
- (3) require an electronic report to the Energy Commission, and
- (4) will help raise awareness of and encourage building owners to find ways to reduce the wasteful, uneconomic, inefficient, and unnecessary consumption of energy in nonresidential buildings across the state.

B. The Administrative Procedure Act. The adopted regulations:

- (1) will not result in a significant statewide adverse impact directly affecting business, including the ability of California businesses to compete with businesses in other states;
- (2) may create jobs in California, and will not eliminate jobs in California;
- (3) may create new businesses, will not eliminate existing businesses, and will not have a significant impact on number of businesses in California;
- (4) will impose minimal costs on private persons;
- (5) will impose no direct costs, nor 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;
- (6) will result in no costs or savings in federal funding to the State of California;
- (7) will have no significant impact on housing costs;
- (8) will have no significant adverse effect on businesses in general or small businesses in particular;
- (9) will have no significant costs that a representative private person or business would necessarily incur in reasonable compliance with the regulations; and
- (10) have no alternatives that would be more effective in carrying out the purposes of the Warren-Alquist Act without increasing burdens, or that would be as effective and less burdensome in carrying out those purposes.

CEQA Exemptions

Commission Staff Counsel independently analyzed application of the California Environmental Quality Act ("CEQA") to the proposed regulations and concluded that the regulations fall under two exemptions. The proposed regulations concern building maintenance activities involving "no or negligible expansion of use." (Cal. Code of Regs., tit. 14, § 15301.) Additionally, the proposed regulations would not have a significant effect on the environment (Cal. Code of Regs., tit. 14, § 15061, subd. (b)(3), defined as substantial, or potentially substantial, adverse change in the environment. (Pub. Resources Code, § 21068; Cal. Code of Regs., tit. 14, § 15382.) The proposed

regulations will not create an adverse effect on the environment because the actions taken have negligible physical impacts. Actions to comply with the regulations chiefly consist of electronic benchmarking in the U.S. EPA ENERGY STAR® Portfolio Manager program, then making disclosures to prospective buyers, lessees, and lenders financing the whole building. By increasing awareness of energy use and providing incentives to make nonresidential buildings more energy efficient, the regulations ultimately will have a beneficial effect on the environment.

The Commission finds that the adoption of the regulations is exempt from CEQA for the reasons stated above.

Adoption of Regulations

After considering the record in its entirety including recommendations of Commission Staff, comments from the public, and documents relied on, the Energy Commission hereby adopts the regulations as published on July 11, 2012.

Directives to Staff

The Energy Commission directs Commission Staff to take all actions reasonably necessary to implement these regulations, including but not limited to, making appropriate non-substantive or purely grammatical changes to the regulations, as well as preparing and filing all appropriate documents, such as the Final Statement of Reasons with the Office of Administrative Law, and the Notice of Exemption with the Office of Planning and Research.

It is so Ordered.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the California Energy Commission held on July 11, 2012.

AYE: Weisenmiller, Douglas, Peterman

NAY: None

ABSENT: McAllister

ABSTAIN: None



Harriet Kallemeyn

Secretariat

California Energy Commission