

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street
Sacramento, California 95814

Main website: www.energy.ca.gov

**NOTICE OF PROPOSED ACTION****NONRESIDENTIAL BUILDING ENERGY USE DISCLOSURE PROGRAM**

**PROPOSED REGULATIONS
CALIFORNIA CODE OF REGULATIONS, TITLE 20
SECTIONS 1680, 1681, 1682, 1683, 1684, 1685**

**CALIFORNIA ENERGY COMMISSION
DOCKET NUMBER 12-AB1103-1
March 23, 2012**

DOCKET**12-AB1103-1**DATE MAR 23 2012RECD. APR 11 2012**INTRODUCTION**

The California State Energy Resources and Development Commission (Energy Commission) proposes to adopt regulations related to nonresidential building energy use benchmarking and disclosure. These regulations implement the mandates of AB 1103 (2007, Saldaña) and AB 531 (2010, Saldaña).

The Energy Commission has prepared this Notice of Proposed Action (NOPA) as specified by Government Code section 11346.5. The Energy Commission has also published the proposed language of the regulations (also referred to as the 45-day language Express Terms), and the Initial Statement of Reasons in support of the proposed regulations.

These documents can be obtained from the contact persons designated below or from the Commission website at:
<http://www.energy.ca.gov/ab1103/rulemaking/documents/index.html>.

PUBLIC COMMENT PERIOD AND HEARINGS

The Energy Commission's Lead Commissioner for Energy Efficiency will hold a hearing to receive public comment on the proposed regulations. At this hearing, any person may present statements or arguments relevant to the proposed regulatory action summarized below. The Lead Commissioner hearing will be held at the following time and place:

APRIL 9, 2012**1 PM to 5 PM****CALIFORNIA ENERGY COMMISSION****1516 Ninth Street****First Floor, Hearing Room A****Sacramento, California****(Wheelchair Accessible)**

REMOTE ATTENDANCE

You may participate in this meeting through WebEx, the Energy Commission's online meeting service. Presentations will appear on your computer screen, and you may listen to audio via your computer or telephone. Please be aware that the meeting may be recorded.

To join a meeting:

VIA COMPUTER: Go to <https://energy.webex.com> and enter the unique meeting number: **921 486 612**. When prompted, enter your name and the following meeting password: **cec@1516**.

The "Join Conference" menu will offer you a choice of audio connections:

1. To call into the meeting: Select "I will call in" and follow the on-screen directions.
2. International Attendees: Click on the "Global call-in number" link.
3. To have WebEx call you: Enter your phone number and click "Call Me."
4. To listen over the computer: If you have a broadband connection, and a headset or a computer microphone and speakers, you may use VoIP (Internet audio) by going to the Audio menu, clicking on "Use Computer Headset," then "Call Using Computer."

VIA TELEPHONE ONLY (no visual presentation): Call 1-866-469-3239 (toll-free in the U.S. and Canada). When prompted, enter the unique meeting number: **921 486 612**. International callers may select their number from <https://energy.webex.com/energy/globalcallin.php>

VIA MOBILE ACCESS: Access to WebEx meetings is now available from your mobile device. To download an app, go to www.webex.com/overview/mobile-meetings.html.

If you have difficulty joining the meeting, please call the WebEx Technical Support number at 1-866-229-3239.

The hearing before the full Energy Commission to consider adopting the 45 -day Language express terms, will be held on May 9, 2012 unless the Energy Commission decides to make substantive changes to the Express Terms through 15-day language, in which case the public hearing will be continued to a later noticed date.

MAY 9, 2012
1 PM to 5 PM
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
First Floor, Hearing Room A
Sacramento, California
(Wheelchair Accessible)

The 45-day language hearing, if not continued to a later noticed date, will be webcast with audio and computer documents available for viewing online. For details, please go to www.energy.ca.gov/webcast.

If you have a disability and require assistance to participate in either of these hearings, please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

PUBLIC COMMENT PERIOD/WRITTEN COMMENTS

The public comment period for the proposed regulations as written in the Express Terms will be from March 23, 2012 through May 9, 2012. Any interested person may submit written comments during this period. However, the Energy Commission appreciates receiving written comments at the earliest possible date. E-mail is preferred.

To e-mail comments on behalf of an organization, send a scanned copy of the comments on the organization's letterhead, signed by an authorized representative.

E-mail comments in either Microsoft Word format (.doc) or Adobe Acrobat portable document format (.pdf) to: docket@energy.ca.gov.

All written comments must indicate **Docket No. 12-AB1103-1** in the subject line.
Or, mail comments to:

California Energy Commission
Docket No. 12-AB1103-1
Docket Unit
1516 Ninth Street, Mail Station 4
Sacramento, California 95814-5504

AUTHORITY AND REFERENCE

The Energy Commission proposes to adopt the proposed regulations under the authority of Public Resources Code sections 25213, 25218, and 25402.10.

The proposed regulations implement, interpret, or make specific Public Resources Code section 25402.10 (AB 1103, AB 531).

INFORMATIVE DIGEST

Existing law requires the Energy Commission to adopt regulations that implement, interpret and make specific the mandates of AB 1103 and AB 531, codified in part at Public Resources Code section 25402.10. AB 1103 and 531 require that nonresidential building owners benchmark and disclose energy consumption data and ratings, if any, for their buildings in advance of major financial transactions (the sale, leasing, or financing of the entire building).

The proposed regulations include provisions on creating building energy use data statements, utility releases of data, reports to the Energy Commission, receipt of disclosures and the schedule for disclosures, as well as general provisions on the scope of the regulations and definition of terms.

The Energy Commission developed the proposed regulations in order to fulfill the purposes of AB 1103, reduce greenhouse gas emissions, and help carry out the Commission's mission of promoting energy efficiency in California. The Commission finds that nonresidential building benchmarking will benefit the environment due to reduced energy use and greenhouse gas emissions. Benchmarking of nonresidential buildings not only saves energy costs, but can boost the sales and rental value of commercial properties. Other nonmonetary benefits include raising the awareness of energy use among commercial building owners.

These proposed regulations require utilities to release all of a building's energy use data, including tenant energy use data, into a building owner's U.S. EPA ENERGY STAR® Portfolio Manager account to implement effective benchmarking and rating of the building. The proposed regulations provide for data security protections.

On July 28, 2011, the California Public Utilities Commission (CPUC) issued new rules regarding the privacy of energy use data on the "smart grid" for investor-owned utilities in the state. (Decision 11-07-056 July 28, 2011; accompanying regulations, Attachment D, available at <http://docs.cpuc.ca.gov/published/Graphics/140370.PDF>.) The decision interpreted a recent statute, SB 1476 (Padilla, 2010) (codified at Pub. Utilities Code, § 8380 et seq.) that both protects energy use data and made specific exceptions allowing for its release. One exception allows release as required or permitted by state law. (§ 8380, subd. (e)(3).) The CPUC rules likewise state that energy use data may be released for a "primary purpose," including to provide services as required by state law, such as AB 1103 and AB 531. (Rule 1, subd. (c)(3) [definition of primary purpose].) Therefore, these

proposed regulations are neither inconsistent nor incompatible with existing state regulations.

FEDERAL LAW

There is no federal law that requires building benchmarking and disclosure. The U.S. Environmental Protection Agency (EPA) Portfolio Manager program is utilized on a voluntary basis.

OTHER STATUTORY REQUIREMENTS

None.

FISCAL IMPACTS

Local Mandate/Reimbursement. The proposed regulations do not impose a mandate on local agencies or school districts. The proposed regulations do not impose on local agencies or school districts any costs for which Government Code sections 17500 - 17630 require reimbursement.

Costs or Savings for State Agencies. Minimal. The proposed regulations impact the Energy Commission. The Energy Commission expects to absorb the costs of maintenance and enforcement of the regulations through its existing budget. Under AB 1103 the Department of General Services (DGS) and other State agencies that own their own buildings would be required to benchmark and rate a state-owned building if the entire building were to be sold, leased, or financed. Although some state building sales are anticipated in the future, the cost of compliance with these proposed regulations is low, and the DGS and other state agencies may be able to rely on previous benchmarking as well. The costs to benchmark will ultimately be offset by increases in energy efficiency and associated increases in the sales and rental value of the buildings.

Other Non-Discretionary Costs or Savings on Local Agencies. Minimal. Local agencies that own government buildings would have to benchmark and disclose energy consumption data for their buildings if the entire building were to be sold, leased, or financed. Because the financial events triggering AB 1103 benchmarking would be relatively rare for government buildings and the cost of compliance with the proposed regulations is low, the costs to local agencies would be minimal. Additionally, costs to benchmark would be offset by increases in energy efficiency, and increased market value of more energy-efficient buildings in sales and rental transactions.

Cost or Savings in Federal Funding to the State. None.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The Energy Commission has made an initial determination that there will be no significant statewide adverse economic, fiscal, or environmental impact directly affecting businesses, including small businesses, as a result of the proposed regulations, including the ability of California businesses to compete with businesses in other states. The cost of benchmarking is low and the benefits derived from increased energy savings and potential increases in market value are substantial. Further explanation and supporting materials will be included in the rulemaking record.

Nevertheless, the Energy Commission invites interested persons to submit alternative proposals to lessen any adverse economic impact on business that might exist.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

AB 1103 and these regulations require the use of the U.S. EPA's Portfolio Manager to benchmark and disclose energy consumption data. Use of Portfolio Manager is free. U.S. EPA estimates that the 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. (Federal Register, Vol. 75, p. 360, Jan. 5, 2010.) Because most benchmarking will be automated, a conservative assumption for the cost is \$250 per benchmark. Financial transactions triggering AB 1103—sale, lease or financing of the entire building—are relatively rare¹ events, and the total annual cost is likely to be much lower. The Energy Commission has conducted analysis and determined that a triggering event is likely to occur every 3.2 years, on average.

There are substantial economic benefits to benchmarking that more than offset any costs. According to a University of California Energy Institute study², "green" buildings roughly command rental rates three percent higher than otherwise identical buildings; and premiums for desirable buildings rose by six percent or more. Selling prices were higher by about 16 percent. Specific to Energy Star-certified buildings (those rated 75 and higher by Portfolio Manager), the study concluded that every dollar in energy cost savings yielded roughly 18 dollars in increased value.

This added market value is on top of energy cost savings from improving the building's energy efficiency. According to the UC study, energy costs represent 30 percent of operating expenses in a typical office building. The *Next 10* organization notes that straightforward measures such as installing insulation and using advanced lighting can save 20-30 percent of energy costs.

IMPACTS ON JOBS AND BUSINESS

¹ Moody's(proprietary database) report XCMCTOTVQ.US, Commercial Mortgage Commitments: Total - Average Life for All Loans, October 2011

² Piet Eichholtz, Nils Kok and John M. Quigley, "Doing Well by Doing Good? Green Office Buildings," Center for the Study of Energy Markets Working Paper 192, 2009, [Accessed](#) on January 26, 2012.

New Jobs and Businesses. The proposed regulations are not expected to directly create a significant number of new jobs within existing companies. The proposed regulations may create some new consultant businesses, as owners initially seek help in benchmarking their buildings. The Commission finds that there will be no elimination of jobs or businesses due to this regulation.

Expansion of Existing Businesses. The proposed regulations slightly expand the existing duties of building owners and agents, and would in turn likely expand the existing duties of building engineers and efficiency experts. The proposed regulations add specifics to the statutory duties of utilities to compile and release building energy use data.

EFFECT ON HOUSING COSTS

The proposed regulations will have no effect on housing costs.

BUSINESS REPORTS

The proposed regulations require nonresidential building owners to release their Energy Star Portfolio Manager report to the Energy Commission by clicking on the Energy Commission button within their Portfolio Manager account. The Commission finds that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

ALTERNATIVES

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

DESIGNATED CONTACT PERSONS

For general information about the proceeding, contact:

Justin Regnier, PE
High Performance Buildings and Standards Development Office
California Energy Commission
1516 Ninth Street, MS-37
Sacramento, California 95814-5512
(916) 654-4196
jregnier@energy.ca.gov

For legal questions about this proceeding, contact:

Robin M. Mayer
Staff Counsel
California Energy Commission
1516 Ninth Street, MS-14
Sacramento, California 95814-5512
(916) 651-2921
rmayer@energy.ca.gov

For documents related to the proceeding, go to:

<http://www.energy.ca.gov/ab1103/rulemaking/documents/index.html> or contact

Docket Office
Docket No. 12-AB1103-1
California Energy Commission
1516 Ninth Street, MS 4
Sacramento, California 95814-5504
916-654-5076
docket@energy.ca.gov

PUBLIC ADVISER

The Energy Commission's Public Adviser Office provides public assistance in participating in Energy Commission proceedings. If you would like information on how to participate in this proceeding, please contact the Public Adviser's Office at (916) 654-4489 or toll free at (800) 822-6228, or by email at PublicAdviser@energy.ca.gov.

NEWS MEDIA INQUIRIES

News media inquiries should be directed to Adam Gottlieb, Interim Assistant Executive Director Media and Public Communications Office, at (916) 654-5027 or mediaoffice@energy.ca.gov.

AVAILABILITY OF THE TEXT OF THE PROPOSED REGULATIONS (EXPRESS TERMS), THE INITIAL STATEMENT OF REASONS (ISOR), AND THE INFORMATION UPON WHICH THE PROPOSAL IS BASED (RULEMAKING FILE)

The Energy Commission has made available the Express Terms of the proposed regulations, the Initial Statement of Reasons supporting the regulations, and all documents relied upon by the Energy Commission for the AB 1103 rulemaking, on its website. Most other documents in the rulemaking file will be posted to the website as they become available.

To download documents, visit the Energy Commission's AB 1103 website:
<http://www.energy.ca.gov/ab1103/rulemaking/documents/index.html>

For hard copies of documents, please contact the Energy Commission's Docket Office (address above). Specify the AB 1103 rulemaking, Docket No. **12-AB1103-1**, and request the needed documents by title.

AVAILABILITY OF MODIFIED REGULATIONS AND COMMENT PERIOD

At the May 9, 2012 45-day language adoption hearing, the Energy Commission may adopt the proposed regulations as described in this NOPA. If substantial, sufficiently-related modifications are made to the original 45-day language proposed regulations, the modified text with changes in underline/strikeout form will be made available to the public for at least 15 days before the Energy Commission adopts the final version of the regulations.

A notice of the availability of the modified text will be placed on the Energy Commission's website. The "15-day language" text will also be mailed or e-mailed to all persons who submitted comments with contact information during the public comment period or at a hearing, and all persons who request to receive notices regarding AB 1103 regulations. In addition, copies of modified text may be requested from the Docket Office. Adoption of the 15-Day language will be considered at a public hearing scheduled in the notice of availability at the time the 15-day language is released.

FINAL STATEMENT OF REASONS

The Energy Commission will prepare a Final Statement of Reasons to support the final version of the regulations. The Final Statement will also contain summaries and responses to relevant public comments made during the comment period.

The Final Statement of Reasons will be posted on the Energy Commission's website and made available for downloading. For hard copies, contact the Docket Office.

INTERNET ACCESS

The proceeding's main web page is at:
<http://www.energy.ca.gov/ab1103/index.html>

Notices and announcements are available at:
<http://www.energy.ca.gov/ab1103/rulemaking/notices/index.html>

Reports, public comments, and other documents are available at
<http://www.energy.ca.gov/ab1103/rulemaking/documents/index.html>