

DOCKETED

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On Building Energy Use Disclosure and Public Benchmarking Program Draft Regulations

Comments on from: California Business Properties Association, Building Owners and Managers Association of California, California Building Industry Association, California Apartment Association, International Council of Shopping Centers, NAIOP, and the Commercial Real Estate Development Association

Additional submitted attachment is included below.



August 12, 2016

TO: CALIFORNIA ENERGY COMMISSION
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Sent Via Email - docket@energy.ca.gov

FR: California Business Properties Association
Building Owners and Managers Association of California
California Building Industry Association
California Apartment Association
International Council of Shopping Centers
NAIOP, the Commercial Real Estate Development Association

RE: *Building Energy Use Disclosure and Public Benchmarking Program Draft Regulations*

On behalf of the coalition of groups mentioned above, please find the following comments pertaining to docket number 15-OIR-05 draft regulations.

As a general comment, our members represent the spectrum of thought on this issue. Many do not take issue with a mandatory benchmarking program; while many are still struggling with forcing such a data driven process on buildings that may see little relative value. We also have a general concern about public disclosure of information that is not relevant to the general public, but could be used to harass building owners that have no ability to control tenant energy usage.

That being said, we understand the CEC is working to fulfill its requirements to write regulations to guide the day-to-day implementation of the policy as well as make some judgement calls in areas the Legislature left to the agency to provide more detail. We hope these comments will help complete this task in the most efficacious manner possible. Overall we are supportive of the direction the regulations have gone and appreciate the Commission's leadership in crafting a program that will hopefully produce desired outcomes while minimizing disruption.

We would, however, like to acknowledge and endorse the comment letter submitted by the California Association of REALTORS(r) on July 28, 2016, and will work with them and the commission to make sure that the regulations accurately reflect intent as well as the letter of the statute. We agree with the Realtors on their assessment regarding definitions for covered buildings going beyond statute; data access and disclosure; and are very concerned about the language pertaining to civil penalties and how that will be applied in this context.

1. EDUCATION, TRAINING, COMPLIANCE ASSISTANCE IS SEVERELY LACKING

We are concerned about the lack of education and training in these regulations. Rolling out a statewide program of this magnitude cannot rely on word of mouth or razor-thin staffing at the CEC. This statute will require many building owners to benchmark their buildings for the first time using a system that is managed by a third party. Even building owners that are very familiar with benchmarking will most likely have questions about whether they are a covered building and how to navigate some of the

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reporting mechanisms. This regulation will be mandating almost a half million buildings to benchmark annually – we believe the current “help desk” staffing at the CEC is nowhere near ready to handle the volume of questions and clarifications that will be generated. Since this is a mandate with civil penalties for not complying, it is incumbent on the commission to assure that owners/managers of covered building know they are covered and are able to navigate and comply with the reporting requirements.

2. ANNUAL MANDATE MAY BE TOO OFTEN

The current draft requires the benchmarking and reporting to happen on an annual basis. We agree that is a “best practice” and encourage our members to benchmark at least this often. However, we are concerned that setting a minimum requirement using a best practice level of benchmarking is not the best place to start. Mandating a best practice on building owners that have never benchmarked seems too aggressive. Additionally, an annual benchmark on all covered buildings will increase the staffing requirements at the Commission. We suggest the Commission consider adopting a regulation with some more flexibility – at least for the first few years.

3. TOO MUCH PRIVATE INFORMATION DISCLOSED ON PUBLIC WEBSITE

Under the “Public Disclosure” section of the regulations we believe that unnecessary information is required that goes above and beyond the need for the public’s need to understand the efficiency level of a building and which offer no real value upon disclosure. At a minimum, we recommend the deletion of items: (K) Open "comments" for owners/managers to provide information, (M) Percentage of space occupied (Occupancy), (N) Number of occupants and (Q) Hours operated per week represent non-public information regarding our properties that is not necessary for this information to be disclosed publicly, as it is not information that is needed to understand the relative energy efficiency of a building. Additionally, disclosure of (T) Total greenhouse gas emissions, seems outside of the scope of this benchmarking program.

4. ENERGY STAR PORTFOLIO MANAGER

We believe that Portfolio Manager is the national standard for benchmarking. The most widely used and understood and easiest for a novice to use. The regulation should clearly state this to be the case and clearly define it as the only tool that is needed for the baseline mandate to benchmark and disclose. Should something happen in the future with Portfolio Manager then we recommend that the Commission revisit this language, but until that time, the regulations should clearly state that its use satisfies this law.

5. DATA REQUEST PROCESS IS TOO STRICT

The data request process for a building owner may be overly strict and complicated in this draft presenting undue barriers to owners getting data. We understand there are privacy concerns, however we think the regulations can be written in a way that recognizes privacy without restricting legitimate access requests. Having to produce a deed, lease or mortgage statement would be difficult for many building managers and/or their agents as that is not typically information laying around a building managers office. It is especially difficult for those that manage buildings on behalf of investment fund ownerships or even large corporations with a multi-building portfolio and out of state headquarters. If an agent of an owner (most cases the property manager) can sign legally-binding contracts on behalf of the owner, then surely their signature/approval should suffice to obtain energy data.

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We suggest that the regulatory language recognize a process similar to what is used in other areas of law to release information. As an example, the current CISR form, contains language that allows one to release information to those legally verifying they have authority to obtain it. It would seem that some type of legal language of this type would be good enough for the purpose of verifying ownership rather than needing to provide property specific documents as well as documentation that the person submitting the request is authorized. Under current practice, when requests for information for energy data is released to the EPA Energy Star portfolio manager, most utilities request information that can only be obtained from the monthly bill. We believe that type of process is adequate for these purposes.

6. CONFUSION ON NOTIFICATION

The following highlighted language could be a possible sticking-point or area of confusion - unless it is a single-tenant that has given permission to disclose, all utility customer information will be aggregated - with few exceptions, only FULL BUILDING data is being shared and disclosed publicly. This should be clarified.

(ii) For a request that facilitates compliance with the Benchmarking and Disclosure requirements in section 1682, the options described in subdivision (b)(4)(A)(i)(1) & (2) shall constitute customer permission, provided that the lease, waiver, or Utility notification additionally informs each Utility customer that their Energy use will be shared with the Energy Commission and subject to public disclosure pursuant to 1682 (d).

7. DATA INTEGRITY ISSUES

There are times where the utility has the wrong address for a property, and this, for reasons that are unclear, is difficult to correct. For example (addresses changed for illustration purposes, but this is a real example), we have a member that owns a building at 6000 Main Street in Los Angeles. However, when it was being built, the construction address was 6005 Main Street, and that address, 20 years later, is still on the bills. We are concerned that the verification process is so strict that if in that example since no deed exists, the building owner would have no ability to access tenant data.

8. UTILITY METER NUMBERS

Under the regulations to assure data integrity and a common understanding that all the meters that are being aggregated match, we advise that the meter numbers be provided to the individuals requesting the information.

We hope these comments are helpful and are taken in the spirit of working together to make the regulation better when they are submitted. This is a complicated area of policy and we look forward to continuing to work with the CEC and other stakeholders to make sure the regulations that are adopted for AB 802 can be cost-effectively implemented by our members while also advancing the strategic goals for the state to become more energy efficient.

Thank you for taking our views into consideration. If you have any questions please feel free to contact Matthew Hargrove on behalf of the coalition at 916-443-4676 or mhargrove@cbpa.com.