

DOCKETED

Docket Number:	15-OIR-05
Project Title:	Building Energy Use Disclosure and Public Benchmarking Program Mandated under Assembly Bill 802
TN #:	216202
Document Title:	AB 802 Benchmarking Initial Statement of Reasons
Description:	N/A
Filer:	Erik Jensen
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	2/23/2017 12:32:33 PM
Docketed Date:	2/23/2017

INITIAL STATEMENT OF REASONS

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 NUMBER 2015-OIR-05

FEBRUARY 14, 2017

PROBLEM STATEMENT

Assembly Bill (AB) 802 (Williams, Chapter 590, Statutes of 2015), codified as Section 25402.10 of the Public Resources Code, requires the following:

- Energy utilities to maintain energy use data for all buildings to which they provide service, beginning January 1, 2016.
- Energy utilities to provide energy use data to building owners, owners' agents, and operators on request beginning January 1, 2017.
- The California Energy Commission to create a program to benchmark and publicly disclose energy performance information for certain buildings; no date is given by which the regulations implementing this portion of the bill must be in effect.
- The repeal of AB 1103 (Saldana, Chapter 533, Statutes of 2007), which had required building owners to disclose building-level energy performance information to prospective buyers, lessees, and lenders at the time of sale, lease, or finance.

Additionally, AB 802 allows the Energy Commission to ensure compliance through the enforcement measures identified in Section 25321 of the Public Resources Code, which allows for fines of \$500 to \$2,000 per day per violation.

BENEFITS

Section 1 of AB 802 states:

“It is the intent of the Legislature that the State Energy Resources Conservation and Development Commission create a benchmarking and disclosure program through which building owners of commercial and multifamily buildings above 50,000 square feet gross floor area will better understand their energy consumption through standardized energy use metrics.”

Toward this goal, the proposed regulations do the following:

- 1) Provide guidance to building owners and utilities, respectively, on how to request and provide building-level energy use data. While the statute requires utilities to provide building-level energy use data to owners, owners’ agents, and operators of covered buildings on request beginning January 1, 2017, the proposed regulations add detail to how building owners will make this request, specifying how to prove building ownership and the number of utility accounts serving the building, as well as how utilities will respond to the request, including indicating whether a request is sufficient, what mechanism to use to provide energy use data and non-energy information that the building owner, owner’s agent, or operator may use to verify that the energy use a utility has associated with a building is correct.

- 2) Set forth a process for utility customers to agree to share their energy use data with building owners when required. For buildings with no residential utility accounts and fewer than three total utility accounts, AB 802 requires that utility customers give their permission before a utility can share building-level energy use data with the building owner, owner's agent, or operator. The bill gives the Energy Commission authority to specify the customer permission process for buildings with one or more residential utility accounts and fewer than five total utility accounts, which are not "covered buildings." Pursuant to this authority, the proposed regulations provide specificity for utilities, utility customers, building owners, and their agents.
- 3) Set forth a process for building owners to benchmark the energy performance of their buildings and report it to the Energy Commission. ENERGY STAR Portfolio Manager, the online tool required in the proposed regulations, uses the inputs of building characteristics and energy use data to produce metrics that benchmark the energy use for a building, which indicates to a building owner how his or her building performs relative to other buildings with similar characteristics. The proposed regulations also specify which building owners will be required to benchmark their buildings annually, as required by AB 802.
- 4) List the information that the Energy Commission may make public for each building for which it receives energy performance information. 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 to understand more fully a building they are considering for purchase or rent.

The specific benefit anticipated from this regulation is an increased understanding of the value of energy efficiency for building owners, resulting in improved building energy efficiency statewide. This could result 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.

PURPOSE

Section 1680. PURPOSE

1680: To summarize the requirements and expected outcomes of the proposed regulations.

Section 1681. DEFINITIONS

1681: To define terms used in the proposed regulations.

1681(a): To specify the intervals for which, and the period during which, a utility account needs to have received energy to be considered “active.”

1681(b): To define the action required by the owners of some buildings. The definition is from AB 802 and is included in the proposed regulation for completeness.

1681(c): To explain what is meant by “Building Identification Number,” which utilities will be required to provide to building owners once the numbering system has been created.

1681(d): To clarify how building ownership may be demonstrated.

1681(e): To specify the population of buildings for which utilities will be required to provide data to a building owner, owner’s agent, or operator on request beginning January 1, 2017. The proposed definition is from AB 802, with modifications for clarity.

1681(f): To specify the population of buildings for which (1) the building owners will be required to report building characteristic and energy use data to the Energy Commission, and (2) the Energy Commission will publicly disclose building characteristic and energy use data.

1681(g): To specify what is meant by “energy.” This definition is from AB 802.

1681(h): To define the tool building owners will be required to use to report building characteristic and energy use data to the Energy Commission. This definition is from AB 802.

1681(i): To describe what should be included when calculating the size of a building. This is a modified version of the definition in the ENERGY STAR Portfolio Manager glossary.

1681(j): To clarify that there is no distinction within the proposed regulations between “operator” and “owner’s agent.”

1681(k): To clarify how agency may be demonstrated.

1681(l): To enable using the word “person” in the proposed regulations rather than repeating this entire list each time.

1681(m): To explain what is meant by Portfolio Manager Property ID.

1681(n): To explain who is responsible for providing energy use data to building owners and owners’ agents on request.

1681(o): To specify what qualifies as a utility account for the several utility account thresholds given in the proposed regulations.

Section 1682. DATA ACCESS

1682(a)(1): To list the items that a building owner, owner’s agent, or operator must provide to request energy use data for a building.

1682(a)(1)(A): To indicate to the utility for which building energy use data is being requested.

1682(a)(1)(B): To make explicit the unique building for which energy use data is being requested.

1682(a)(1)(C): To ensure that the person requesting building-level energy use data from a utility is the owner of that building, or a person authorized to act on behalf of the owner of that building.

1682(a)(1)(D): To make the utility aware of the number of utility accounts serving a building, which is necessary to indicate whether the utility customers in the building are required to provide permission before the utility will provide energy use data for the building to the building owner.

1682(a)(1)(E): To indicate to the utility what level of customer permission will be required before the utility shares building-level data with the building owner, owner’s agent, or operator. The proposed regulations establish two levels of customer permission:

1. For data requests not made to comply with the benchmarking and public disclosure requirements of the regulations, customers are agreeing to have their energy use data shared with the building owner only.
2. For data requests made to comply with the benchmarking and public disclosure requirements of the regulations, customers are agreeing to have their energy use data shared publicly.

1682(a)(2): To specify the manner by which a building owner, owner's agent, or operator may request building-level energy use data from a utility.

1682(b)(1)(A): To provide a means by which a building owner, owner's agent, or operator may verify that the energy use data provided by a utility corresponds to the building for which energy use data is being requested.

1682(b)(1)(B): To provide a unique identifier for the building or property.

1682(b)(2): To clarify that the utility is responsible for identifying and providing all energy use data associated with a building for which energy use data is requested, and to specify that energy use data shall be provided both for the calendar year preceding the date on which the request is made, and for all available data for the year in which energy use data is requested.

1682(b)(2)(A): To provide a method for utilities not using ENERGY STAR Portfolio Manager's Data Exchange Services to send energy use data for a building to the owner, owner's agent, or operator for that building. Data Exchange Services is a service by which utilities may upload energy use data directly to a person's ENERGY STAR Portfolio Manager Account. ENERGY STAR Portfolio Manager (Portfolio Manager) is the online program, provided by the U.S.

Environmental Protection Agency, which building owners, owners' agents, and operators will use to benchmark their buildings and report their building performance to the California Energy Commission (Energy Commission).

1682(b)(2)(B): To give building owners, owners' agents, and operators the option to have building energy use data uploaded to Portfolio Manager, or sent to them in the form of a spreadsheet provided by Portfolio Manager.

1682(b)(3): To specify the time period within which a utility must determine whether a request for building energy use data contains all required information, and whether customer permission will be necessary before the utility can provide building energy use data to the building owner, owner's agent, or operator.

1682(b)(3)(A): To specify that, for requests not requiring customer permission, the utility will have 28 calendar days in which to provide the requested information, and to require the utility to notify the building owner, owner's agent, or operator of the same.

1682(b)(3)(B): To require a utility to notify an owner, owner's agent, or operator who has requested building energy use data when the request is missing information and what is missing.

1682(b)(4): To explain the process for obtaining customer permission prior to providing energy use data to a building owner, owner's agent, or operator, when there are fewer than three utility accounts of any energy type a utility provides, none of which are residential, or fewer than five utility accounts of each energy type a utility provides, at least one of which is residential.

1682(b)(4)(A)(i): To explain the customer permission required for energy use data requests not made for compliance with the benchmarking and public disclosure requirements of this program.

1682(b)(4)(A)(i)(1): To provide the option for a building owner, owner's agent, or operator to obtain customer permission to share energy use data with the owner, owner's agent, or operator prior to the request for energy use data.

1682(b)(4)(A)(i)(2): To direct utilities to contact customers for whom they do not yet have permission to share energy use data with a building owner, owner's agent, or operator.

1682(b)(4)(A)(ii): To explain the customer permission required for energy use data requests made for compliance with the benchmarking and public disclosure requirements of this program.

1682(b)(4)(A)(iii): To explain that building owners who are also utility customers do not need to provide permission to receive their own energy use data.

1682(b)(4)(B): To describe the requirements for a utility to send a reminder to a customer from whom it has not received permission to share energy use data with a building owner, owner's agent, or operator after 30 calendar days, and to notify the building owner, owner's agent, or operator if it has not received customer permission after 60 calendar days.

1682(b)(4)(C): To require a utility to provide energy use data to a building owner, owner's agent, or operator for those utility accounts for which the utility customers have provided permission, even if not all customers in the building have provided permission, and to require utilities to aggregate all energy use data for which customers have provided permission.

1682(b)(5): To clarify that a utility may not require any information from a building owner beyond those items listed in subdivision (b)(4)(A) as a condition of providing building energy use data.

1682(b)(6): To require utilities to provide building energy use data to a building owner, owner's agent, or operator within 28 calendar days of determining that a request is valid or, for cases in which customer permission is required, within 28 calendar days of receiving customer permission.

1682(b)(7): To require a utility to notify a building owner and send the information listed in subdivision (b)(2) directly to a building owner, owner’s agent, or operator in the event of an interruption in Portfolio Manager.

1683. BENCHMARKING AND REPORTING DISCLOSABLE BUILDINGS

1683(a): To give the years in which building owners must comply with the benchmarking and reporting requirements set forth in subdivision (b).

1683(b)(1): To list the steps required for a building owner to benchmark and report to the Energy Commission the characteristics and energy performance of a disclosable building.

1683(b)(1)(A): To require a building owner to open a Portfolio Manager account, enter building information into it, and complete or update all required fields.

1683(b)(1)(B): To require a building owner to request energy use data by March 1 of each year.

1683(b)(2): To provide the reporting procedure for owners of buildings with three or more utility accounts of every energy type serving the building, or fewer than three utility accounts where all utility customers have granted permission.

1683(b)(3): To provide the reporting procedure for owners of buildings with fewer than three utility accounts of any energy type serving the building, where one or more utility customers other than the building owner have not granted permission to share their energy use data with the building owner, owner’s agent, or operator.

1683(b)(4): To give the public disclosure procedure for owners of buildings with two utility accounts, one of which belongs to the building owner, where the utility customer who is not the building owner has granted permission to share his or her energy use data with the building owner, owner’s agent, or operator.

1683(b)(5): To instruct a building owner or owner's agent required to benchmark and disclose energy use for a building what to do in the case of an interruption in Portfolio Manager.

1683(c)(1): To specify the years in which building-level data for disclosable buildings with no residential utility accounts will be publicly disclosed.

1683(c)(2): To specify the years in which building-level data for disclosable buildings with residential utility accounts will be publicly disclosed.

1683(c)(3): To list the building characteristic and energy performance information that the Energy Commission may make public for each disclosable building with three or more utility accounts of all energy types serving the building.

1683(c)(4): To list the building characteristic and energy performance information that the Energy Commission may make public for each disclosable building for which energy use data is not available.

1683(c)(5): To state that the Energy Commission may collect from ENERGY STAR Portfolio Manager additional information regarding building energy use and building characteristics beyond those metrics listed for public disclosure, and that the Energy Commission will not post this additional information on its public website.

1683(d): To explain that owners of disclosable buildings assisted or insured by the United States Department of Housing and Urban Development (HUD) programs with one or more active residential utility accounts who use Portfolio Manager to report building characteristic and energy use data to HUD for those buildings or properties containing those buildings may report to the Energy Commission benchmarking information at the property level, rather than at the building level, if that is how they report to HUD.

1683(e): To state that the Energy Commission may designate other tools in addition to, or instead of, Portfolio Manager for compliance with this program if it determines that Portfolio Manager is unavailable or unsuitable for the requirements of the benchmarking and disclosure program required by AB 802.

1684. EXEMPTIONS

1684(a): To list the circumstances under which the owner of a disclosable building is exempt from the reporting requirements of this program.

1684(b)(1): To describe the process by which a local jurisdiction may request that compliance with its benchmarking program exempts a building owner from compliance with the statewide program.

1684(b)(2): To describe the causes and procedure for a local jurisdiction to have its exemption revoked.

1684(b)(3): To specify that owners of buildings in jurisdictions that have had exemptions revoked will need to begin reporting to the Energy Commission in the calendar year following the year in which the exemption is revoked.

1684(b)(4): To state that the Energy Commission will list on its website details regarding revocation of exemptions.

1684(c): To establish a process for the Energy Commission to specify building types or usages for which building owners will be exempt from the reporting requirements of this program.

1685. VIOLATIONS AND ENFORCEMENT

1685(a): To list the violations for which a person requesting energy use data may be subject to a fine pursuant to Public Resources Code section 25321.

1685(b): To list the violations for which a utility may be subject to fine pursuant to Public Resources Code section 25321.

NECESSITY

Section 1680: PURPOSE

This section is necessary to provide an overview of, and the expected outcomes of, the proposed regulations.

Section 1681: DEFINITIONS

Section 1681(a): The term “active utility account” is used in the definition of “covered building” in AB 802, so it is necessary to provide a definition for “active.”

Section 1681(b): The term “benchmarking” is used in the proposed regulations, so a definition of “benchmark” is necessary. The definition in the proposed regulations is from AB 802.

Section 1681(c): There is currently no universal method for explicitly identifying a building. Because this program will require utilities to provide energy use data at the building level to building owners, and require building owners to report building-level energy performance to the Energy Commission, a method for identifying buildings is necessary. The Energy Commission is proposing to assign a Building Identification Number to each disclosable building; this number can be used by building owners, utilities, and the Energy Commission to ensure that a given building is being referenced correctly.

Section 1681(d): The proposed regulations require utilities to provide building-level energy use data to building owners, owners’ agents, or operators on request, and require building owners to report building energy performance to the Energy Commission. Therefore, a definition of

“building owner” is necessary. The specific documentation listed in the proposed regulations can be obtained with reasonable effort by a legitimate building owner or owner’s agent.

Section 1681(e): AB 802 requires utilities to provide building energy use data to the owner, owner’s agent, or operator of a covered building upon request, and provides a definition for “covered building.” The proposed regulations use the definition from AB 802, with added detail for clarity without changing the substantive meaning. This definition also clarifies an ambiguity in the statute with respect to the treatment of multiple buildings sharing a meter. The proposed regulation specifies that such buildings should be treated as a single “covered building” for the purpose of this program, thereby clarifying this ambiguity.

Section 1681(f): The definition of “disclosable building” is necessary to define the population of buildings for which the owners will be required to report energy performance to the Energy Commission. The proposed definition excludes buildings for which benchmarking is less likely to be beneficial. For clarity and completeness, the definition also excludes residential buildings with fewer than 17 active residential utility accounts, which are expressly excluded from benchmarking by AB 802, and fewer than 50,000 square feet of gross floor area, which the legislature did not specify were intended to be benchmarked.

Section 1681(g): A definition of “energy” is necessary to ensure that building owners know what they are required to disclose. The definition in the proposed regulations is substantially similar to that in AB 802, but is included in the definitions for clarity and completeness.

Section 1681(h): ENERGY STAR Portfolio Manager is the software tool required in the proposed regulations for building owners to enter building characteristics and energy use data, and to report their building information to the Energy Commission, so a definition of ENERGY STAR

Portfolio Manager is necessary. The definition in the proposed regulations is substantially similar to that in AB 802, but is included for clarity and completeness.

Section 1681(i): The proposed regulations require benchmarking and public disclosure for those buildings larger than 50,000 square feet of gross floor area, so a definition of “gross floor area” is required to clarify what spaces within a building should be included for benchmarking. The definition in the proposed regulations is a modified version of the definition of “gross floor area” used in the Portfolio Manager glossary.

Section 1681(j): AB 802 requires utilities to provide building energy use data to the owner, owner’s agent, or operator of a covered building upon request. In practice, a building operator is a specific type of owner’s agent, so the proposed regulations define “operator” the same as “owner’s agent.”

Section 1681(k): AB 802 requires utilities to provide building energy use data to the owner, owner’s agent, or operator of a covered building upon request. A definition of “owner’s agent” is necessary to make explicit to whom a utility will be required to give building energy use data.

Section 1681(l): The proposed definition of “person” avoids the need to list separately every possibly entity in multiple places later in the regulations.

Section 1681(m): The Portfolio Manager Property ID provides a means to distinguish between multiple instances of the same structure entered in Portfolio Manager.

Section 1681(n): AB 802 requires utilities to provide building energy use data to the owner, owner’s agent, or operator of a covered building upon request. A definition of “utility” is necessary to make explicit from which entities energy use data may be requested.

Section 1681(o): AB 802 sets several data aggregation thresholds based on the number of utility accounts in a building. The term “utility account” does not have a standard meaning, so a definition is necessary. A definition referring to the number of unique users of energy in a building (by using postal addresses) is closer to the intention of the statutory thresholds than a definition referring to the number of agreements between a utility and unique users in a building. Specifically, the proposed definition refers to the number of postal addresses served by a utility account as a single utility account, and refers to a single utility customer served by multiple utility accounts as a single utility account.

Section 1682: DATA ACCESS

Section 1682(a)(1): This section is necessary to specify what a building owner, owner’s agent, or operator will need to provide to request energy use data from a utility.

Section 1682(a)(1)(A): The building address is necessary so the utility can identify for which building a requester is requesting energy use data.

Section 1682(a)(1)(B): Building identification numbers, when available, will provide a more explicit reference to a building than the building address, as often a building can contain multiple addresses. Until building identification numbers are available, utilities will need to provide building-level energy use data based on building addresses.

Section 1682(a)(1)(C): AB 802 requires utilities to provide building energy use data to the owner, owner’s agent, or operator of a covered building upon request. It is therefore necessary for a person requesting energy use data to provide information verifying that he or she is the building owner or owner’s agent, as described in the definitions of these terms.

Section 1682(a)(1)(D): Consistent with the apparent intent of the legislature, section 1681(o) defines “utility account” to mean the number of distinct users of a given energy type. Where a single account serves multiple unique users, it is necessary for the building owner to notify the utility of that fact, so each user can be treated as a separate account-holder for the purposes of evaluating any data aggregation threshold. It is therefore necessary for a person requesting data from a utility to include in the request the number of unique postal addresses as a way to discern the number of unique users as a utility may not know how many unique users of energy there are in a building if all energy is delivered through one utility account.

Section 1682(a)(1)(E): Whether a request is made for compliance with the benchmarking and public disclosure requirements of the proposed regulations affects the type of customer permission that is required. For requests not made for compliance with the benchmarking and public disclosure requirements, utility customers will need to decide whether to allow their energy use information to be shared with the building owner. For requests made for compliance with the benchmarking and public disclosure requirements, utility customers will need to decide whether to allow their energy use information to be publicly disclosed. It is therefore necessary for a person requesting building-level energy use data to indicate whether a given data request is made for compliance with the benchmarking and public disclosure requirements so the utility will know what type of customer permission is needed, and can send the request to the customer accordingly.

Section 1682(a)(2): AB 802 specifies that requests for building-level energy use data be made in writing or by a secure electronic method.

Section 1682(b)(1)(A): Partial meter numbers are necessary for a person who has requested energy use data to verify that the energy use data provided is correctly associated with the building. Because in some instances a meter number can be used to access a utility account, as a security measure, only the last four digits of the meter number are to be provided.

Section 1682(b)(1)(B): The building identification number, if available, will help the person requesting data to confirm that the building for which data is provided is the building for which data was requested. It will also help the Energy Commission to track compliance with the benchmarking and public disclosure requirements of the proposed regulations.

Section 1682(b)(2): AB 802 requires that utilities provide the most recent 12 months of energy use data to a building owner, owner's agent, or operator on request. The proposed regulations require that building owners report energy use data from the previous calendar year to the Energy Commission. Therefore, the proposed regulations require utilities to provide energy use data from the previous calendar year. Requiring utilities to also provide all energy use data from the current year ensures that building owners who are not requesting energy use data for the purpose of compliance with the benchmarking and public disclosure requirements of the regulations do not have to make a different data request to the utilities.

Section 1682(b)(2)(A) & (B): The most efficient means of transmitting energy use data from a utility to a person requesting the data is through the Portfolio Manager Data Exchange Service. However, for this to work, the utility must have a direct connection to Portfolio Manager, which not all utilities have. It is therefore necessary to provide an alternate method by which utilities can provide energy use data to a person who requests it. The spreadsheet template provided by Portfolio Manager includes the appropriate fields for communicating and populating energy

use data. Similarly, for a person who requests energy use data to receive the data by a utility uploading it to Portfolio Manager would require the person to have created a Portfolio Manager account, which may not be preferred, such as in instances where the person requesting the data is planning to use other software tools for benchmarking. It is therefore necessary to allow a person requesting energy use data the option to request the data in spreadsheet form rather than by upload to Portfolio Manager.

Section 1682(b)(3): AB 802 requires a utility to provide energy use data within four weeks of a request. However, this four-week period should not include the time required for a utility to determine the validity of a data request, including whether customer permission has been provided. Therefore, a utility receiving a request for energy use data is allowed 14 calendar days to confirm the validity of the request and determine whether customer permission is required.

Section 1682(b)(3)(A): Once a utility has determined that a data request is valid, if the request is not one for which customer permission is required, it is necessary for the utility to inform the person requesting data that the data will be provided within 28 calendar days, so the person knows that no further action is required.

Section 1682(b)(3)(B): If a utility determines that a data request does not contain all required information, it is necessary for the utility to notify the person who requested information that the request was insufficient, as well as what information was missing, so the person may submit a valid request.

Section 1682(b)(4): AB 802 requires that customer permission be granted prior to a utility providing energy use data to a building owner, owner's agent, or operator for buildings with no

residential utility accounts and fewer than three total utility accounts. AB 802 also gives the Energy Commission discretion to specify how customer permission will be requested and granted, including for buildings that are not “covered buildings” per this program (buildings with one to four active residential utility accounts). This section is necessary to specify how customer permission will be requested and granted for all buildings for which it is required.

Section 1682(b)(4)(A)(i): The permission required from utility customers varies depending on whether a data request is for compliance with the benchmarking and public disclosure requirements of the proposed regulations or not. This section is necessary to specify the customer permission procedure for those data requests not made for compliance with the benchmarking and public disclosure requirements of the proposed regulations.

Section 1682(b)(4)(A)(i)(1): For building owners who want to be able to request and receive energy use data as quickly as possible, it is necessary to provide the option for utility customers to provide permission to share their energy use data with the building owner, owner’s agent, or operator directly.

Section 1682(b)(4)(A)(i)(2): For cases in which a person submitting a request for energy use data has not already obtained the customer’s permission to receive energy use data, it is necessary to provide a procedure by which the utility can attempt to obtain permission prior to providing energy use data.

Section 1682(b)(4)(A)(ii): This section is necessary to specify the customer permission procedure for those data requests made for compliance with the benchmarking and public disclosure requirements of the proposed regulations. In addition to acknowledging that energy use data will be shared with the person requesting data for the building, permission granted

pursuant to this section includes acknowledgement that building-level energy use data will be publicly disclosed.

Section 1682(b)(4)(A)(iii): This section is necessary to specify that the permission of a building owner is not necessary for a utility to provide energy use data to the owner, owner's agent, or operator of the building.

Section 1682(b)(4)(B): This section is necessary to specify the process by which a utility must keep a person who has requested energy use data informed of the status of the request.

Section 1682(b)(4)(C): This section is necessary to specify that a utility is required to provide energy use data for a utility customer that has provided permission, even if not all utility customers have provided permission. This section further specifies that when multiple utility customers have provided permission to have their data shared, the utility must aggregate the energy use data for all customers who have provided permission to have their data shared.

Section 1682(b)(5): This section is necessary to specify that, while a utility may *request* information beyond that which is required for a building owner, owner's agent, or operator to make a data request, a utility may not *require* anything beyond that which is specifically listed.

Section 1682(b)(6): This section is necessary to specify the time limit within which a utility must provide energy use data to a building owner, owner's agent, or operator upon request. AB 802 specifies four weeks for this time limit; this is written as "28 calendar days" in the proposed regulations to be consistent with other time limits in the proposed regulations.

Section 1682(b)(7): This section is necessary to tell utilities how to provide the energy use data and other information required in the Data Access section of the proposed regulations in the event of an interruption in Portfolio Manager.

Section 1683: BENCHMARKING AND DISCLOSURE

Section 1683(a): This section is necessary to specify when building owners will be required to disclose the performance of their buildings to the Energy Commission. Staff chose 2018 for the first required disclosure to allow utilities a year to develop processes and/or data exchange systems for responding to voluntary requests for energy use data before requiring public disclosure of nonresidential buildings, which is likely to greatly increase the volume of requests. In addition, requiring public disclosures for disclosable buildings with no active residential utility accounts beginning in 2018 should provide sufficient time between the regulations going into effect and when the first disclosure is required. The mandatory disclosure requirement for residential disclosable buildings begins the following year, allowing utilities and other stakeholders additional time to prepare before the requirement is extended to these buildings.

Section 1683(b): This section is necessary to specify the process by which building owners will report information about their buildings to the Energy Commission.

Section 1683(b)(1)(A): Portfolio Manager is the platform specified by the legislature for benchmarking and reporting energy use data. Opening a Portfolio Manager account provides a specific place for utilities to send energy use data for a given building. Also, by completing all required fields as specified by Portfolio Manager, the building owner provides the necessary information for Portfolio Manager to create a benchmark for their building.

Section 1683(b)(1)(B): It is necessary for building owners to request data on a date that is late enough to allow a utility time to compile the previous calendar year of energy use data, but early enough to allow time to report the benchmarking and reporting process. Requiring that the request be made by March 1 balances these concerns.

Section 1683(b)(2): This section is necessary to specify the process by which owners of buildings with (1): three or more utility accounts, or (2): fewer than three utility accounts, where all utility customers have granted permission to have building-level energy use data publicly disclosed consistent with 1682(b)(4)(A)(ii), will report their information to the Energy Commission.

Section 1683(b)(2)(A): Where a utility has not uploaded energy use data to a building owner's Portfolio Manager account, it is necessary for the building owner to do so.

Section 1683(b)(2)(B): Requiring automated data checking allows an opportunity to catch errors in information entry before the information is transmitted to the Energy Commission.

Section 1683(b)(2)(C): It is necessary to instruct building owners on the steps they need to take to report their benchmark to the Energy Commission.

Section 1683(b)(3): AB 802 allows a utility customer in a building with fewer than three active utility accounts to provide permission for their energy use data to be shared with a building owner or their agent. However, if an account holder in a disclosable building does not provide this permission, the building cannot be benchmarked and disclosed. It is therefore necessary to have a link for buildings for which customer permission would have been required prior to disclosure, where one or more utility customers other than the building owner have not granted permission to have building-level energy use data publicly disclosed. This provides the Energy Commission with a record of buildings for which customer permission has been denied, as well as building characteristics information for those buildings, rather than having what would appear to be missing reports.

Section 1683(b)(4): Sometimes, building owners may hold active utility accounts in their own nonresidential buildings with only one or two active utility accounts, the account threshold for which customer permission is required. However, building owners do not need to consent before a utility provides them with their own energy use data; therefore their privacy interests are not protected by the aggregation threshold for customer permission. To address this issue, this provision specifies that a building owner in such a situation may avoid public disclosure of energy use data if this would result in the release of proprietary information that could be characterized as a trade secret.

Section 1683(b)(4)(A): This section is necessary to specify the reporting process for building owners who are utility customers and for whom public disclosure of building-level energy performance information would not constitute the release of proprietary information that can be characterized as a trade secret.

Section 1683(b)(4)(B): This section is necessary to protect the energy use data of those building owners who think that public disclosure of building-level energy performance information would constitute the release of proprietary information that can be characterized as a trade secret. It is necessary to require that a determination be made in each such case, as such a case should be rare and will need to be verified.

Section 1683(b)(5): This section is necessary to specify a building owner's obligations if an interruption in Portfolio Manager prevents the building owner from completing disclosure to the Energy Commission.

Section 1683(c): This section is necessary to specify what information the Energy Commission will publicly disclose through this program, and when this public disclosure will happen.

Section 1683(c)(1) and (2): These sections are necessary to make clear that information disclosed to the Energy Commission in the first reporting year for buildings with no residential accounts will not be publicly disclosed, and that information disclosed to the Energy Commission in the second reporting year for buildings with no residential accounts will be publicly disclosed. The purpose of not disclosing information received for the first year is to familiarize building owners with the data request, benchmarking, and disclosure processes, and to give them a chance to improve the performance of their buildings prior to public disclosure should they wish to do so, and also to allow sufficient time for the Energy Commission to develop and refine its state-wide public disclosure infrastructure using actual reported data before going live with the platform.

Section 1683(c)(3): This section is necessary to specify the metrics that may be made available on a public website for disclosable buildings to which subdivision (c)(4) does not apply.

Section 1683(c)(3)(A): A building identification number is necessary to ensure that a given building can be correctly and easily referenced by the multiple parties that will participate in this program.

Section 1683(c)(3)(B): In addition to the building identification number, the building address is necessary to identify buildings to the public, who may not be familiar with the building identification number system. Also, building identification numbers will take time to develop, and may not be immediately available.

Section 1683(c)(3)(C): The county in which a building is located is necessary to provide a means by which buildings may be categorized to quantify performance.

Section 1683(c)(3)(D): The year in which a building was built is necessary to provide another means by which buildings may be categorized to quantify performance.

Section 1683(c)(3)(E): The gross floor area of a building is necessary to calculate the energy use intensity of the building, which is the energy used per unit of area.

Section 1683(c)(3)(F): The latitude and longitude of a building are necessary to correctly place that building on a state map on the public website that will be used for this program.

Section 1683(c)(3)(G): The property or building name is necessary to identify buildings to the public, who may be more familiar with the property name than the address or building identification number.

Section 1683(c)(3)(H): The property type is necessary to enable direct comparison of energy performance between buildings used for similar purposes. The Environmental Protection Agency-calculated type is used in Portfolio Manager to compare a building against similar buildings to produce a score.

Section 1683(c)(3)(I): The property type is necessary to enable direct comparison of energy performance between buildings used for similar purposes. The self-selected property type allows building owners to specify the type they feel best fits their uses.

Section 1683(c)(3)(J): The property floor area is necessary for situations in which a building and other areas are served by the same meter, as this provides a means to distinguish between the building and non-building areas.

Section 1683(c)(3)(K): An open “comments” field is necessary for building owners to provide information about their buildings beyond the information that is pulled from Portfolio Manager. Examples of information that could be communicated in this field include plans for

future building improvements, explanations for unusual energy benchmarks, and details regarding recent changes in the building or its use.

Section 1683(c)(3)(L): The ENERGY STAR Portfolio Manager property ID, assigned by Portfolio Manager, is necessary to distinguish between instances of the same building entered in Portfolio Manager, and to ensure that year-over-year reporting is for the same building.

Section 1683(c)(3)(M): For buildings that are not eligible for an ENERGY STAR score, the portion of a building that is occupied is necessary to understand energy use.

Section 1683(c)(3)(N): For buildings that are not eligible for an ENERGY STAR score, the number of occupants in a building is necessary to understand energy use.

Section 1683(c)(3)(O): The number of buildings (in cases where multiple buildings are served by a single energy meter without sub-metering) is necessary to accurately portray energy use on the public disclosure website.

Section 1683(c)(3)(P): Publicly disclosing the ENERGY STAR score is necessary because it allows an intuitive metric for comparing buildings of similar use types nationwide. However, not all buildings are eligible for an ENERGY STAR score.

Section 1683(c)(3)(Q): The number of hours operated per week is necessary to understand energy use intensity according to how much a building is used; a building that uses a given amount of energy will look comparatively better if it is used for more hours each week. This is particularly important for buildings that are not eligible for an ENERGY STAR score.

Section 1683(c)(3)(R): This item is necessary to specify a metric by which the Energy Commission may disclose energy use. Energy use intensity (described below) is typically expressed in units that do not distinguish between fuel types. This metric distinguishes

between the fuel types serving a building, providing additional information that can reflect a building's or region's incorporation of renewable energy over time.

Section 1683(c)(3)(S): Energy use intensity provides another way to quantify building performance, and is especially important for buildings that are not eligible for an ENERGY STAR Score. It is calculated by dividing energy use by floor area.

Section 1683(c)(3)(T): Greenhouse gas emissions are necessary to allow the impact that energy use in buildings has on the environment to be tracked over time.

Section 1683(c)(4): This section is necessary to specify the metrics that may be made available on a public website for disclosable buildings for which energy use data is not available.

Section 1683(c)(5): This section is necessary to make clear that the Energy Commission may collect additional information regarding building energy use and building characteristics beyond the items listed in subdivision (c)(3) for analytical and program evaluation purposes.

Section 1683(d): This section is necessary to provide a procedure that avoids requiring building owners to benchmark at the property level to HUD, and at the building level to the Energy Commission.

Section 1683(e): Although Portfolio Manager is currently appropriate for the AB 802 program and is identified in AB 802, it is administered by U.S. Environmental Protection Agency and is therefore not under the control of the Energy Commission. It is possible that Portfolio Manager could become unavailable in the future, or that changes could be made to the platform that make it unsuitable for this program. To account for such contingencies, it is therefore necessary to indicate that the Energy Commission may propose alternatives to Portfolio Manager.

Section 1684: EXEMPTIONS

Section 1684(a): This section is necessary to list the conditions under which a building owner is exempt from reporting to the Energy Commission for a disclosable building.

Section 1684(a)(1): It is necessary to exempt buildings that have not yet been occupied, as they will not yet have useful energy use data.

Section 1684(a)(2): It is necessary to exempt buildings that are scheduled to be demolished as there is no purpose in seeing or improving the energy performance of these buildings.

Section 1684(a)(3): It is necessary to exempt from compliance with the statewide program buildings that were benchmarked pursuant to a local program listed on the Energy Commission website to avoid building owners having to report more than once annually.

Section 1684(b): This section is necessary to describe the process by which a local benchmarking and public disclosure program may be listed on the Energy Commission website, meaning that owners of buildings subject to, and in compliance with, a local benchmarking program will not need to report directly to the Energy Commission for those buildings. Information on the buildings will be transmitted to the Energy Commission by the jurisdiction administering each local benchmarking and public disclosure program.

Section 1684(b)(1)(A): It is necessary to require that local programs applying for exemption require, at a minimum, annual disclosure of the information required by these regulations, so that the same information can be included on the statewide website for these buildings as for buildings not covered by local programs, and so that the information can be updated with the same frequency as for buildings not covered by the statewide programs.

Section 1684(b)(1)(B): It is necessary to require local programs to transmit their publicly disclosed data to the Energy Commission, so that building owners do not need to report both to

a local jurisdiction and to the state. August 1 was selected as the date by which the local jurisdiction must transmit to the Energy Commission the data that it has received, allowing it additional time to organize and check the data before transmittal.

Section 1684(b)(2): In the event that a local program listed on the Energy Commission's website is not meeting its obligations to benchmark covered buildings and transmit publicly disclosed data to the Energy Commission, there needs to be a process by which a local benchmarking and public disclosure ordinance may be disqualified from exemption from compliance with the statewide program. This is necessary to ensure publicly disclosed data is consistent for disclosable buildings statewide. Notification 30 calendar days in advance of revoking a local exemption is sufficient to provide opportunity for public comment in advance of the Energy Commission taking action, including from the local jurisdiction in question.

Section 1684(b)(3): In cases where a local exemption is revoked, it is necessary for building owners in that jurisdiction to resume compliance with the state-wide program, starting with the year after revocation. This promotes continuous data on the statewide public disclosure website.

Section 1684(b)(4): It is necessary to maintain a public list of those jurisdictions for which a local ordinance exemption has been revoked, so that owners of buildings in those jurisdictions know that they are required to report to the Energy Commission.

Section 1684(c): While the proposed regulations identify certain buildings that are exempt from mandatory benchmarking and public disclosure, in the future additional buildings types and usages for which benchmarking is less useful may be identified. This section is necessary to create a mechanism for the Energy Commission to exempt building types and usages for which

it determines benchmarking and public disclosure is of minimal value, either at the request of an interested stakeholder or on its own initiative.

Section 1685: VIOLATIONS AND ENFORCEMENT

This section is necessary to specify what actions are considered non-compliant with the requirements of this program, and the penalties for such actions. The penalties mentioned (the measures identified in Public Resources Code section 25321) are specified in AB 802.

SPECIFIC TECHNOLOGIES OR EQUIPMENT– Government Code Sections 11340.1(a), 11346.2(b)(1), and 11346.2(b)(4)(A)

Public Resources Code section 25402.10(c)(1) specifies the use of the U.S. Environmental Protection Agency’s online ENERGY STAR Portfolio Manager benchmarking tool for transmitting energy use data from a utility to a building owner. Consistent with this requirement, the proposed regulations require building owners, owners’ agents, or operators to use Portfolio Manager to transmit their building characteristic information and energy use data to the Energy Commission. Portfolio Manager is the national standard for benchmarking commercial and multi-family residential buildings and already familiar to many building owners. The ENERGY STAR score that Portfolio Manager produces is widely understood and can be used to compare a building’s performance to that of similar buildings across the country. Portfolio Manager provides interfaces for data entry by building owners and utility providers. It also provides the interface for export to the Energy Commission’s Portfolio Manager account, which Energy Commission staff will use to make building-level energy performance information public.

ECONOMIC IMPACT ANALYSIS

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 associate energy usage with buildings, to create and implement the system for responding to data requests, and to 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 regulation 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 included in the existing programs in San Francisco and Berkeley, and the Department of General Services requirement for state buildings, to apply 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 hopefully lead to an increased understanding of the value of energy efficiency, 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.

DOCUMENTS AND REPORTS RELIED UPON – Government Code Section 11346.2(b)(3)

ENERGY STAR Portfolio Manager Glossary. U.S. Environmental Protection Agency
<https://portfoliomanager.energystar.gov/pm/glossary>

60-Day Notice of Proposed Information Collection: Energy Benchmarking of Public Housing, 81 Fed. No. 192 Reg. 68450
<https://www.gpo.gov/fdsys/pkg/FR-2016-10-04/pdf/2016-23978.pdf>

60-Day Notice of Proposed Information Collection: Energy Benchmarking, 81 Fed. No. 192 Reg. 68446
<https://www.gpo.gov/fdsys/pkg/FR-2016-10-04/pdf/2016-23979.pdf>

CONSIDERATION OF REASONABLE ALTERNATIVES, INCLUDING THOSE THAT WOULD LESSEN

ANY ADVERSE IMPACT ON SMALL BUSINESS - Government Code Section 11346.2(b)(4)

Staff considered the following alternatives in creating the proposed regulations:

1. One alternative to the proposed regulations would be for the Energy Commission to perform benchmarking for all disclosable buildings, rather than requiring building owners to perform benchmarking and report the results to the Energy Commission. The considerations regarding this alternative are as follows:

(a) The advantages of this method would be the following:

- i) The benchmarking of each disclosable building would be performed by a person with significant experience doing so: either Energy Commission staff or a contractor.

Under the proposed regulations, there is likely to be more variation in the quality of the data the Energy Commission receives due to a range of experience in benchmarking building energy use.

- ii) Compliance would be very high, as Energy Commission staff would benchmark every building for which building characteristic information and energy use data are available.

(b) The overwhelming disadvantage to this method is that building owners would not be involved with the benchmarking of their buildings. This causes two problems:

- i) Without a personal investment in the benchmarking process, a building owner is likely to be less interested in the results of the process.
- ii) Accurately benchmarking a building requires inputting information that only the building owner is likely to have. If the Energy Commission were to benchmark buildings, default values would be used for the number of occupants, the number of

computers, and the number of weekly operating hours, resulting in inaccurate benchmarks.

2. A second alternative staff considered was to not require benchmarking and public disclosure for buildings served by fewer than three utility accounts of any fuel type. This would have avoided the need for customer permission in the benchmarking and public disclosure portion of the program. Staff concluded, with input received through the public process, that this was not an ideal solution, as it would have resulted in too many buildings being excluded from mandatory benchmarking and public disclosure.
3. Consistent with Government Code section 11340.1(a), staff considered proposing a performance-based standard for benchmarking and public disclosure, wherein utilities would provide energy use data to building owners and their agents in whatever format they chose, and building owners or their agents would be afforded discretion to benchmark their buildings using whatever tools and methods they chose. There are two major drawbacks to such an approach. First, without a common technology platform such as Portfolio Manager, utilities would not have a uniform mechanism for providing energy use data to building owners and their agents, nor would building owners have a uniform mechanism for providing their benchmarks to the Energy Commission. Such lack of uniformity would substantially increase the burden for all regulated entities and for the Energy Commission. Second, without a common methodology, benchmarking data would not be readily comparable, which would substantially lessen the benefit in providing meaningful information about the relative efficiency of similar buildings. It is for these reasons, and because the legislation specifically identifies Portfolio Manager for public benchmarking and

disclosure, that staff determined the common use of Portfolio Manager was more effective and less burdensome than an alternative performance standard.

Any of the above alternatives would have applied equally to businesses of any size. Staff did not specifically consider alternatives that would lessen the impact of the regulations on small businesses.

SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS – Government Code

§11346.2(b)(5)(A)

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 businesses 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 or any 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.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS – Government Code Section

11346.2(b)(6)

Staff searched for and found no federal regulations requiring the benchmarking of buildings in California. Staff also reviewed federal statutes, proposed regulations, Presidential Executive Orders and Memoranda, and Federal Register notices. Staff found (1) a federal statute and

Presidential Memorandum requiring federal agencies to benchmark certain federal buildings and publicly disclose the data, and (2) two Federal Register Notices from the U.S. Department of Housing and Development (HUD) proposing to require owners of certain public housing properties and certain HUD-assisted and HUD-insured multifamily housing properties to benchmark their properties and report benchmarking data to HUD. As discussed below, staff concluded that the Energy Commission's proposed regulations do not represent duplication of, or a conflict with, these federal requirements.

Benchmarking of Federal Buildings

The Energy Independence and Security Act of 2007 requires federal agencies to enter energy use data for certain metered federal buildings into a building energy use benchmarking system, and requires the Department of Energy to publicly disclose the information entered into the building system through a web-based tracking system. (42 U.S.C. §§ 8253(f)(8)(A), 8253(f)(8)(C)). Also, section 3 of President Barack Obama's Presidential Memorandum entitled *Federal Leadership on Energy Management* (December 5, 2013), requires federal agencies to enter energy data for certain federal buildings into ENERGY STAR Portfolio Manager and to publicly disclose annual benchmarking data through the Department of Energy web-based tracking system. However, federal buildings are exempt from the requirements in the Energy Commission's proposed regulations. Therefore, the Energy Commission's proposed regulations do not represent duplication of, or a conflict with, federal benchmarking and public disclosure requirements for federal buildings.

Benchmarking of Public Housing and Multifamily Housing Receiving HUD Assistance or Insurance

The U.S. Department of Housing and Development (HUD) recently issued two notices of proposed information collection under the Paperwork Reduction Act that would require certain public housing agencies and private building owners receiving HUD insurance or assistance to benchmark certain properties and report their energy use data to HUD using ENERGY STAR Portfolio Manager every three years (*60-Day Notice of Proposed Information Collection: Energy Benchmarking of Public Housing*, 81 Fed. No. 192 Reg. 68450; *60-Day Notice of Proposed Information Collection: Energy Benchmarking*, 81 Fed. No. 192 Reg. 68446). HUD's proposed requirements do not preempt state or local benchmarking laws. Also, to ensure that HUD's proposed requirements are not duplicative of, or inconsistent with, the Energy Commission's proposed regulations, the Energy Commission's proposed regulations would allow owners of a public housing building or a multifamily building that receives assistance or insurance from HUD to report benchmarking information to the Energy Commission for the same combination of buildings as required by HUD (typically the property level). Therefore, the Energy Commission's proposed regulations do not represent duplication of, or a conflict with, HUD's proposed benchmarking requirements.