

NOTICE PUBLICATION/REGULATIONS SUBMISSION

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OAL FILE
NUMBERS

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NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Energy CommissionENDORSED FILED
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N/A

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Nonresidential Building Energy Use Disclosure		TITLE(S) 20	FIRST SECTION AFFECTED 1680	2. REQUESTED PUBLICATION DATE March 23, 2012
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Lisa DeCarlo	TELEPHONE NUMBER (916) 654-5195	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER 2012, 122	PUBLICATION DATE 3-23-2012

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Nonresidential Building Energy Use Disclosure	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) N/A
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Cal. Code Regs Title 20, Section 1680, 1684, 1681, 1682, 1683, 1684 AMEND REPEAL
TITLE(S) 20	per agency request 4/15/13

3. TYPE OF FILING

- ☒ Regular Rulemaking (Gov. Code §11346) ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. ☐ Emergency Readopt (Gov. Code, §11346.1(h)) ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) ☐ File & Print ☐ Print Only
- ☐ Emergency (Gov. Code, §11346.1(b)) ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) ☐ Other (Specify) _____

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIALS ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

June 26, 2012 - July 2, 2012; November 26, 2012 - December 12, 2012

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§11346.1(a); Cal. Code Regs., title 1, §100)

- ☐ Effective 30th day after filing with Secretary of State ☐ Effective on filing with Secretary of State ☐ §100 Changes Without Regulatory Effect ☒ Effective other (Specify) 7/1/13 per GC 11343.4(a)(3)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☒ Department of Finance (Form STD. 399) (SAM §6660) ☐ Fair Political Practices Commission ☐ State Fire Marshal
- ☐ Other (Specify) _____

7. CONTACT PERSON

Lisa DeCarlo

TELEPHONE NUMBER

(916) 654-5195

FAX NUMBER (Optional)

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Lisa.DeCarlo@energy.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

03/12/12

TYPED NAME AND TITLE OF SIGNATORY

Robert B. Weisenmiller - Chair

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ENDORSED APPROVAL

APR 18 2013

Office of Administrative Law

AB 1103 Nonresidential Building Energy Use Disclosure Program Rulemaking

Chapter 4. Energy Conservation

Article 9. Nonresidential Building Benchmarking and Disclosure

Section 1680 Purpose

Section 1681 Definitions

Section 1682 Schedule of Implementation

Section 1683 Disclosures

Section 1684 Data Releases, Report

Appendix A Disclosure Summary Sheet

Article 9. Nonresidential Building Benchmarking and Disclosure

Section 1680. Purpose

This article implements procedures, pursuant to Public Resources Code Section 25402.10, for disclosing energy use data and ENERGY STAR® Energy Performance 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 to a nonresidential building, or an agent authorized to act on behalf of a person possessing title.
- (b) "Compliance Report" means electronic submission pursuant to subdivision (c) of Section 1684 of the data used for generating disclosure documents within the Portfolio Manager system.
- (c) "Data Checklist" means a report generated by Portfolio Manager that summarizes a property's physical and operating characteristics.
- (d) "Disclosure Summary Sheet" means the Energy Commission document detailing the contents and relevance to California buildings of disclosures generated by Portfolio Manager, as represented in Appendix A.
- (e) "Energy Provider" means an entity providing sources of energy other than electricity or natural gas that are recognized by Portfolio Manager.
- (f) "ENERGY STAR® Energy Performance 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.
- (g) "Energy Use Data" means a record of kilowatt hours, therms, or any other measure of energy recognized by Portfolio Manager.
- (h) "Facility Summary" means a report generated by Portfolio Manager that summarizes the space and energy usage of a building and compares a building's energy use to national medians.

- (i) "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).
- (j) "Portfolio Manager" means the U.S. Environmental Protection Agency's ENERGY STAR® program online tool for managing building energy use data.
- (k) "Prospective buyer" means a person who has submitted a written offer to purchase a building.
- (l) "Prospective lessee" means a person who has submitted an application to lease an entire building.
- (m) "Prospective lender" means a person who has received an owner's application to finance an entire building.
- (n) "Statement of Energy Performance" means a report generated by Portfolio Manager that supplies data about a building's energy performance and, if available, the building's ENERGY STAR® Energy Performance Score.
- (o) "Utility" means an entity providing electricity or natural gas to a nonresidential building owner or tenant.

Note: Authority cited: Sections 25213, 25218(e), 25402.10, Public Resources Code.
Reference: Sections 25116, 25402.10, Public Resources Code.

Section 1682. Schedule of Implementation

A building owner shall comply with this article according to the following schedule:

- (a) On and after July 1, 2013, for a building with total gross floor area measuring more than 50,000 square feet.
- (b) 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.
- (c) On and after July 1, 2014, for a building with a total gross floor area measuring at least 5,000 square feet and up to 10,000 square feet.

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

Section 1683. Disclosures

- (a) A building owner shall disclose the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and the Facility Summary for the building to:
 - (1) A prospective buyer of the building, no later than 24 hours prior to execution of the sales contract.

- (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 of the loan application.
- (b) Nothing in these regulations permits an owner to use tenant energy use data for purposes other than compliance with Public Resources Code, Section 25402.10.
- (c) 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 1684. Data Releases, Report

- (a) At least 30 days before a disclosure is required by Section 1683, a 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:
- (1) Provide the owner name and the owner e-mail address;
 - (2) Provide the building name, 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 months;
 - (4) Provide space use characteristics as specified by Portfolio Manager for all space types in the entire building; and
 - (5) 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 months for specified meters or accounts to the owner's Portfolio Manager Account; or, the owner may manually enter all energy use data for the entire building from at least the most recent 12 months to the owner's Portfolio Manager account.
- (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 energy use data for the entire building from at least the most recent 12 months for the specified meters or accounts to the building owner's Portfolio Manager Account. 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.

(c) After all utilities and energy providers serving a building have complied with subdivision (b) of this section, and before the disclosures required pursuant to Section 1683, the building owner shall access the Energy Commission's AB 1103 compliance website, and

- (1) Download the Disclosure Summary Sheet;
- (2) Select the link to Portfolio Manager and log on to the owner's account;
- (3) Complete and submit the compliance report; and
- (4) Download the building's Statement of Energy Performance, Data Checklist, and Facility Summary. The Statement of Energy Performance, Data Checklist, and Facility Summary shall expire 30 days after they are generated.

(d) In the event that the Energy Commission accesses the data submitted pursuant to subdivision (c)(3) of this Section, the Energy Commission shall treat the data as confidential consistent with state and federal laws.

(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.

APPENDIX A. Disclosure Summary Sheet

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

Disclosure Summary Sheet

Overview

The California Energy Commission Disclosure Summary Sheet accompanies and describes three disclosure documents generated by the EPA's ENERGY STAR® measurement and verification tool, Portfolio Manager: the Statement of Energy Performance, the Data Checklist, and the Facility Summary. The disclosures, required by Public Resources Code, Section 25402.10, are standardized documents designed to provide insight into the energy use of a building, under the space utilization and operational characteristics of the building during the past 12 months. The disclosures include metrics for overall building energy use, as well as a detailed description of the conditions the building owner inputs to Portfolio Manager to generate the metrics.

Overall Building Metrics

Two metrics are used to report overall building energy use, the ENERGY STAR® Energy Performance Score and the Energy Use Intensity.

The ENERGY STAR Energy Performance Score compares a building to a statistically representative national sample of similar buildings. A score of 75 indicates that the building's energy consumption is less than the energy use consumption of 75 percent of similar buildings nationwide. ENERGY STAR cannot score all buildings, and not all buildings in California will receive a score. Energy Use Intensity is a unit of measurement that describes a building's energy use. It represents the energy consumed by a building relative to its size.

Statement of Energy Performance

The Statement of Energy Performance is a standard report generated by Portfolio Manager that describes a building's energy performance in a format that is both understandable and easy to use in business transactions. The Statement includes the name and location of the building; the age, size, and rating, if any, of the building; and summaries of energy use and greenhouse gas emissions. The Statement has a space for a licensed architect or engineer to certify the accuracy of the data used to benchmark. Energy Commission regulations do not require this certification for disclosures.

Data Checklist

The Data Checklist is a standard report generated by Portfolio Manager that summarizes a property's physical and operating characteristics. The Checklist allows review of the way the space is being used (for example, open office), as well as the hours of occupancy. The Checklist verifies that the rating, if any, shown in the Statement of Energy Performance is applicable to the real-world operation of the building. The Checklist also summarizes the conventional and renewable energy being used within the building by fuel type. There is a space for a licensed professional to certify the data. Energy Commission regulations do not require this certification for disclosures.

Facility Summary

The Facility Summary summarizes the data presented in the Statement of Energy Performance and the Data Checklist. It also compares the energy use of the building as it is currently operated against previous performance (if available), along with the score required

for the optional ENERGY STAR label, and the average national energy use for a building with similar characteristics. There is also a brief section devoted to cost and greenhouse gas emissions associated with these energy uses.

Unscored Buildings

Many conditions may cause a building to not receive a score. This does not mean that the building has better or worse energy efficiency than comparable buildings.

Evaluating Unscored Buildings

Evaluating the Energy Use Intensity metric for an unscored building against the median for the building's space type is another way to gauge relative energy use. The following table gives median Energy

Use Intensity values for space types in California. Energy Use Intensity is expressed in units of thousands of source British thermal units (BTUs) per square foot that are consumed in a year. A detailed discussion of source and site energy use can be found on the Portfolio Manager website.

The table below compares energy use of an unscored building to the median energy use of a California building for that set of space types. The table does not account for variations affecting building energy use such as occupancy, worker density, computer equipment, or climate. The space types significantly impacted by climate are indicated with an asterisk below.

Building Space Type	Median EUI kBTU square foot-yr
Education – Day Care or Preschool	66*
Education – Elementary School	92*
Education – Middle / Secondary School	119*
Education – Vocational or Trade School	83*
Convenience Store	923
Liquor Store	456
Small Grocery	483*
Specialty / Ethnic Grocery	457
Supermarkets	544
Clinic / Outpatient	223
Hospital	484
Medical Laboratory	253
Medical Office	158
Nursing Home	221
Data Processing / Computer Center	611
Laboratory / R&D Facility	571
Software Development	248
Lodging – Hotel	176*
Lodging – Motel	154*
Lodging – Resort	276*
Office / Bank	186
Insurance / Real Estate	149
Light Manufacturing	129*
Fire / Police Station	183

Building Space Type	Median EUI kBTU square foot-yr
Public Assembly – Health / Fitness	310
Public Assembly – Library / Museum	174
Public Assembly – Movie Theater	235
Public Assembly – Other	299
Religious	66*
Theater	133
Fast Food Restaurant	1148
Table Service Restaurant	749
Other Restaurant	712
Bar	367
Auto Sales	221
Department / Variety Store	208
Enclosed Mall	259
Other Retail	148*
Big Box Retail	193*
Strip Mall	147
Gas Station	94
Gas / Convenience Store	1162*
Other Services	158
Conditioned Warehouse	98
Unconditioned Warehouse	51
Refrigerated Warehouse	289
All Other	287*

Other Rating Systems and Standards

National and regional organizations provide checklists and standards for energy use disclosure that provide a high level of detailed information on building operations. Examples include, but are not limited to, the ASTM Standard E2797-11, American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 100, ASHRAE Building Energy Quotient (beQ), and the California Commissioning Collaborative (CCC) Existing Building Commissioning Toolkit.