

INITIAL STATEMENT OF REASONS**PROPOSED REGULATIONS TO IMPLEMENT AB 1103****NONRESIDENTIAL BUILDING ENERGY USE DISCLOSURE PROGRAM****CALIFORNIA CODE OF REGULATIONS,
TITLE 20, SECTIONS 1680 THROUGH 1685****CALIFORNIA ENERGY COMMISSION
Docket Number 12-AB1103-1****March 23, 2012****INTRODUCTION**

AB 1103 (Saldaña, 2007), codified in pertinent part at Public Resources Code, section 25402.10, requires owners of nonresidential buildings to benchmark the previous 12 months of the building's energy use in advance of the sale, lease or financing of the entire building, and to disclose the benchmarking data and ratings to prospective buyers, lessees, or lenders. AB 531 (Saldaña, 2010) amended section § 25402.10 to require the Energy Commission to set the schedule for disclosures by building owners.

The intent of AB 1103 is to facilitate a benchmarking system that provides energy consumption information for all nonresidential buildings in the state. (See AB 1103, § 1, subd. (a) (uncodified).) The system 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." (*Ibid.*) The benchmarking results are expected to "motivate building operators to take actions to improve" a building's energy use and to help justify the cost of those improvements. (*Id.*, § 1, subd. (b).)

Besides lowering energy costs for nonresidential building owners, promoting energy efficiency helps California. Commercial buildings use 36 percent of the state's electricity and account for a large percentage of greenhouse gas emissions, raw materials use and waste. (Gov. Exec. Order S-20-04.)

The nonmonetary benefits include benefits to the environment due to reduced energy use and greenhouse gas emissions, as well as raising the awareness of energy use among commercial building owners.

The proposed regulations implement, interpret, and make specific the mandates of AB 1103 (2007, Saldaña) and AB 531 (2010, Saldaña).

PURPOSE, RATIONALE AND NECESSITY FOR EACH PROPOSED REGULATION

(Per Gov. Code, § 11346.2, subd. (b)(1).)

1. Proposed Section 1680. Purpose

The proposed regulation explains the purpose of the article as implementing procedures pursuant to Public Resources Code, section 25402.10, for benchmarking and disclosing energy use data and energy use ratings for nonresidential buildings in California.

This regulation is necessary to demonstrate which statute the regulations are implementing and the basic requirements of the statute.

2. Proposed Section 1681. Scope

The proposed regulation sets the scope of the article as applying to all nonresidential buildings in California, as the statute states.

This section is necessary to explain the application of the regulations.

3. Proposed Section 1682. Definitions

The definitions introduce terms contained in the proposed regulations, many of which are also contained in the statute. Specifically:

Proposed subdivision (a) defines a building owner. The regulation is necessary to clarify that a nonresidential building owner is the person or entity possessing title to a nonresidential building, and also that an authorized agent may act for the owner in complying with the proposed regulations.

Proposed subdivision (b) defines Commission. The regulation is necessary to allow shorter terms in the regulatory language and differentiate the Energy Commission from other Commissions.

Proposed subdivision (c) defines a Compliance Report. This regulation is necessary to explain the source and contents of one of the disclosed reports required in the proposed regulations.

Proposed subdivision (d) defines Data Checklist. This regulation is necessary to explain the source and contents of one of the disclosed reports required in the proposed regulations.

Proposed subdivision (e) defines Disclosure Summary Sheet. This regulation is necessary to explain the source and contents of one of the disclosed reports required in the proposed regulations.

Proposed subdivision (f) defines Energy Provider. This regulation is necessary to differentiate providers of other kinds of energy from electricity and gas utilities.

Proposed subdivision (g) defines Energy Use Data. This regulation is necessary to describe the scope of data required in the proposed regulations.

Proposed subdivision (h) defines Entire Building. This regulation is necessary to clarify what is to be benchmarked.

Proposed subdivision (i) defines EPA. This regulation is necessary to clarify that the ENERGY STAR® Portfolio Manager system is managed by the federal agency, not the California Environmental Protection Agency.

Proposed subdivision (j) defines Facility Summary. This regulation is necessary to explain the source and contents of one of the disclosed reports required in the proposed regulations.

Proposed subdivision (k) defines Nonresidential Building. This regulation is necessary to explain which types of buildings are to be benchmarked in terms of the existing California Building Code.

Proposed subdivision (k) defines Portfolio Manager. This regulation is necessary to explain the source of the benchmarking program.

Proposed subdivision (l) defines Portfolio Manager Energy Performance Rating. This regulation is necessary to explain the rating.

Proposed subdivision (m) defines Square Feet. This regulation is necessary to clarify that “gross” square feet is the proper measurement for compliance with the proposed regulations.

Proposed subdivision (n) defines Statement of Energy Performance. This regulation is necessary to explain the source and contents of one of disclosed reports required in the proposed regulations.

Proposed subdivision (o) defines Utility. This regulation is necessary to distinguish electricity and gas utilities from other energy providers.

4. Proposed Section 1683 Schedule

The proposed regulation sets the schedule for compliance by building size. The regulation is necessary in order to inform an owner when compliance with the statute and the proposed regulations is required. The Commission chose to phase in the schedule by building size to provide extra notice of the regulations to small building owners, who may be unfamiliar with benchmarking.

5. Proposed Section 1684 Disclosures

Proposed subdivision (a) sets the time frames for disclosure according to the financial transactions of sales, leasing, or financing of the entire building. The regulation is necessary in order to give owners a deadline for compliance, and for potential buyers, lessees, and tenants to receive energy use disclosures in a timely fashion.

Proposed subdivision (b) allows an owner to supplement Portfolio Manager benchmarking data and ratings during the disclosure. This regulation is necessary to encourage detailed benchmarking and to allow an owner to add data in the context of the financial transaction.

6. Proposed Section 1685 Benchmarking, Data Releases, Report

Proposed subdivision (a) sets the deadline for an owner to benchmark, describes the steps involved for setting up an account in Portfolio Manager, and allows the owner to either request a release of energy use data directly from the utility or to manually enter the data. This regulation is necessary to make specific the steps involved in complying with the statute and to ensure timely compliance.

Proposed subdivision (b) sets the deadline for the utilities to release the energy use data. This portion of the regulation is necessary to ensure timely compliance. The proposed subdivision also requires the release of all data from all accounts associated with the building into the owner's Portfolio Manager account. This portion of the regulation is necessary because Portfolio Manager can only benchmark and rate data for entire buildings. The proposed subdivision also requires reasonable privacy protections for the upload of data. This portion of the regulation is necessary to comply with the statute and with other law serving to protect the privacy of energy use data. The proposed subdivision allows utilities to verify requests or ask for clarification before the release of data. This portion of the regulation is necessary to allow utilities flexibility to not release data within the deadline when an owner's request has errors or is otherwise not verifiable.

Proposed subdivision (c) describes the steps an owner must take to generate all the documents for disclosure. This portion of the regulation is necessary to ensure

disclosure of sufficient benchmarking data for the prospective buyer, lessee, or lender to understand the building's energy use and fairly compare it to other buildings. The proposed subdivision also requires the owner to report compliance to the Commission. The regulation is necessary for the Commission to ensure compliance and to receive comprehensive data regarding nonresidential building energy use across the state. The proposed subdivision also sets an expiration date for the building-specific documents. This portion of the regulation is necessary to ensure the prospective buyer, lessee, or lender receives timely data.

Proposed subdivision (d) restricts the Commission's use of compliance reports and the data contained in the reports. This regulation is necessary to clarify that the Commission will not publicize individual account data.

Proposed subdivision (e) provides a safe harbor provision for owners by allowing an owner to approximate data for disclosure. This regulation is necessary to ensure that financial transactions are not delayed when an owner, despite reasonable efforts, cannot successfully benchmark a building due to missing information.

STUDIES, REPORTS, AND DOCUMENTS RELIED UPON

(Per Gov. Code, § 11346.2, subd. (b)(2).) The Energy Commission relied on the following studies, reports and similar documents in proposing AB 1103 regulations:

Brook, CEC Staff Report, "Rating the Energy Performance of California Commercial Buildings" http://www.energy.ca.gov/ab1103/documents/2009-08-13_workshop/presentations/Martha_Brook_Presentation.pdf

Regnier, CEC Staff Report, "AB 1103 [Benchmarking] and Disclosure process" http://www.energy.ca.gov/ab1103/documents/2011-09-12_workshop/2011-09-12_AB_1103_disclosure_process.pdf

Regnier, CEC Staff, "Economic Impact Analysis document", 2011

EPA Portfolio Manager website,
http://www.energystar.gov/index.cfm?c=evaluate_performance.bus_portfoliomanager

Global Real Estate Sustainability Benchmark, 2011 Research Report.
<http://www.climatechange-capital.com/media/221400/gresb-report-20112.pdf>

Center for the Study of Energy Markets, *Doing Well by Doing Good? Green Office Buildings*, August 2009. <http://www.ucei.berkeley.edu/PDF/csemwp192.pdf>

Next10.org, *Untapped Potential of Commercial Buildings: Energy Use and Emissions*, 2010. http://www.next10.org/next10/pdf/NXT10_BuildingEfficiencies_final.pdf

**CONSIDERATION OF REASONABLE ALTERNATIVES
REQUIREMENTS FOR SPECIFIC TECHNOLOGIES AND EQUIPMENT
CONSIDERATION OF PERFORMANCE STANDARDS**

(Per Gov. Code, § 11346.2, subd. (b)(3)(A).) While not self-executing, the statute contains many specific requirements, including use of Portfolio Manager as the benchmarking technology, which financial transactions trigger benchmarking and disclosure, and application to all nonresidential buildings in the state. (Pub. Resources Code, § 25402.10.) For almost two years, Commission staff met with a working group made up of stakeholders and other interested parties to draft the regulations and minimize any burden of compliance, especially on building owners. The proposed regulations add or reinforce the following requirements, discussed in turn:

1) Use of Portfolio Manager

The statute requires that a building owner use specific technology, the U.S. EPA's online benchmarking tool known as Portfolio Manager, to benchmark a building. (Pub. Resources Code, § 25402.10, subds. (a), (b), (d). The proposed regulations adhere to that requirement, but otherwise do not require any specific technologies or equipment. Use of Portfolio Manager is free. The ENERGY STAR™ program supporting Portfolio Manager is a well-respected and proven program that helps save energy in buildings, appliances, light bulbs, and many other products.

2) Disclosure Schedule

As expressly delegated, the Commission sets the schedule for building owners to comply with the disclosure requirements. (§ 25402.10, sub. (d)(2).) The Commission considered different schedules, and determined that rolling out the regulations by building size (50,000 square feet, 10,000-50,000 square feet, and 5,000-10,000 square feet) would maximize compliance, give ample notice to owners in order of their likely sophistication regarding benchmarking, and ease the impact on Commission and EPA resources. The Commission has set back the schedule periodically to make sure that all nonresidential building owners in the state receive at least six months' notice that the regulations are law and that compliance is due if an applicable financial transaction is imminent.

3) Report to Commission

The Commission is empowered to collect energy use data via its collection statutes. (Pub. Resources Code, §§ 25216.5(d), 25320.) Generally, the Commission collects energy data to help develop the biannual Integrated Energy Policy Report, the state's central policy report to the Legislature on all energy-related subjects assigned to the Commission, including in particular energy efficiency. Specifically, the Commission would collect AB 1103 reports to get an overall picture of compliance and to verify compliance by specific owners in case of a complaint. Reporting by building owners is extremely easy as it will be incorporated within Portfolio Manager. The owner is able to report with a few clicks of the mouse, and the report is then delivered to the Commission account within Energy Star Portfolio Manager. No simpler alternative has been proposed.

4) Utility release of non-owner energy data to owner's Portfolio Manager account

The statute requires disclosure of the most recent 12 months of energy use data to a prospective buyer, lessee of the entire building, or lender that would finance the entire building. (Pub. Resources Code, § 25402.10, subd. (d)(1).) Additionally, the statute requires use of Portfolio Manager (*Id.*, subds. (a), (b), (d)), which benchmarks data for entire buildings. To fulfill the purposes of the statute, meet the Commission's policy goals such as those expressed in the Governor's Green Building Initiative (Executive Order S-20-04), and as supported by SB 1476 (Pub. Utilities Code, §§ 8380, subd. (e)(3) and 8381 (e)(3)), which allows release of energy use data to comply with state law, the Commission is directing utilities to release tenant energy use data with reasonable and flexible protections for privacy during the upload. The other option is to require owners to get consent for release from every tenant from the previous 12 months. The Commission has rejected this option as so burdensome that it would endanger compliance and prevent owners from benchmarking and deriving resultant energy efficiency benefits, and deprive building buyers, lessees and lenders from the disclosure of energy use data that is expressly required by statute.

No further alternatives have been offered at this point.

ALTERNATIVES TO IMPACTS ON SMALL BUSINESS

(Per Gov. Code, § 11346.2, subd. (b)(3)(B).) None. No reasonable alternatives are cheaper or more convenient, because the statute requires use of the U.S. EPA Portfolio Manager website, and Portfolio Manager is free. For economic impacts on business generally, see below.

SIGNIFICANT ADVERSE ECONOMIC IMPACTS ON BUSINESS

(Per Gov. Code, § 11346.2, subd. (b)(4).) None.

Building owners: Minor costs associated with compliance with the proposed regulations would be more than compensated for by decreased energy costs and increases in a building's sales and lease value. The evidence for this conclusion is based on the following:

According to a U.S. EPA nationwide survey, benchmarking a building in Portfolio Manager costs 2.75 labor-hours per benchmark for manual entry, 1 hour per benchmark using the Portfolio Manager import tool, and 30 minutes per benchmark when using a utility's automated benchmarking system. (EPA's ENERGY STAR™ Program in the Commercial and Industrial Sectors, 75 Fed. Reg. 360-03 (Jan. 5, 2010).) The EPA estimated those costs as \$322, \$117, and \$59 per benchmark respectively. The EPA estimates assumed no start-up costs, presumably because the use of computers and the Internet, along with the printing of one or two page reports as needed, are routine business expenses. Additionally, use of Portfolio Manager accounts is free.

The purpose of AB 1103 benchmarking is to raise awareness among building owners about how much energy the building is using. (See AB 1103, § 1 (Saldaña, 2007.)) The intermittent labor costs—no more than once a month, but usually much less often, would likely be more than offset by energy savings then instituted by the owner. For example, energy efficiency practices for commercial and institutional buildings in California were estimated to save more than \$2 billion per year. (Gov. Exec. Order S-20-4.)

Benchmarking *alone* has been shown to save 1% of energy costs, purely through simple conservation measures. (Global Real Estate Sustainability Benchmark Foundation, *Research Report 2011*.)

Active efforts can save much more. Improvements in lighting can save up to 20% of energy costs and improvements in insulation can save 30%. (Next10, *Untapped Potential of Commercial Buildings Energy Use and Emissions*, 2010.)

What is less obvious than energy savings is that a “green” building's sales and leasing values are likely to increase by substantial amounts. According to a University of California Energy Institute study, energy efficient buildings receive rentals about three percent higher per square foot than otherwise identical buildings. (Center for the Study of Energy Markets, *Doing Well by Doing Good? Green Office Buildings* (Aug. 2009), Abstract, p. 1.) High-quality buildings with “premium” rents commanded rents more than six percent higher. Sale prices of green buildings ran higher by about 16 percent.

Benchmarked buildings that earn a rating of 75 or higher are also eligible for ENERGY STAR™ certification. In the same study, UC researchers found that, for an ENERGY STAR-certified building, every dollar saved in energy costs yielded roughly 18 dollars in increased values.

Thus, not only are the costs minor, but the benefits of AB 1103 benchmarking can overwhelmingly compensate for those costs.

Utilities: The proposed regulations also set the timing for utilities' release of data into an owner's Portfolio Manager account. While startup costs for the major utilities may be significant, these requirements flow from the statute itself. At most, the proposed regulations impose operation and maintenance costs as the regulations trigger data releases by a certain time. Informal polling of utility executives found O&M costs of data releases to run about \$50,000 a year per utility, not a significant cost for these billion-dollar companies. See, e.g., <http://www.smud.org/en/about/Documents/2011%20Budget%20Summary.pdf>

IMPACT ON FEDERAL REGULATIONS

(Per Gov. Code, § 11346.2, subd. (b)(5).) None. The proposed regulations neither duplicate nor conflict with any federal regulation. While the proposed regulations rely on the U.S. EPA Portfolio Manager (in compliance with the statute) for execution, at the federal level, Portfolio Manager is a completely voluntary program with no federal regulatory mandates.