

CALIFORNIA ENERGY COMMISSION

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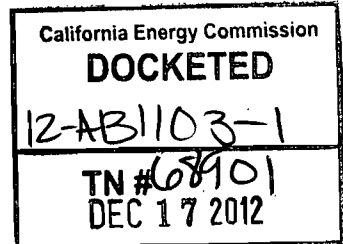
Main website: www.energy.ca.gov



In the matter of: AB 1103 Commercial
Building Energy Use Disclosure Program
Rulemaking, California Code of
Regulations, Title 20, Sections 1680-1684

) Docket No. 12-AB1103-01

) Order No. 12-1212-1h



Order Adopting Regulations and Directing Additional Rulemaking Activities

The California Energy Commission hereby adopts revised regulations for the Nonresidential Building Energy Use Disclosure Program (California Code of Regulations, Title 20, Sections 1680 - 1684). The Commission takes this action under the authority of Sections 25213, 25218, subdivision (e), and 25402.10 of the Public Resources Code to implement, interpret, and make specific Section 25216.5, subdivision (d), and Section 25402.10 of the Public Resources Code.

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 and disclose 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. It also requires utilities and other energy service providers to release energy use data in order to allow building owners to comply with benchmarking and disclosure requirements.

Assembly Bill 531 (Saldaña, Stats. 2009, ch. 323) amended Public Resources Code, Section 25402.10 to direct the Energy Commission to establish a compliance schedule for disclosure.

Proposed Regulations. The California Energy Commission developed the proposed regulations to fulfill the purposes of AB 1103, carry out the Commission's mission of promoting energy efficiency in California, and to implement, interpret, and make specific the provisions of Public Resources Code, Section 25402.10.

The proposed regulations require an owner of a nonresidential building within California, in advance of the sale, lease, or and 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 Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary) to potential buyers, lessees, and lenders:

The proposed regulations also require utilities and other energy service 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 within the Portfolio Manager system, which the Energy Commission may access. The proposed regulations clarify that the Energy Commission's treatment of any collected information identified as confidential will be consistent with state and federal law.

The proposed regulations additionally set a schedule for compliance, according to building size. This schedule was amended in the 15-day language discussed below. Once a building is subject to compliance under the schedule, an owner must benchmark and disclose in advance of a sale, leasing of the entire building, or financing of the entire building.

Once final, the regulations will add Article 9, Sections 1680 through 1684, to the California Code of Regulations, Title 20, Division 2, Chapter 4 ("Energy Conservation").

Portfolio Manager. The statute and the proposed regulations require nonresidential building owners to measure their building's energy use with 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 is designed to help a building owner set investment priorities, identify under-performing buildings, and verify efficiency improvements. Use of Portfolio Manager is free. The EPA has stated that improving energy efficiency in buildings is the "fastest, cheapest, and largest untapped solution for saving energy, saving money, and preventing greenhouse gas emissions."

Proceeding History Since July 11, 2012 Adoption

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 determined that additional changes to the regulations were necessary.

On November 27, 2012, pursuant to Government Code, Section 11346.8, subdivision (c), the Energy Commission published a Notice of Hearing of for the Possible Adoption of Amended Regulations, Notice of Availability of Additional 15-Day Language, and Notice of Availability of New Documents Added to the Rulemaking Record. The Energy Commission published the Notices and the full text of the revised proposed regulations with the changes clearly indicated to its website. The Energy Commission also e-

mailed notice of the postings to AB 1103 regulations listserve subscribers and mailed the notice and revised regulations to persons who made comments during the 45-day comment period.

The November 27, 2012 Notice identified several additional documents relied on during the AB 1103 rulemaking process. The Energy Commission made those documents available per Government Code, Section 11347.1 for the same 15-day comment period.

The 15-day comment period ended on December 12, 2012.

Additional 15-Day Language

The 15-day changes are described more fully in the Notice published on November 27, 2012. To summarize, the revisions include minor changes to the definitions for clarity; delay of the compliance schedule to begin on July 1, 2013, to allow for substantial notice to the public before the regulations take effect; clarification of when the disclosures are required to be made; changes in ENERGY STAR® Portfolio Manager document references to follow current U.S. EPA terminology; clarification that the Energy Commission's treatment of collected information as confidential will be consistent with state and federal laws; and the addition of Appendix A, the Disclosure Summary Sheet, as part of the regulations.

No Further Changes. No comments and no material in the record justify further changes to the proposed regulations as they were published on November 27, 2012.

Based on the entire record for Docket No. 12-AB1103-01, the Energy Commission finds as follows:

Findings

The adopted regulations:

- (1) require a building owner to submit a compliance report within Portfolio Manager that the Energy Commission may access. The Energy Commission finds it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to business, as many nonresidential building owners function as businesses. If accessed, the report will help the Energy Commission evaluate compliance with the statute and form energy policy for the state.
- (2) will not result in a significant statewide adverse impact directly affecting business, including the ability of California businesses to compete with businesses in other states;
- (3) will not have a significant adverse effect on business;

- (4) will affect small business as a small business may be legally required to comply with the regulations;
- (5) may create jobs within the state and will not eliminate jobs within the state;
- (6) may create new businesses within the state, and will not eliminate existing businesses within the state;
- (7) may expand businesses currently doing business within the state;
- (8) will benefit the health and welfare of California residents;
- (9) impose a mandate on local agencies and school districts. The mandate is not reimbursable pursuant to Government Code, section 17500 et seq. because the costs are not unique to local agencies. (See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57-58.)

No reasonable alternatives considered by the Energy Commission or have otherwise been identified and brought to the attention of the Energy Commission would be more effective in carrying out the purpose for which the regulations are 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 other provision of law.

CEQA Exemptions

The California Environmental Quality Act (Act) requires that state agencies consider the environmental impact of their discretionary decisions, including the adoption of regulations. (Pub. Resources Code, § 21000 et seq.; see also implementing regulations, California Environmental Quality Act Guidelines, at tit. 14, Cal. Code of Regs., § 15000 et seq.)

The requirements of the Act only apply to projects that have the potential for causing a significant effect on the environment. (Cal. Code of Regs., tit. 14, § 15061 (b)(3).) A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment. (Pub. Resources Code, § 21068; Cal. Code of Regs., tit. 14, § 15382.)

The requirements of the Nonresidential Building Energy Use Disclosure Program will benefit the environment by providing information that can be used in identifying energy efficiency improvements. The only change in the environment that could result from their adoption is increased use of energy efficiency measures. Therefore, although adopting these regulations is arguably a "project" as defined under the Act, (see Pub. Resources Code, § 21065; Cal. Code of Regs., tit. 14, § 15378) it is nonetheless exempt from the requirements of the Act because there is no possibility that the requirements of the Nonresidential Building Energy Use Disclosure Program may have

a significant effect on the environment. Nothing in the record suggests otherwise. Accordingly, adopting these regulations is not subject to the California Environmental Quality Act.

Adoption of Regulations

After considering the record in its entirety including recommendations of Commission Staff, comments from the public, and documents relied on, the Energy Commission hereby adopts the revised regulations as published on November 27, 2012.

Directives to Staff

The Energy Commission directs Commission Staff to take all actions reasonably necessary to implement these regulations, including but not limited to, making appropriate non-substantive or purely grammatical changes to the regulations, as well as preparing and filing all appropriate documents, such as the Final Statement of Reasons with the Office of Administrative Law, and the Notice of Exemption with the Office of Planning and Research.

It is so Ordered.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the California Energy Commission held on December 12, 2012.

AYE: Weisenmiller, Douglas, Peterman, McAllister

NAY: None

ABSENT: None

ABSTAIN: None



Harriet Kallemeyn

Secretariat

California Energy Commission