

DOCKETED

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NOTICE OF PROPOSED ACTION

PROPOSED REGULATIONS

**WHOLE-BUILDING ENERGY USE DATA ACCESS,
BENCHMARKING, AND PUBLIC DISCLOSURE**

California Code of Regulations,
Title 20, Division 2, Chapter 4, Article 9, Sections 1680 - 1685

California Energy Commission

Docket No. 15-OIR-05

February 14, 2017

Assembly Bill 802 (Williams, Chapter 590, Statutes of 2015) revises Public Resources Code Section 25402.10 to require utilities to provide energy usage data for covered buildings to the owners, owner's agents, or operators of those buildings upon request, and further requires the Energy Commission to establish a benchmarking and public disclosure program for certain buildings. AB 802 went into effect on January 1, 2016; the proposed regulations would implement specific provisions of AB 802. AB 802 also repealed the Nonresidential Building Energy Use Disclosure Program implemented by the Energy Commission pursuant to Assembly Bill 1103 (Saldana, Chapter 533, Statutes of 2007).

NOTICE THAT A PUBLIC HEARING IS SCHEDULED:

The date set for the adoption of regulations at a public hearing is as follows:

California Energy Commission Business Meeting
July 12, 2017
Beginning 10:00 a.m.
California Energy Commission
1516 Ninth Street
First Floor, Arthur Rosenfeld Room
Sacramento, California
Wheelchair Accessible

ORAL AND WRITTEN STATEMENTS

Interested persons may present oral and written statements, arguments, or contentions regarding the proposed regulations at the hearing, or may submit written comments to the Energy Commission for consideration on or prior to April 10, 2017. The Energy Commission appreciates receiving written comments at the earliest possible date.

Please submit comments using the Energy Commission's e-commenting feature by going to the Energy Commission's Benchmarking page at <http://www.energy.ca.gov/benchmarking> and clicking on "Submit comment." Your name, e-mail address, comment title, and either a comment or an attached document (.doc, .docx, or .pdf format) will be required. After a challenge-response test to ensure that responses are generated by a human user and not a computer, click on the "Agree & Submit Your Comment" button to submit the comment to the Energy Commission's Docket Unit.

Please note that written comments, attachments, and associated contact information included within the written comments and attachments, (e.g., your name and contact information) become part of the viewable public record.

If you are unable to submit your comments through the docket system, you may send a paper copy of your comments to:

Docket Unit
California Energy Commission
Docket No. 15-OIR-05
1516 9th Street, MS-4
Sacramento, CA 95814
Telephone: 916-654-5076

Or e-mail them to: Docket@energy.ca.gov.

STATUTORY AUTHORITY AND REFERENCE – Government Code Section 11346.5(a)(2) and 1 California Code of Regulations 14

Public Resources Code, Sections 25213, 25218(e), and 25402.10 authorize the Energy Commission to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Public Resources Code, Section 25402.10.

INFORMATIVE DIGEST – Government Code Section 11346.5(a)(3)

Existing law (Public Resources Code Section 25402.10, as revised by Assembly Bill 802 [Williams, Chapter 590, Statutes of 2015]) requires utilities to maintain records of the energy usage data of all buildings to which they provide service for at least the most recent 12 complete months. Beginning no later than January 1, 2017, each utility must, upon the request and written authorization or secure electronic authorization of the owner, owner's agent, or operator of a covered building, deliver or provide aggregated energy usage data for a covered building to the owner, owner's agent, operator, or to the owner's, owner's agent's, or operator's account in the ENERGY STAR Portfolio Manager. Existing law also requires the Energy Commission to establish a benchmarking and public disclosure program for certain buildings.

AB 802 went into effect on January 1, 2016, and repealed the Nonresidential Building Energy Use Disclosure Program implemented by the Energy Commission pursuant to Assembly Bill 1103 (Saldana, Chapter 533, Statutes of 2007).

The proposed regulations would implement specific provisions of AB 802.

The proposed regulations would clarify how an owner of a covered building, or the owner's agent, may request energy use data from a utility. The proposed regulations would require utilities to deliver the following information to the owners of covered buildings, in addition to aggregated energy use data, on request:

1. The last four characters of the meter number for each meter serving the building.
2. The Building Identification Number, if available.

The proposed regulations also clarify, for covered buildings with fewer than three utility accounts, and for buildings that are not covered buildings, how a utility customer's permission to share his or her energy use data with the building owner, owner's agent, or operator, is to be provided.

The proposed regulations would require owners of "disclosable buildings," as defined in section 1681, subdivision (f), to share building characteristic information and energy use data with the Energy Commission's ENERGY STAR Portfolio Manager account by June 1, 2018 and annually thereafter for disclosable buildings with no residential utility accounts, and by June 1, 2019 and annually thereafter for disclosable buildings with one or more residential utility accounts.

The proposed regulations further provide that the Energy Commission will make available on a public website certain information relating to each disclosable building's characteristics and energy use. The Energy Commission will make this information available starting in 2019 for disclosable buildings with no residential utility accounts, and in 2020 for disclosable buildings

with one or more residential utility accounts.

The proposed regulations also provide a process through which local jurisdictions may request that the Energy Commission exempt owners of buildings covered by a local benchmarking program from compliance with these regulations. The proposed regulations also allow the Energy Commission to exclude a certain use type from the definition of “disclosable building,” on its own initiative or at the request of a member of any person, if it finds that benchmarking and public disclosure of buildings of that type are of minimal benefit.

The proposed regulations also provide for the Energy Commission to impose a civil penalty for violation of the regulations by a building owner or utility.

BENEFITS FROM THE PROPOSED REGULATIONS

Public disclosure of building-level performance information provides an incentive for building owners to improve their buildings, and provides a valuable tool to help prospective building owners and tenants understand more fully a building they are considering purchasing or renting. The specific benefit anticipated from this regulation is improved building energy efficiency statewide, resulting in less demand for energy, thus reducing the environmental impact of operating buildings, including greenhouse gas emissions.

By specifying details of the data request process, the proposed regulations will additionally facilitate access to building-level energy use data for the owners of buildings not subject to the benchmarking and public disclosure requirements of the proposed regulations. This data will enable building owners to make informed decisions regarding whether and how to make building improvements.

EVALUATION OF INCONSISTENCY/ INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The Energy Commission has determined that these proposed regulations are neither inconsistent nor incompatible with existing state regulations. After conducting a review for any regulations that would relate to or affect this area, the Energy Commission has concluded that these are the only regulations that would require benchmarking and public disclosure of building energy use data on a statewide basis for certain buildings over 50,000 square feet.

DOCUMENTS INCORPORATED BY REFERENCE – 1 California Code of Regulations Section 20(c)(3)

The proposed regulations do not incorporate any documents by reference.

MANDATED BY FEDERAL LAW OR REGULATIONS – Government Code Sections 11346.2(c) and 11346.9

The proposed regulations are not mandated by, or similar to, any federal statute or regulation.

OTHER STATUTORY REQUIREMENTS – Government Code Section 11346.5(a)(4)

There are no other matters prescribed by statute applicable to the Energy Commission or this regulation.

LOCAL MANDATE DETERMINATION – Government Code Section 11346.5(a)(5)

The proposed regulations require owners of disclosable buildings, including those owned by local government entities, to benchmark and disclose their buildings annually. This requirement applies equally to all owners of disclosable buildings, and the proposed regulations do not impose a different requirement on local governments that own disclosable buildings; therefore the expense of a local government required to benchmark a disclosable building pursuant to these regulations is not reimbursable.

Similarly, the proposed regulations require utility providers, including those operated by local governments, to provide building-level energy use data for a covered building to a building owner, owner's agent, or operator on request. This requirement applies equally to all utility providers, and the proposed regulations do not impose a higher level of service upon local governments; therefore the expense of a utility operated by a local government in providing building-level energy use data to a building owner, owner's agent, or operator to facilitate compliance with the benchmarking and public disclosure requirements is not reimbursable.

FISCAL IMPACTS – Government Code Section 11346.5(a)(6)

A. Costs or Savings for State Agencies

Implementation of the proposed regulations would result in costs to the Energy Commission to administer the program. This effort is estimated to require three permanent staff positions (each estimated at \$157,333 annually) and \$500,000 in contract funding annually, for a total of \$972,000 annually. This amount has been approved in the Energy Commission budget by the state Legislature. There are no direct savings expected for the state due to the implementation of the proposed regulations.

B. Costs or Savings for Local Agencies or School Districts Requiring Reimbursement Pursuant to Government Code Section 17500, et seq.

Because the requirements imposed on local agencies (including publicly owned utilities and buildings) and school districts by the proposed regulations do not require a higher level of service than the requirements imposed on other utilities and building owners, compliance with the proposed regulations does not require reimbursement.

C. Other Non-Discretionary Costs or Savings on Local Agencies

Publicly owned utilities

There will be a cost to publicly owned utilities (POUs), which may be regarded as local agencies, to comply with the proposed regulations. Specifically, utilities would be required to receive requests for building-level energy use data, verify the validity of these requests, obtain customer permission in some cases, accurately associate energy use with the buildings in which energy is used, aggregate this data, and provide it to the persons making the requests. Staff estimates the cost to publicly owned utilities to perform these activities as follows:

Table 1. Estimated POU Costs

2016	2017	2018	2019	2020	2021
\$1,832,000	\$1,099,000	\$1,099,000	\$1,099,000	\$1,099,000	\$1,099,000

There are no direct savings expected for local agencies due to the implementation of the proposed regulations.

Publicly owned buildings

There will be a cost to local agencies that own disclosable buildings, to comply with the proposed regulations. Specifically, these agencies would be required to enter data regarding these buildings into Portfolio Manager, request energy use for these buildings from the relevant utilities, and report building characteristic and energy use information to the Energy Commission. The cost to perform these actions should be similar to those in Table 2 below.

D. Costs or Savings in Federal Funding to the State

Implementation of the proposed regulations would not result in any costs or savings in federal funding.

HOUSING COSTS – Government Code Section 11346.5(a)(12)

The proposed regulations may have a small, indirect effect on housing costs. The average cost to comply for an owner of a residential building in 2019 is estimated at \$661 per year. For a building with 17 postal addresses (the smallest number for which a building owner would be required to comply with this program), this results in an estimated added cost of \$39 per postal address per

year, which the building owner may pass along to tenants. For residential buildings with more than 17 postal addresses (which will apply to most residential disclosable buildings, which, by definition, must be larger than 50,000 square feet), the cost per tenant per year will be less.

INITIAL DETERMINATION REGARDING SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE – Government Code Sections 11346.5(a)(7), 11346.5(a)(8), and 11346.3(a) & (b)

Although the proposed regulations will directly affect businesses statewide, including small businesses, staff concluded that the regulations would not have a significant adverse economic impact on business and would not affect the ability of California businesses to compete with businesses in other states. Similar benchmarking programs have been successfully implemented in jurisdictions nationwide, and there is no indication that these programs have had significant adverse economic effect on businesses. Because of the localized nature of building ownership and utility service, the incremental costs incurred due to the proposed regulation are unlikely to affect competitiveness with businesses in other states.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT – Government Code Sections 11346.5(a)(10), 11346.3(a) & (b)

The creation or elimination of jobs within the state

For building owners who choose not to undertake requesting data, benchmarking, and reporting to the Energy Commission themselves, or to use someone already on staff, this program will result in work for energy consultants who perform some or all of the above tasks for a building owner.

For utilities, there will be an increased workload to match utility meters or accounts with specific buildings, create and implement the system for responding to data requests, and respond to data requests.

The creation of new businesses or the elimination of existing businesses within the state

The proposed regulations will likely cause the creation of new energy consulting businesses due to the increased energy request, benchmarking, and reporting activity the proposed regulations will require, and will likely increase demand for building improvement services. Because of the localized nature of building ownership and utility service, the incremental costs incurred due to the proposed regulations are unlikely to cause the elimination of existing businesses in California.

The expansion of businesses currently doing business in California

Businesses currently offering benchmarking services in California will likely expand due to the proposed regulations. The population of buildings for which building owners are currently required to benchmark and report energy performance will expand significantly, from those buildings included in the existing programs in San Francisco and Berkeley, and the Department of General Services requirement for state buildings, to buildings statewide.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment

There is not expected to be any direct effect from the proposed regulations on the health and welfare of California residents, worker safety, or the state's environment. However, the public disclosure of building energy performance will create an incentive for building owners to improve the energy efficiency of their buildings, which will likely lead to voluntary building improvements in some cases.

It is likely that the proposed regulations will result in the creation of both jobs and businesses in California, as well as the expansion of existing businesses, due to the requirement to request building energy use data, benchmark the energy performance of buildings, and report the benchmarking information to the Energy Commission.

It is unlikely that any jobs or businesses will be eliminated due to the proposed regulations.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS – Government Code Section 11346.5(a)(9)

Cost impacts on building owners

Energy Commission staff estimates the average cost incurred by the owners of disclosable buildings (those buildings for which reporting to the Energy Commission is required under the proposed regulations) to perform the required data request, benchmarking, and reporting, as follows:

Table 2. Estimated average annual per-building cost to a building owner to comply with the proposed regulations

	2016	2017	2018	2019	2020	2021
Commercial Building	No action required	No action required	\$548	\$561	\$575	\$589
Residential Building	No action required	No action required	No action required	\$661	\$677	\$692

Table 3. Estimated annual cost to all building owners to comply with the proposed regulations

	2016	2017	2018	2019	2020	2021
Commercial Building	No action required	No action required	\$6,773,000	\$7,052,000	\$7,343,000	\$7,646,000
Residential Building	No action required	No action required	No action required	\$7,537,000	\$7,848,000	\$8,171,000

Building owners may pass these costs along to building occupants. If they choose to do so, the cost per tenant will depend on the number of tenants in each disclosable building. For a commercial building, the cost incurred by a tenant will range from an upper estimated bound of the costs shown above, in the case of a building with only one tenant, to a much smaller amount per tenant for a building with many tenants. The cost incurred by tenants of residential buildings is explained in more detail in the “Housing Costs” section.

Cost impacts on energy utilities

Because of the disparity in the number of disclosable buildings in each utility territory, there is no representative utility in terms of cost impacts. Table 3 shows estimated costs for the four largest individual utilities, the combined costs for the members of the Southern California Public Power Authority (SCPPA), and the combined costs for publicly owned utilities that aren’t members of SCPPA.

Table 4. Estimated annual utility costs, in thousands, to comply with the proposed regulations

Year	2016	2017	2018	2019	2020	2021
PG&E	\$ 2,081	\$ 887	\$ 456	\$ 487	\$ 497	\$ 504
Southern California Edison	\$ 986	\$ 657	\$ 348	\$ 446	\$ 456	\$ 468
SoCalGas	\$ 1,510	\$ 240	\$ 240	\$ 240	\$ 240	\$ 240
San Diego Gas and Electric	\$ 1,850	\$ 125	\$ 125	\$ 125	\$ 125	\$ 125
SCPPA utilities	\$ 1,250	\$ 750	\$ 750	\$ 750	\$ 750	\$ 750
Non-SCPPA POUs	\$ 582	\$ 349	\$ 349	\$ 349	\$ 349	\$ 349
Total Utility Costs	\$ 8,259	\$ 3,008	\$ 2,268	\$ 2,397	\$ 2,417	\$ 2,436

BUSINESS REPORT – Government Code Sections 11346.5(a)(11) and 11346.3(d)

The proposed regulations require building owners, some of which will be businesses, to report energy performance information regarding their buildings to the California Energy Commission. The Energy Commission finds that it is necessary for the health and welfare of the people of the

state that the proposed sections 1680 through 1685 of Title 20 of the California Code of Regulations apply to business, as the regulations should lead to reduced greenhouse gas emissions and a cleaner environment through improvements in building occupant behavior and building energy efficiency, resulting from increased knowledge of building energy performance.

SMALL BUSINESS IMPACTS – 1 California Code of Regulations Section 4(a) and (b)

Some small businesses, as defined in Government Code 11342.610, will be required to comply with the proposed regulations. Therefore, staff has determined that the proposed regulations will affect small businesses.

ALTERNATIVES STATEMENT – Government Code Section 11346.5(a)(13)

In accordance with Government Code section 11346.5, subdivision (a)(13), the Energy Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Energy Commission would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Energy Commission is not aware of any alternatives that would be as effective as and less burdensome than the proposed modifications to the regulations.

The Energy Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

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 the Public Adviser's Office at PublicAdviser@energy.ca.gov or (916) 654-4489 (toll free at (800) 822-6228).

If you have a disability and require assistance to participate, please contact Poneh Jones at poneh.jones@energy.ca.gov or (916) 654-4425 at least five days in advance.

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

CONTACT PERSON – Government Code Section 11346.5(a)(14)

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulations, should be directed to:

Erik Jensen
Efficiency Division
California Energy Commission
1516 Ninth Street, MS-26
Sacramento, CA 95814
Telephone: (916) 654-4166
Email: Erik.Jensen@energy.ca.gov

The designated backup contact person for these inquiries is:

Abhilasha Wadhwa
Efficiency Division
California Energy Commission
1516 Ninth Street, MS-26
Sacramento, CA 95814
Telephone: (916) 653-0378
Email: Abhilasha.Wadhwa@energy.ca.gov

COPIES OF THE INITIAL STATEMENT OF REASONS AND THE TEXT – Government Code Section 11346.5(a)(16)

The Commission has prepared an initial statement of reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms of the proposed regulations, please visit the Commission's website at <http://www.energy.ca.gov/benchmarking/documents/> or contact Erik Jensen at (916) 654-4166 or Erik.Jensen@energy.ca.gov. Additionally, the Commission has available all the information upon which the proposed regulations are based; to obtain copies, please contact the Docket Unit at (916) 654-5076 or by e-mail at docket@energy.ca.gov.

AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL FOR AT LEAST 15 DAYS PRIOR TO AGENCY ADOPTION/REPEAL/AMENDMENT OF RESULTING REGULATIONS – Government Code Section 11346.5(a)(18)

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the

Commission considers substantive changes to the proposed regulations pursuant to Government Code section 11346.8, a full copy of the text will be available for review at least 15 days prior to the date on which the Commission adopts or amends the resulting regulations.

COPY OF THE FINAL STATEMENT OF REASONS – Government Code Section 11346.5(a)(19)

At the conclusion of the rulemaking, persons may obtain a copy of the final statement of reasons once it has been prepared, by visiting the Commission’s website at <http://www.energy.ca.gov/benchmarking/documents/> or contacting Erik Jensen at (916) 654-4166 or Erik.Jensen@energy.ca.gov .

INTERNET ACCESS – Government Code Sections 11346.4(a)(6) and 11346.5(a)(20)

The Commission maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Commission for this rulemaking, including this Notice of Proposed Action, the Express Terms, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statements, as well as many other documents in the rulemaking file have been posted at <http://www.energy.ca.gov/benchmarking/documents/>.