

## DOCKETED

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# Nonresidential Building Energy Use Disclosure Program

## California Code of Regulations Title 20. Public Utilities and Energy Division 2. State Energy Resources Conservation and Development Commission Chapter 4. Energy Conservation Article 9. Nonresidential Building Benchmarking and Disclosure Sections 1680-16841685

### Effective Date

#### Section 1680. Purpose

This article implements procedures, pursuant to Public Resources Code Section 25402.10, for disclosing energy use data and ENERGY STAR® Scores for nonresidential buildings in California.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code.  
Reference: Section 25402.10, Public Resources Code.

#### Section 1681. Definitions

The following definitions apply to this article:

- a) "Building Owner" means a person possessing title or deed to a nonresidential building, or ~~an agent~~ any party authorized to act on behalf of a person possessing title or deed.

*Rationale: Added deed as a document with which a building owner may demonstrate ownership.*

- b) "Complete calendar month" means a period of time corresponding to one month of the calendar, starting on the first day of the month and ending on the last day of the month.

*Rationale: Portfolio Manager requires 12 complete calendar months of data to benchmark a building. Billing cycles often do not coincide with the beginning and end of a calendar month.*

- ~~b) "Data Verification Checklist" means a report generated by Portfolio Manager that summarizes a property's physical and operating characteristics.~~

*Rationale: Data Verification Checklist replaced with Statement of Energy Performance (see below).*

- c) "Energy Provider" means an entity providing sources of energy other than electricity or natural gas that are recognized by Portfolio Manager.

- d) "ENERGY STAR® Score" means an energy efficiency measurement created by Portfolio Manager, represented on a scale from 1 to 100 and normalized for a building's characteristics, operations, and regional weather.
- e) ~~"Energy Use Data" means a record of kilowatt hours, therms, or any other measure of energy recognized by Portfolio Manager.~~

*Rationale: Definition merged with 'Whole-building energy use data' definition to more closely reflect statutory intent (see below).*

- f) "Nonresidential Building" means a building of occupancy type A, B, E, I-1, I-2, M, R1, S, or Type U parking garages, as defined in the California Building Code, Title 24, Section 302 et seq. (2007 2013).
- g) "Portfolio Manager" means the U.S. Environmental Protection Agency's ENERGY STAR® program online tool for managing building energy use data.
- h) "Prospective buyer" means a person ~~who has submitted a written offer to purchase a building~~ whose offer to purchase a building has been accepted by the building owner.

*Rationale: Redefining "prospective" limits the provision of building energy use information to those parties engaged in a bonafide transaction.*

- i) "Prospective lender" means a person who has received an owner's application to finance an entire building.
- j) "Prospective lessee" means a person ~~who has submitted an~~ whose application to lease an entire building has been accepted by the building owner.

*Rationale: Redefining "prospective" limits the provision of building energy use information to those parties engaged in a bonafide transaction.*

- k) "Statement of Energy Performance" means a Portfolio Manager report that lists a property's annual energy consumption, benchmarking score if available, and energy use intensity.

*Rationale: Changing the form used for disclosure from the Data Verification Checklist to the Statement of Energy Performance.*

- l) "Utility" means an entity providing electricity or natural gas to a nonresidential building owner or tenant.
- m) "Whole-building energy use data" means a record of kilowatt hours, therms, or any other measure of energy fuel type recognized by Portfolio Manager summated for all the meters and fuel types associated with the building.

*Rationale: This revision clarifies the statutory intent of providing energy use data "for the entire building" to the building owner for disclosure purposes.*

Note: Authority cited: Sections 25213, 25218 (e), 25402.10, Public Resources Code.  
Reference: Sections 25402.10, Public Resources Code.

## Section 1682. Schedule of Implementation

- (a) Utilities and energy providers shall connect with Portfolio Manager's Web Services according to the following schedule:  
*Rationale: Requiring utilities to connect to Web Services avoids building owners having to upload data or enter it manually. This ensures data integrity and ease of compliance.*
- (1) By July 1, 2016, for utilities and energy providers with over 100,000 service accounts.
  - (2) By July 1, 2017, for utilities and energy providers with over 50,000 service accounts.
- (b) A building owner shall comply with this article according to the following schedule:
- (1) On and after July 1, 2013, for a building with total gross floor area measuring more than 50,000 square feet.
  - (2) On and after January 1, 2014, for a building with a total gross floor area measuring more than 10,000 square feet and up to 50,000 square feet.
  - (3) ~~On and after July 1, 2016, for a building with a total gross floor area measuring at least 5,000 square feet and up to 10,000 square feet.~~  
*Rationale: Buildings smaller than 10,000 square feet represent a small percentage of California commercial floor space. Exempting these buildings would eliminate the reporting burden for smaller property owners.*

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code.

Reference: Section 25402.10, Public Resources Code.

## Section 1683. ~~Disclosures~~ Data Releases, Report

- (a) ~~At least 30 days before a disclosure is required by Section 1683, a~~ As early as possible, or soon after a building becomes available for sale or lease, or a loan application is submitted, the building owner shall open an account or update an existing account for the same building on the EPA's ENERGY STAR® program Portfolio Manager website, and within the account, request all utilities and energy providers serving the building to release whole-building energy use data from at least the most recent 12 complete calendar months.

*Rationale: Requiring building owners to request the data before the start of the transaction should provide ample time to obtain the data.*

- ~~1) Provide the owner name and the owner e-mail address;~~
- ~~2) Provide the building street address, city and ZIP code, and the year in which the building was constructed;~~
- ~~3) Identify all sources of energy use data for the entire building, for at least the most recent 12 complete calendar months; and~~
- ~~4) Provide space use characteristics as specified by Portfolio Manager for all space types in the building.~~

*Rationale: Details of the Portfolio Manager process are not necessary in these regulations and do not reflect situations where the Portfolio Manager account is already set up.*

~~request all utilities and energy providers serving the building to release energy use data for the entire building from at least the most recent 12 complete calendar months for specified meters or accounts to the owner's or operator's Portfolio Manager Account; or, the owner or operator may manually enter all energy use data for the entire building from at least the most recent 12 complete calendar months to the owner's or operator's Portfolio Manager account. The energy use data can be used for disclosure pursuant to Section 1684(a) for up to one year from the date of request.~~

*Rationale: Making the energy use data valid for one year reduces the burden on building owners if a property transaction takes longer than anticipated.*

- (b) ~~As soon as practicable and no later than 30 days after receiving a request under subdivision (a) of this section, a utility or energy provider shall upload all whole-building energy use data for the entire specified building address from at least the most recent 12 complete calendar months for the specified meters or accounts to the building owner's or operator's Portfolio Manager Account, aggregated by fuel type. For buildings with two or fewer service accounts of any fuel type, the utility shall provide a randomly generated number that is within 10% of actual monthly usage. A utility or energy provider that is not required to use Portfolio Manager's Web Services according to Section 1682(b) may provide the energy use data to the building owner electronically using the spreadsheet template provided by the U.S. Environmental Protection Agency. If a building has a utility or energy provider account for which the owner is not the customer of record, the utility or energy provider shall aggregate or use other means to reasonably protect the confidentiality of the customer. A utility or energy provider may verify a request or ask for clarification before releasing data request a copy of the current title or deed for a building for which energy use data is requested as verification of ownership.~~

*Rationale: The statute requires utilities to “to maintain records of the energy consumption data of all nonresidential buildings” and provide energy use data for the entire building (not individual meters) to the building owner at the time of a bonafide transaction. The current regulations require the building owner to identify all accounts or meters associated with a building. This information is onerous for the building owner to collect. This change would require utilities to provide whole-building energy use data based on building address.*

*Allowing utilities to provide energy use data by sending a spreadsheet clarifies compliance for smaller utilities or energy providers not connected to Portfolio Manager’s data exchange services.*

- (c) Utilities and energy providers shall not require tenant consent or any information that is not under the sole control of the building owner.

*Rationale: Confirms that utilities must provide data to building owners involved in covered transactions without requiring tenant involvement.*

- (d) ~~In the event that the Energy Commission accesses the data submitted pursuant to subdivision (c) of this Section, the Energy Commission shall treat the data as confidential consistent with state and federal laws.~~

*Rationale: The Energy Commission will no longer receive actual energy consumption data.*

- (e) If there is information missing from a disclosure, and if the owner has made a reasonable effort to ascertain the missing information, the owner may then use an approximation of the information, provided that the approximation is identified as such, is reasonable, is based on the best information available to the owner, and is not used for the purpose of circumventing or evading this article.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code.

Reference: Sections 25216.5(d), 25320, 25402.10, Public Resources Code.

#### **Section 1684. ~~Data Releases, Report~~ Disclosures**

- a) A building owner shall disclose the ~~Data Verification Checklist Portfolio Manager Statement of Energy Performance~~, or other disclosure form approved by the Energy Commission, for the building to:

*Rationale: The Statement of Energy Performance does not show energy use data by individual meters, which significantly preserves the confidentiality of the customer. It also contains lesser number of unnecessary fields (as compared to Data Verification Checklist) that currently cause confusion. If, in future, the EPA introduces reports that are more appropriate for transactional disclosure reporting, the Energy Commission may approve them for satisfying this section.*

- (1) A prospective buyer of the building, no later than 24 hours prior to ~~execution of the sales contract~~ three days after the signing of the purchase and sales agreement.

*Rationale: The Energy Commission has interpreted "execution of the sales contract" to mean the close of escrow. Comments received during the Informational Proceeding stated that disclosure is currently made too late to be useful for decision making.*

- (2) A prospective lessee of the entire building, no later than 24 hours prior to execution of the lease.

- (3) A prospective lender financing the entire building, no later than ~~submittal~~ final approval of the loan application.

*Rationale: Gives the building owner more time to receive energy use data.*

- (b) ~~After the building owner has made all utilities and energy providers serving a building have complied with subdivision (b) of this section, and before the disclosure required pursuant to Section 16831684, the building owner shall generate submit the to the Energy Commission via the Portfolio Manager reporting link provided on the program website information deemed necessary to determine compliance. Data Verification Checklist from Portfolio Manager and electronically submit the Data Verification Checklist to the Energy Commission. The Data Verification Checklist shall expire 30 days after it is generated.~~

*Rationale: The Custom Report Template reporting feature provides an easier way for owners to submit compliance information to the Energy Commission. Building owners will no longer be required to email a PDF of the disclosure report to the Energy Commission.*

- (c) Nothing in these regulations permits an owner to use un-aggregated tenant energy use data for purposes other than compliance with Public Resources Code, Section 25402.10.

- (d) A building owner may supplement the above disclosure with forms from other sources, such as the ASTM International (formerly known as the American Society for Testing and Materials) Checklist E2797-11 (2011), the Standard Practice for Building Energy Performance Assessment for a Building Involved in a Real Estate Transaction.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code.  
Reference: Section 25402.10, Public Resources Code.

**Section 1685. Exemption from Disclosure**

A building that is scheduled to be completely demolished one year or less from the date of signing of a purchase and sales agreement or a lease agreement is exempt from disclosure pursuant to these regulations.

*Rationale: Addresses comments that when a building is scheduled for demolition, energy use data is of little use.*

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