

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)
 Regulations, Title 20, Proposed Sections)
 1680-1685 and Appendix A)

Notice of Hearing for the Possible Adoption of Amended Regulations for the Nonresidential Building Energy Use Disclosure Program

Notice of Availability of Additional 15-Day Language

Notice of Availability of New Documents Added to the Rulemaking Record

Revisions to Proposed Regulations Establishing the Nonresidential Building Energy Use Disclosure Program

Hearing to Consider Adoption of the Revised Regulations

The Energy Commission will conduct a hearing to consider adoption of the revised regulations for the Nonresidential Building Energy Use Disclosure Program, pursuant to AB 1103 (Saldaña, 2007) and AB 531 (Saldaña, 2009) during its regularly scheduled business meeting on:

December 12, 2012

10:00 a.m.

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

1st Floor, Hearing Room A

Sacramento, California

Wheelchair Accessible

Remote Access Available by Computer or Phone via WebEx™
 (Link to instructions below)

Public Comment

The Energy Commission will accept public comment on the additional language from November 26, 2012 through the possible adoption at the business meeting on December 12, 2012.

Written comments should be submitted to the Dockets Unit. The Energy Commission encourages comments to be submitted by e-mail. Please include your name and any organization name. Comments should be in a downloadable attachment, such as Microsoft® Word (.doc) or Adobe® Acrobat® (.pdf). Please write "AB 1103 Rulemaking, Docket No. 12-AB1103-01" in the subject line of the e-mail, and send to: docket@energy.ca.gov.

If you prefer, you may send a paper copy of your comments to:

California Energy Commission
Dockets Office, MS-4
Re: Docket No. 12-AB1103-01
1516 Ninth Street
Sacramento, CA 95814-5512

The Energy Commission will also accept oral comments during the hearing on December 12, 2012. Comments may be limited to three minutes per speaker. All comments will become part of the public record of this proceeding. Oral comments will be available in the hearing transcript and recording on the Energy Commission website for the December 12 business meeting. Additionally, written comments may be posted to the Energy Commission's website for the proceeding.

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 or toll free at (800) 822-6228.

If you have a disability and require assistance to participate, please contact Lou Quiroz at Lou.Quiroz@energy.ca.gov or (916) 654-5146 at least five days in advance of the hearing.

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

If you have questions on the subject matter of this proceeding, please contact Project Manager Justin Regnier at Justin.Regnier@energy.ca.gov or (916) 654-4196.

If you have legal questions about this proceeding, please contact Staff Counsel Robin Mayer at Robin.Mayer@energy.ca.gov or (916) 651-2921.

Remote Attendance

To participate by telephone, please call toll free 1-888-823-5065 on December 12, 2012 after 10:01 a.m. (PDT). The pass code for the meeting is "Business Meeting" and the call leader is Jerome Lee. If you plan to speak on a specific item, please give the operator the subject matter of "Nonresidential Building Energy Use Disclosure Program."

To avoid occasional technical problems with the Commission's telephone link, the Commission recommends that a written comment also be submitted either by facsimile or e-mail to the Public Adviser by 5 p.m. two days before the scheduled business meeting. Fax (916) 654-4493 or e-mail publicadviser@energy.ca.gov.

The Business Meeting is broadcast via WebEx, the Energy Commission's on-line meeting service. To listen to the meeting and view any presentations, please click the following link or paste it into your browser:

<https://energy.webex.com/energy/onstage/g.php?t=a&d=928596830>

You may also go to <https://energy.webex.com/ec> and enter Meeting Number 928 596 830. The meeting password is mtg@10am.

The December 12 Business Meeting agenda, is at the following link:

www.energy.ca.gov/business_meetings/.

Introduction

The California Energy Commission has revised the proposed regulations establishing the Nonresidential Building Energy Use Disclosure Program. The Energy Commission invites the public to review and comment on the revised regulations. The proposed revised regulations are included with this notice. Additionally, the proposed revisions and other supporting documents are available on the Energy Commission's website at www.energy.ca.gov/ab1103/rulemaking/documents/index.html.

The public may also request copies of the proposed regulations by contacting Justin Regnier, Project Manager, at justin.regnier@energy.ca.gov, or (916) 654-4196.

Documents in the rulemaking file are also available from the Energy Commission's Dockets Office. For copies please contact:

CALIFORNIA ENERGY COMMISSION
Dockets Office
1516 Ninth Street, MS-4
Sacramento, California 95814-5512
(916) 654-5076
docket@energy.ca.gov

The Energy Commission will conduct a hearing to consider adoption of the revised regulations during its business meeting on December 12, 2012.

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 of the entire building, or financing of the entire building. Benchmarking is a process that compares the energy use of a building against a baseline or against the energy use of similar buildings.

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

Proposed Regulations.

The proposed regulations require an owner of a nonresidential building within California, in advance of the sale, lease, or 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 Portfolio Manager Statement of Energy Performance, Data Checklist, and Facility Summary, and the Energy Commission Disclosure Summary Sheet) to potential buyers, lessees, and lenders. The proposed regulations also require utilities and energy providers 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 complete and submit a compliance report, and allow the Energy Commission access to the compliance report, which contains the energy use data submitted by the utility and/or energy provider. Additionally, the proposed regulations set a schedule for compliance, according to building size. Once a building is subject to compliance requirements under the schedule, an owner must benchmark and disclose in advance of the sale of the building, or the leasing or financing of the entire building.

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 identify under-performing buildings and verify that improvements work to save energy costs, and help building owners receive EPA recognition for superior energy performance via the award of an ENERGY STAR label. Use of Portfolio Manager is free.

Policy Overview

Broad Objectives

In promulgating AB 1103, the Legislature cited two broad objectives for the statute:

- (a) Facilitating a benchmarking system that provides energy consumption information for all nonresidential buildings in the state would allow building owners and operators to compare their building's performance to that of similar buildings and to manage their building's energy cost.
- (b) Benchmarking scores could motivate building operators to take actions to improve the building's energy profile and help to justify financial investments.

(AB 1103, § 1 (Saldaña, Stats. 2007, ch. 533).)

Through these regulations, the Energy Commission seeks to ensure that nonresidential building owners become cognizant of the energy use of their buildings, helping to motivate them to make energy efficiency improvements. The regulations help facilitate the benchmarking system identified in the statute by defining terms in the statute,

clarifying the requirements for building owners to benchmark under the U.S. EPA's Portfolio Manager program, setting a compliance schedule, setting time frames for owners to receive and disclose data, and requiring disclosure of information about California buildings compared to national norms. Additionally, the regulations set a time frame for utility release of data and ensure the utilities protect the confidentiality of the customer when uploading data to Portfolio Manager.

Identified Problem and Specific Benefits

The problem the Energy Commission intends to address with this rulemaking is that many nonresidential building owners lack information regarding their building's energy use. The U.S. EPA estimates that on average, 30 percent of the energy consumed in commercial buildings is wasted. The wasted energy increases costs for owners, may interfere with proper valuation of their buildings, and results in the needless release of greenhouse gas emissions. Raising awareness of a building's energy use may lead to changes in how energy is used in the building and perhaps to investments in energy efficiency improvements.

The specific benefits of the regulation include educating owners of nonresidential buildings about their building's energy use, and educating potential buyers, lessees, or lenders of nonresidential buildings of the existing energy use of the building in which they are about to invest. Benchmarking allows building owners to compare their building's energy efficiency performance in two ways: against the performance of similar buildings, and as a baseline to demonstrate changes in building performance over time. Once owners understand their building's energy use, they can take actions, including performing an energy audit, to determine how best to lower their energy use.

Benchmarking is an inexpensive and accessible first step toward making energy improvements that over time may help reduce energy use. Use of the U.S. EPA's Portfolio Manager website is free. The regulations further allow an owner who would like to supplement Portfolio Manager data to use other industry standard benchmarking programs to do so. Once the data is received, the owner then may take steps to improve the building's energy efficiency, including getting an energy audit to determine whether conservation or the installation of energy-efficient measures would be beneficial in reducing the building's energy use. Cutting energy use in turn leads to reduced greenhouse gas emissions. Commercial buildings consume 36 percent of the state's electricity. (AB 1103 Senate Floor Analysis (Sept. 5, 2007).) Disclosures of benchmarking data and Portfolio Manager scores of energy efficiency also increase openness and transparency in business. Additionally, an owner who has taken further steps to improve a building's energy use may benefit financially. Energy efficient buildings can command premium rents and higher sales values. (Center for the Study of Energy Markets, "Doing Well by Doing Good? Green Office Buildings," p.1. (Aug. 2009).)

Effects of the Regulation

The regulation directly affects California utilities, energy providers (for sources of fuel besides electricity and gas), and nonresidential building owners or their agents.

Within 30 days of a request by the building owner, utilities and energy providers are required to upload all energy use data for the entire building for at least the most recent 12 months into the owner's Portfolio Manager account. Utilities have flexibility under the regulations to aggregate or use other means to reasonably protect the confidentiality of the data during the upload. Utilities may verify a request or ask for clarification before releasing the data. AB 1103 specified the obligations of these entities; the regulations simply establish a timeline and process for completing the obligation.

Nonresidential building owners or their agents have several duties under the regulations. First, they must determine whether their building's energy use is subject to the disclosure requirements pursuant to the phased schedule. Once a building's energy use is subject to disclosure requirements, and in advance of the sale of the building, leasing of the entire building, or the financing of the entire building, the owner must open an account in Portfolio Manager; request all utilities and energy providers serving the building to release energy use data into the account or manually enter all energy use data for the building into the account; then receive the Portfolio Manager Statement of Energy Performance, Data Checklist, and Facility Summary. The owner must electronically submit a compliance report from within Portfolio Manager. The compliance report, which the Energy Commission can access, contains the energy use data submitted by the utility and/or the energy provider. From the Energy Commission's AB 1103 website, the owner must download the Energy Commission's Disclosure Summary Sheet. Finally, the owner must disclose the three documents Portfolio Manager generates upon receipt of the energy use data and the Energy Commission's Disclosure Summary Sheet to a prospective buyer, lessee, or lender of the entire building. If necessary, an owner may approximate the data for the sole purpose of complying with the statute and the regulations.

The regulations affect prospective buyers, lessees, and lenders of an entire building as they receive disclosures in advance of their financial transaction. The disclosures will give them a detailed picture of the building's energy use. As required by the statute, the regulations impose no further duties on the parties to the financial transaction. (Pub. Resources Code, § 25402.10, sub. (d)(1).)

Economic Impacts

Impacts on a Representative Private Person or Business (Gov. Code, § 11346.5, subd. (a)(9).)

There are three types of private persons/businesses affected by these regulations: nonresidential building owners, investor-owned utilities, and energy providers. Below is a discussion of cost impacts all known representative private persons or businesses in

each of these categories would incur in reasonable compliance with these regulations.

Nonresidential Building Owners. Public Resources Code, section 25402.10 requires nonresidential building owners to benchmark their buildings within ENERGY STAR Portfolio Manager, and to disclose the results in advance of major financial transactions. Use of ENERGY STAR Portfolio Manager is free. U.S. EPA estimates for labor and operating costs per benchmark are: \$322 for manual entry, \$117 for entry using the Portfolio Manager import tool, and \$59 for automated benchmarking entry. (75 Fed. Reg. 360 (Jan. 5, 2010).) Most building owners will use the automated entry method known as the Automated Benchmarking System, as it is the most efficient way to benchmark. However, staff used a conservative average of \$250 per transaction.

Additionally, the regulations impose three other duties on owners: 1) downloading the Disclosure Summary Sheet from the Energy Commission's AB 1103 website; 2) printing or otherwise including the two-page Disclosure Summary Sheet with the other disclosures generated by Portfolio Manager; and 3) electronically submitting a compliance report within the owner's Portfolio Manager account. Submittal of the compliance report is accomplished with a few clicks within the Portfolio Manager website. This duty is less than or equal in effort and cost to that of composing and sending a business letter, approximately \$20 per submittal.

Investor-Owned Utilities (IOUs). Information technology personnel from Pacific Gas and Electric estimated operation and maintenance costs for the automated benchmarking system to be approximately one million dollars per year. It is assumed that the other two major IOUs (Southern California Edison, San Diego Gas and Electric) incur similar or lesser costs, and the four smaller IOUs incur lower costs because of their reduced coverage, similar to that of a municipal utility of \$50,000 per year. Total costs for IOUs are then estimated at \$3.2 million a year. The regulations impose no extra duties on utilities supplying electricity and natural gas.

Energy Providers. The regulations also require providers of other kinds of energy (for example, a company providing chilled water to air-condition a building) to upload building-specific information to Portfolio Manager. Portfolio Manager recognizes a wide range of fuels. Although AB 1103 does not expressly reference energy providers, in order to enable building owners and operators to compare their building's performance to that of similar buildings, it is necessary to include all energy sources when benchmarking. If electric and natural gas energy were the only energy sources considered, any building utilizing other energy sources would appear to be more energy efficient than it actually is. For example, a building that is connected to a central plant system utilizing steam, hot water, or chilled water to meet heating and cooling requirements would appear to be far more efficient than an identical building using electricity and natural gas because the energy used by the building from the central plant system would not be accounted for. Approximately 25 percent of all nonresidential buildings within the state are served by both a utility and an energy provider.

The regulations require energy providers to release the data directly into the owner's Portfolio Manager account, as the least expensive way to release data, and allow an owner to manually enter the data if necessary.

The major fuels supplied by energy providers to California nonresidential buildings are district energy (steam, hot water, chilled water), propane, and fuel oil. Approximately 450 of these entities statewide serve about 25 percent of California's nonresidential buildings. Therefore, of the approximately 11,100 transactions that the Energy Commission estimates will trigger AB 1103 reporting requirements each year, approximately 2,775 will affect energy providers. Assuming most providers would not have enough requests from owners to justify installing an automated benchmarking system, compliance is estimated at \$300 per request (based on 8 hours of labor by a mid-level analyst plus ancillary costs). This yields an average of \$1850 per energy provider per year; however, the number of benchmarks is expected to vary with the customer base. The total cost for compliance with these regulations by energy providers is estimated at \$832,500 per year.

Effects of the Regulation on Small Business (Cal. Code of Regs., tit. 1, § 4, subd. (a).)

Government Code, section 11342.610 defines a small business as a business activity in agriculture, general construction, special trade construction, retail trade, wholesale trade, services, transportation and warehousing, manufacturing, generation and transmission of electric power, and health care facilities, which is both independently owned and operated, and not dominant in its field. The vast majority of businesses in California are small, with an overall ratio of almost 600 small businesses to every large business.

While the focus of the regulations is on nonresidential building owners, which do not appear to meet the definition of small business solely as a result of this ownership, a large portion of these owners are likely to also run businesses out of these buildings, such as restaurants, small stores, etc. According to California Green Solutions, owner-occupied buildings comprise 62 percent of the office market. It is assumed that most of these are small businesses, and that other categories, such as retail, share a similar percentage. These same building and small business owners would be responsible for benchmarking the individual building; thus, the proposed action affects small businesses.

The impacts on small business are those that occur as a result of being nonresidential building owners, and therefore consist of the duty to open a Portfolio Manager account and provide building characteristics about their building to the Portfolio Manager account, request submission of energy use data to the Portfolio Manager account by the utility and energy provider, to report compliance to the Commission, and to disclose the Portfolio Manager documents and the Energy Commission's Disclosure Summary Sheet to prospective buyers, lessees of the entire building, or lenders financing the entire building. Staff estimates that small business building owners will incur the same costs as other nonresidential building owners; \$250 on average to open a Portfolio

Manager Account and submit the required building data. Staff derived \$250 as a conservative average of U.S. EPA estimates for labor and operating costs per benchmark (\$322 for manual entry, \$117 for Portfolio Manager import entry, and \$59 for automated entry). Staff estimates costs of \$20 to provide the required disclosures. Submittal of the compliance report is accomplished with a few clicks within the Portfolio Manager website. This duty is less than or equal in effort and cost to that of composing and sending a business letter, approximately \$20 per submittal.

The Energy Commission considered an alternative that would lessen any impact on small businesses, namely not including energy providers in the regulations, but rejected that alternative (see discussion in alternatives section below).

Statewide Significant Adverse Economic Impact on Business (Gov. Code, § 11346.5, subd. (a)(8).)

As stated in the March 23, 2012 Notice of Proposed Action, the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Using the Dataquick information, it was determined that of the approximately 11,100 transactions triggering disclosure requirements per year, only 1.72 percent of these are in public sector buildings. As a result of subtracting the public sector buildings from the 11,100 transactions referenced above, the number of businesses affected per year is estimated at 10,900 nonresidential building owners, plus seven IOUs and 450 energy providers.

The impact of the regulations on individual nonresidential building owners is minor. The regulations implement the statutory requirement of benchmarking with ENERGY STAR Portfolio Manager via a free, federally-funded program operated by the U.S. Environmental Protection Agency. As noted above, staff used a conservative average of \$250 per transaction. The regulations also require submittal of a compliance report within the owner's Portfolio Manager account along with the downloading and disclosure of the Energy Commission's Disclosure Summary Sheet, which was created to explain energy use in California buildings and how owners may benefit from benchmarking. The estimated costs of those latter duties are \$20 per submittal. Studies have shown that benchmarking can lead to lower energy bills. For buildings that earn an ENERGY STAR plaque, owners may also enjoy higher rents and higher sales values for their buildings.

The impact on IOUs is low. Pursuant to Public Resources Code section 25402.10, subdivision (a), IOUs have been obligated since 2009 to keep records of energy use data for their nonresidential building customers. In addition, Public Resources Code section 25402.10, subdivision (b), requires the IOUs to upload energy use data to Portfolio Manager. Total costs for IOUs to release data in response to owner requests are estimated at \$3.2 million a year. These costs are attributable to the statutory requirements; the Energy Commission has not identified any additional costs

attributable solely to these regulations. Because smaller IOUs would be servicing far fewer owners, their cost impacts are similarly low.

The impact on energy providers is low, estimated at \$832,500 per year statewide. The Energy Commission assumes that the number of benchmarks is proportional to the size of the energy provider, with larger energy providers responding to more requests for data than smaller energy providers. Therefore, the ability of each business to absorb the costs associated with these regulations is proportional to its overall revenue.

Business Report (Gov. Code, § 11346.5, subd. (a)(11), § 11346.3. subds. (b)(1)(D), (d).)

For the purposes of this discussion, the Energy Commission treats all nonresidential building owners as a business, regardless of whether their building has tenants. As stated in the Notice of Proposed Action of March 23, 2012, requiring businesses to electronically submit a compliance report is necessary for the health, safety, and welfare of the people of the state. (Gov. Code, § 11346.3, subd. (d).) Specifically, submitting compliance reports within the owner's Portfolio Manager account serves the welfare of the state. Reporting accomplishes three purposes. It allows confirmation of compliance with the regulation and the statute; provides the Energy Commission with access to individual reports in case someone makes a complaint or requests an investigation under the Energy Commission's regulations (Cal. Code of Regs., tit. 20, § 1230 et seq.); and facilitates the Energy Commission's development of state energy policy, by providing the Energy Commission with access to useful data concerning the energy efficiency of existing nonresidential buildings. (See Pub. Resources Code, § 25216.5, subd. (d).)

Statement of the Results of the Economic Impact Assessment (Gov. Code, §§ 11346.3(b)(1), 11346.5, subd. (a)(10).)

Using two sample years from studies by DataQuick and other industry sources, the Energy Commission determined that approximately 6,500 sales, 3,900 loans, and 650 leases will trigger AB 1103 statutory and regulatory requirements each year, for a rounded total of 11,100 transactions. Of these, approximately 10,900 are associated with private sector buildings. At an average of \$250 per data submittal, compliance with the statutory requirements will cost nonresidential building owners approximately \$2.72 million per year. Compliance with the statutory requirements of release of energy use data will cost investor-owned utilities approximately \$3.2 million a year. Compliance with regulations establishing requirements in addition to those in the statute, including providing an electronic report that the Energy Commission can access, will cost nonresidential owners approximately \$218,000 per year. The regulations also would cost energy providers (supplying fuels other than electricity and gas) approximately \$832,500 per year. Owners may potentially save costs with lower energy bills as a result of information learned from benchmarking. Additionally, if energy-efficient improvements are made as a result of benchmarking, building owners may see their buildings increase in value, as highly energy-efficient buildings can yield as much as 4.5 percent higher rents and 26 percent higher sales value in the market.

The regulations will not eliminate any jobs or businesses in California. The regulation may help create a minor number of jobs or small businesses, as consultants seek to help nonresidential building owners comply with these requirements. The statute and the regulations may expand the businesses of current consultants and energy efficiency managers.

Summary of Comments Regarding Economic Impacts

The Energy Commission has received no comments on the economic impacts of the regulation.

Fiscal Impacts (Gov. Code, § 11346.5, subd. (a)(6).)

Impacts on Local Agencies

Data provided to the Energy Commission by Dataquick indicates that of the 11,100 annual transactions falling under AB 1103 requirements, approximately 190 of these take place in publicly owned buildings. Of these, approximately 50 are owned by local agencies. Opening a Portfolio Manager account and providing the required building information costs an average of \$250 a transaction, for a total cost of \$12,500 per year for local agencies to comply with the statute. Local agencies may see savings from actions taken after benchmarking to lower their energy bills.

In addition, local agency building owners would electronically submit a report within their Portfolio Manager account, download the Disclosure Summary Sheet from the Energy Commission's AB 1103 website, and disclose that document along with the Portfolio Manager generated documents to the prospective buyer, lessee, or lender. Staff assumed a low but reasonable cost of \$20 per disclosure, approximately the current cost of composing and sending a business letter. Based on the calculation of 50 local agency building transactions per year, the cost of local agency compliance with the regulations is \$1,000 per year.

Publicly-Owned Utilities (POUs) have incurred statutorily-imposed costs to maintain records, compatible with Portfolio Manager, for all nonresidential buildings to which they provide service. Regarding owner requests of data and associated uploads, staff conducted an informal survey of municipal utilities regarding their operations and maintenance costs of automated systems handling nonresidential owner requests for energy use data. The results ranged up to \$50,000 a year. According to the Energy Commission's Energy Almanac, there are 53 publicly-owned utilities in California. Using a conservative estimate, 53 x \$50,000, the costs of compliance with the statute by POU's is \$2.75 million a year.

Impacts on State Agencies

According to the Department of General Services (DGS), the state currently owns 2,336

office buildings and 22,538 non-office structures (such as warehouses, classrooms, and laboratories). Executive Order S-20-04 required the benchmarking of state buildings with the Portfolio Manager system by 2007. Recently, Governor Brown's Executive Order B-18-12 replaced that order with an aggressive Green Building Action Plan. Among other requirements, the Plan calls for buildings of more than 50,000 square feet to meet an ENERGY STAR rating of 75 or an alternate standard established by the Energy Commission. The Plan also calls for use of Portfolio Manager for new building leases and renegotiated leases where the state is the sole tenant.

Because of these requirements and the benchmarking expertise developed by DGS, specifically within the Building and Property Management section of the Real Estate Services Division, the statute and the regulations impose minimal duties on the state, resulting in a cost of approximately \$20 per transaction. Using Dataquick numbers and the assumption of the ratio of state/local agency impacts, the maximum number of likely transactions per year is 140. The regulations would at most then cost DGS \$2,800 a year. Benchmarking of state buildings under any requirement potentially creates savings in terms of conservation and potential installation of energy efficiency improvements.

The Energy Commission may track automated reports to check compliance, may publish aggregated data regarding energy use in the nonresidential sector in policy reports, and will handle any complaints under its usual procedures (Cal. Code Regs, tit. 20, §§ 1230 et seq.) Labor costs are expected to be minimal, spread among several employees, and absorbable into current budgets.

Summary of Comments Regarding Fiscal Impacts

The Energy Commission has received no comments on the fiscal impacts of the regulation.

Standards and Alternatives

Use of Portfolio Manager as a Prescriptive Standard

Public Resources Code, section 25402.10 specifically requires the use of the U.S. EPA's Portfolio Manager website to benchmark. (See subds. (a), (b), (d).) The legislative history of AB 1103 suggested possible flexibility in determining which benchmarking systems were used (see Senate Committee Analysis, June 15, 2007 [encouraging consideration of other benchmarking systems]), but the Legislature never incorporated such a choice into amendments of the bill. As further support for requiring the use of Portfolio Manager, the Legislature repeatedly cited its ability to rate most buildings on a 1-100 scale, making it easier to compare a building's energy use over time and potentially motivating owners to earn a high score. (E.g., AB 1103 Assembly Floor Analysis, Sept. 12, 2007.)

The regulations reiterate the statutory mandate for use of Portfolio Manager. Not only is it required by the statute, but it is a convenient, user-friendly, and prevalent benchmarking

system. According to the U.S. EPA, commercial building owners in California have benchmarked more than one billion square feet of space with Portfolio Manager, and more than 3,300 commercial buildings have earned the ENERGY STAR label. Use of a widely-recognized and accessible benchmarking process also promotes consistency of reports and data in the marketplace, helping prospective buyers, lessees, and lenders understand the information provided. Likewise, the use of the same reports over time allows owners to compare their building's energy use against an identical baseline. Use of a performance standard would not comply with the statutory requirement to use Portfolio Manager and hamper comparison of benchmarking data.

The regulations, however, allow an owner to supplement the required disclosures with other industry standard benchmarking programs such as the ASTM (American Society for Testing and Materials) checklist, a performance assessment for a building involved in a real estate transaction. Thus an owner who wants to present extra details or alternative views of a building's energy use data may find it helpful to include other benchmarking results with the same required disclosures.

Reasonable Alternatives to the Regulation

The Energy Commission must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the Energy Commission's attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Energy Commission considered different approaches during the rulemaking such as alternative disclosure schedules and limiting the types of energy data that would be reported to the Portfolio Manager program. The Energy Commission also received specific suggestions about the regulations. The Energy Commission incorporated many of the suggestions, such as allowing utilities more time to release data, more flexibility in how the data should be protected during the upload, and making the addition of California-specific energy use ratings or data from other benchmarking programs a voluntary part of the disclosure.

The Energy Commission rejected requests by utilities to require owners to get tenant consent for the release of data when tenants pay their own utility bills. This would have made the regulation unduly burdensome on building owners, many of which function as small businesses. The Energy Commission also rejected suggestions to expand the application of the regulations to buildings of less than 5,000 square feet as potentially confusing. At this time, Portfolio Manager does not generate ratings for most buildings of less than 5,000 square feet.

The Energy Commission also considered excluding energy providers from the regulations, as they may incur greater costs from these regulations than the utilities, which are already statutorily required to retain and upload energy use data for nonresidential buildings. However, because energy providers supply energy to up to 25

percent of nonresidential buildings (the majority of which also use utility-provided electricity), without measuring the energy use attributed to those fuel sources, the Statement of Energy Performance could be highly inaccurate.

Additional 15-Day Language

On July 11, 2012, the Energy Commission adopted proposed regulations to implement and interpret AB 1103 and AB 531. After careful consideration, the Energy Commission has determined that additional changes to the regulations are necessary. The Energy Commission is hereby publishing additional 15-day Language. All changes from the previously proposed language are reflected in double underline/~~double-strikeout~~ format. Changes from the original 45-day language to the first 15-day language are reflected in single underline/~~single-strikeout~~.

The new 15-day language changes include the following:

1. Minor changes to the definitions, to ensure that the terms and definitions are clear and relevant to the regulations.
2. Slight modification of the compliance schedule to ensure sufficient time for affected entities to comply.
3. Clarification of exactly when disclosures are required to be made.
4. Change of terms for the U.S. EPA benchmarking program to match current U.S. EPA terminology, in response to comments made by U.S. EPA.
5. Clarification of the Energy Commission's treatment of collected information as confidential consistent with state and federal laws.

Section 1684 (previously Section 1685), subdivision (b), was modified to replace "confidentiality of the data" with "confidentiality of the customer." The change from "data" to "customer" aligns the regulations with the language in AB 1103, which ensures that energy consumption data is uploaded into Portfolio Manager in a manner that preserves the confidentiality of the "customer."

Section 1684 (previously Section 1685), subdivision (d), was modified to add "in the event of Energy Commission access to data", to change "compliance report" to "data submitted pursuant to subdivision (c)(3)" and to add "consistent with state and federal laws." This language change states more clearly that the information the Energy Commission will protect from disclosure is that which is protected under state or federal confidentiality laws. The change also narrows the scope of confidentiality by removing the limiting reference to the compliance report. Appropriate customer protection may not require the entire compliance report to be treated as confidential and in some cases information contained in the compliance report may already be in the public domain or

otherwise not linked to a specific customer and could not be held as confidential under the Public Records Act. (Gov. Code, § 6250 et seq.)

6. Addition of Appendix A, the Disclosure Summary Sheet and reference to Appendix A.

Appendix A. The regulations require a nonresidential building owner to download the Disclosure Summary Sheet from the Energy Commission's AB 1103 web page, and give the Disclosure Summary Sheet along with the three documents generated by Portfolio Manager (the Statement of Energy Performance, Data Checklist, and Facility Summary) to the prospective buyer, lessee, or lender. The Disclosure Summary Sheet explains the documents in plain English to parties who may not be sophisticated in building operations, engineering, energy use, or energy efficiency. It provides an overview of the Portfolio Manager documents, explains the main methods of measuring a building's energy efficiency, and explains that that Portfolio Manager cannot rate all buildings. A table provides the median Energy Use Intensity values for space types in the state of California. The table allows an owner to see where a building stands in relation to similar buildings in the state, information that is not available from Portfolio Manager.

The Disclosure Summary Sheet is necessary to help educate nonresidential building owners, and prospective buyers, lessees, and lenders about the information in the Portfolio Manager documents. It also helps a nonresidential building owner understand whether a building's energy use is efficient in the absence of a rating, and how the building compares with similar buildings in California.

Additional Documents Added to the Rulemaking Record

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These documents are available at:

www.energy.ca.gov/ab1103/rulemaking/documents/documents_relied_upon/.

These documents are also available for public inspection from 9:00 a.m. to 4:30 p.m.
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