

DOCKETED

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Initial Proposal to Implement Building Energy Use Data Access, Benchmarking, and Public Disclosure Provisions of Assembly Bill 802 (Williams) (2015)

Section 1680. DEFINITIONS

- (a) Active Utility Account – A Utility Account under which a building received Energy at any time within the time period for which Energy use data is requested.
- (b) Benchmark – To obtain information on the Energy use in an entire building for a specific period to enable that usage to be tracked or compared against other buildings.
- (c) Building Identification Number - A number unique across California utilities assigned to each Disclosable Building by the Energy Commission. Building Identification Numbers will be listed on the Energy Commission website.
- (d) Building Owner – An individual or entity identified as the current owner on the deed for a Covered Building.
- (e) Covered Building – Any structure used or intended to support or shelter any use or occupancy, other than a condominium development, meeting either or both of the following:
 - (1) Receiving Energy from a Utility, with no residential Utility Accounts.
 - (2) With five or more Active Utility Accounts of any one Energy type, at least one of which is residential.Two or more Covered Buildings on the same parcel, campus, or site, that are served by one common Energy meter without sub metering, such that their Energy use cannot be tracked individually, shall be considered one Covered Building.
- (f) Disclosable Building – A Covered Building of any property type defined by ENERGY STAR Portfolio Manager, except manufacturing and industrial plants, meeting any of the following:
 - (1) No residential Utility Accounts, and more than 50,000 square feet of Gross Floor Area.
 - (2) 17 or more Utility Accounts of each Energy type serving the building and more than 50,000 square feet of Gross Floor Area.
- (g) Energy – Electricity, natural gas, steam, or fuel oil sold by a Utility to a customer for end uses addressed by the ENERGY STAR Portfolio Manager system.
- (h) ENERGY STAR Portfolio Manager – The tool developed and maintained by the United States Environmental Protection Agency to track and assess the Energy performance of buildings.
- (i) Gross Floor Area -- The total property square footage, measured between the principal exterior surfaces of the enclosing fixed walls of the building(s). This includes all areas inside the building(s), including lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the

base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage rooms.

- (j) Operator – Defined the same as “Owner’s Agent.”
- (k) Owner’s Agent - An individual or entity with written authorization from the Building Owner to act on behalf of the Building Owner.
- (l) Utility – An entity providing Energy to a building. Energy aggregators that do not directly bill an individual customer are not considered Utilities for this program.
- (m) Utility Account – An agreement between a Utility and its customer to provide Energy to a pre-determined location, subject to the following exceptions:
 - (1) Where multiple postal addresses within a building are served by the same Utility Account for a single Energy type, those separate postal addresses will be deemed to be separate Utility Accounts.
 - (2) Where a single Utility customer has multiple Utility Accounts for service of a single Energy type, those Utility Accounts will be deemed to be a single Utility Account.

Section 1681. DATA ACCESS

(a) DATA REQUEST

- (1) The owner of a Covered Building, or the Owner’s Agent, may request Energy use data from each Utility serving a Covered Building by providing the following information:
 - (A) The building address.
 - (B) The Building Identification Number, if available.
 - (C) Information that verifies with reasonable certainty that the person submitting the request is the Building Owner or Owner’s Agent. A copy of the current deed or lease, or a recent mortgage statement for the property on which the building is located, along with documentation showing that the person submitting the request is authorized to act on behalf of the person identified as the Building Owner on any of these documents, shall be sufficient to demonstrate the validity of a request.
 - (D) An indication of whether the building has a Utility Account serving multiple postal addresses, as described in 1680(m)(1), and if so, the number of unique postal addresses served by the Utility Account.
 - (E) An indication of whether the request is made for compliance with the Benchmarking and Public Disclosure requirements pursuant to section 1682.
- (2) The request in subdivision (a)(1) shall be made in writing or by a secure electronic method specified by the Utility.

(b) UTILITY REQUIREMENTS

- (1) For each Energy type, the Utility shall deliver the following information to the Building Owner:
 - (A) A list of meter numbers for all meters serving the building.
 - (B) A list of all Utility customers associated with the building.
 - (C) The Building Identification Number, if available.
- (2) For each Energy type, the Utility shall identify, aggregate, and provide all Energy usage for the requested building for at least the previous calendar year and all available usage for the year in which data is requested by one of the following methods:
 - (A) For utilities not using ENERGY STAR Portfolio Manager's Data Exchange Services, by sending the data to the Building Owner or Owner's Agent using the spreadsheet template provided by ENERGY STAR Portfolio Manager.
 - (B) For utilities using ENERGY STAR Portfolio Manager's Data Exchange Services, the Utility shall provide the data by direct upload to the Building Owner's or Owner's Agent's ENERGY STAR Portfolio Manager account, or, at the Building Owner's or Owner's Agent's request, send the data to the Building Owner or Owner's Agent using the spreadsheet template provided by ENERGY STAR Portfolio Manager.
- (3) Within 14 calendar days of receiving a request as described in subdivision (a), a Utility shall review the request to determine whether it contains all of the information required by subdivision (a)(1), and determine whether customer permission has been provided if required by subdivision (b)(4).
 - (A) If the request contains all of the information specified in subdivision (a)(1), the Utility shall notify the person who submitted the request that the request is complete, and that the Building Owner or Owner's Agent will receive the requested information within 28 calendar days, unless the request is one for which customer permission is required pursuant to subdivision (b)(4).
 - (B) If the request does not contain all of the information specified in subdivision (a)(1), the Utility shall notify the person who submitted the request that the request is missing information and must be resubmitted, specifying what information is missing.
- (4) If a Utility receives a request for Energy use data for a building that has: (1) fewer than three Utility Accounts of any Energy type the Utility provides, none of which are residential, or (2) fewer than five Utility Accounts of each Energy type the Utility provides, at least one of which is residential, the Utility shall not provide the information listed in subdivision (b)(1)

& (2) unless customer permission is obtained from each utility customer other than the Building Owner.

(A) (i) For a request that is not made for compliance with the Benchmarking and Public Disclosure requirements pursuant to section 1682, either of the following options constitute customer permission:

1. A current lease or waiver, executed or signed by the Utility customer or a person authorized to act on behalf of the Utility customer, in which the customer gives permission to the sharing of his or her Energy use data with the Building Owner or Owner's Agent.
2. In the absence of such a lease or waiver, the Utility shall notify the customer within 14 calendar days of receiving a data request that the customer's Energy use data has been requested by the Building Owner or Owner's Agent, and ask whether the customer allows the Utility to share his/her Energy use data with the Building Owner or Owner's Agent. For buildings subject to subdivision (b)(4), the Utility may only share the Energy use data with the Building Owner or Owner's Agent if the customer has provided permission.

(ii) For a request that facilitates compliance with the Benchmarking and Disclosure requirements in section 1682, the options described in subdivision (b)(4)(A)(i)(1) & (2) shall constitute customer permission, provided that the lease, waiver, or Utility notification additionally informs each Utility customer that their Energy use will be shared with the Energy Commission and subject to public disclosure pursuant to section 1682 (d).

(iii) If a Building Owner is the holder of an Active Utility Account in a covered building, the consent of the Building Owner shall not be required for the Utility to provide Energy use data for that Utility Account, whether or not that request is to facilitate compliance with the Benchmarking and Disclosure requirements in section 1682.

(B) Upon sending a permission request to a customer as described in subdivision (A)(ii), the Utility shall notify the Building Owner or Owner's Agent that customer permission has been requested. If customer permission has not been received after 30 calendar days, the Utility shall send a reminder to the customer and notify the Building Owner or Owner's Agent that customer permission has not yet been received. If customer permission has not been received within 60 calendar days of sending a permission request to a customer, the Utility shall notify the Building Owner or Owner's Agent that customer permission has not been received from all Utility customers in the building, and that Energy use data for the Utility Accounts for which permission has not been received will not be provided. If a Utility customer refuses permission to provide Energy use data, the Utility shall notify the Building Owner or Owner's Agent that permission has been denied.

- (C) The Utility shall provide to the Building Owner or Owner's Agent Energy use data for those Utility Accounts for which customer permission has been received. When possible, the Utility shall aggregate usage of each Energy type across Utility Accounts for which permission has been provided.
- (5) A Utility shall not require anything from the Building Owner other than the information listed in subdivision (a), and, if required, the information in subdivision (b)(4)(A).
- (6) A Utility shall provide the information required by these regulations within 28 calendar days of providing notice that a request is complete. If customer permission is required pursuant to subdivision (b)(4), a Utility shall provide the information required by these regulations within 28 calendar days of receiving customer permission.
- (7) If a Utility is unable to send the information listed in subdivision (b)(2) due to an interruption in ENERGY STAR Portfolio Manager, the Utility shall notify the Building Owner of the interruption and send the information listed in subdivision (b)(2) directly to the Building Owner by email.

Section 1682. BENCHMARKING AND DISCLOSURE

(a) COMPLIANCE WITH A LOCAL ORDINANCE

A Building Owner who has complied with a local building Energy use benchmarking program listed on the Energy Commission website has fulfilled the requirements of this program.

(b) SCHEDULE

The owner of a Disclosable Building or the Owner's Agent shall comply with subdivision (c) on the following schedule:

- (1) Buildings with no residential Utility Accounts: 2018 and annually thereafter.
- (2) All other Disclosable Buildings: 2019 and annually thereafter.

(c) BENCHMARKING AND REPORTING DISCLOSABLE BUILDINGS

- (1) For a Disclosable Building, the Building Owner or Owner's Agent shall do the following:
 - (A) Open an ENERGY STAR Portfolio Manager account, enter the building information into ENERGY STAR Portfolio Manager, and complete or update all required fields for the building.
 - (B) By February 1 of the year specified in subdivision (b) of this section, and by each February 1 thereafter, request Energy use data for the building for the previous calendar year as described under section 1681(a).
 - (C) For Disclosable Buildings with (1) three or more Utility Accounts, or (2) fewer than three Utility Accounts where all Utility customers have granted permission

consistent with 1681(b)(4)(A)(ii), the Building Owner or Owner's Agent shall do the following:

- (i) If the Utility did not provide data through Data Exchange Services, upload the Energy use data into the ENERGY STAR Portfolio Manager account.
 - (ii) Once the data has been uploaded into ENERGY STAR Portfolio Manager, run the automated data checking tools and correct any errors.
 - (iii) For Disclosable Buildings with three or more Utility Accounts of every energy type serving the building, by April 1 of the year specified in subdivision (b), and by each April 1 thereafter, on the Energy Commission benchmarking website, select the ENERGY STAR Portfolio Manager benchmarking reporting link for buildings with three or more Utility Accounts, log into ENERGY STAR Portfolio Manager, and share the building information and Energy use data with the Energy Commission's ENERGY STAR Portfolio Manager account.
 - (iv) For Disclosable Buildings with fewer than three Utility Accounts of any Energy type where all Utility customers have granted permission consistent with 1681(b)(4)(A)(ii), by June 1 of the year specified in subdivision (b), and by each June 1 thereafter, on the Energy Commission benchmarking website, select the ENERGY STAR Portfolio Manager benchmarking reporting link for buildings with fewer than three Utility Accounts, log into ENERGY STAR Portfolio Manager, and share the building information and Energy use data with the Energy Commission's ENERGY STAR Portfolio Manager account.
- (D) For Disclosable Buildings with fewer than three Utility Accounts of any Energy type serving the building, where one or more Utility customers other than the Building Owner have not granted permission consistent with 1681(b)(4)(A)(ii), the Building Owner or Owner's Agent shall, on the Energy Commission benchmarking website:
- (i) Click the link for cases where Energy use data is not available.
 - (ii) Attest that permission was not received from all Utility customers.
 - (iii) Share the building information with the Energy Commission's ENERGY STAR Portfolio Manager account.
- (E) For a Disclosable Building with fewer than three Utility Accounts of any Energy type serving the building, one of which belongs to the Building Owner, where the other Utility customer, if applicable, has consented to the provision of data to facilitate public disclosure, the Building Owner must do one of the following:
- (i) Include Building Owner's own Energy use data in the disclosure made to the Energy Commission pursuant to the Benchmarking and Disclosure requirements of this section.

(ii) File a request for determination by the Energy Commission Executive Director that disclosure of the Building Owner's Energy use data would result in the release of proprietary information which can be characterized as a trade secret. If the Executive Director grants the request, the Building Owner or Owner's Agent shall, on the Energy Commission benchmarking website:

1. Click the link for cases where Energy use data is not available.
2. Share the building information with the Energy Commission's ENERGY STAR Portfolio Manager account.

(2) If a Building Owner or Owner's Agent is unable to comply with subdivision (c) by the specified date due to an interruption in ENERGY STAR Portfolio Manager, the Building Owner or Owner's Agent shall complete compliance within 14 calendar days of ENERGY STAR Portfolio Manager resuming service.

(d) PUBLIC DISCLOSURE

(1) For Disclosable Buildings with no residential Utility Accounts, the Energy Commission will not make building-level data public in 2018. Public disclosure of building-level data received in 2019 will begin in September 2019.

(2) For Disclosable Buildings with one or more residential Utility Accounts the Energy Commission will not make building-level data public in 2019. Public disclosure of building-level data received in 2020 will begin in September 2020.

(3) For Disclosable Buildings, the Energy Commission may make available on a public website the following information and derivatives thereof:

(A) Building Identification Number.

(B) Building address.

(C) County.

(D) Year built.

(E) Gross Floor Area.

(F) Latitude and longitude.

(G) Property name, if any.

(H) Primary property type, United States Environmental Protection Agency calculated.

(I) Primary property type, self-selected.

(J) Property floor area (buildings and parking).

- (K) Open "comments" field for owners/managers to provide information.
- (L) ENERGY STAR Portfolio Manager Property ID.
- (M) Percentage of space occupied (Occupancy).
- (N) Number of occupants.
- (O) Number of buildings (if served by one common Energy meter without sub metering).
- (P) ENERGY STAR Score, for eligible buildings.
- (Q) Hours operated per week.
- (R) Monthly and/or annual site and/or source Energy use by energy type.
- (S) Monthly and/or annual weather-normalized site and/or source Energy use intensity.
- (T) Total greenhouse gas emissions.

(4) For Disclosable Buildings with fewer than three Utility Accounts of any Energy type serving the building where Energy use data is not available, the Energy Commission may make available on a public website items (A) through (O) from the above list.

(e) EXEMPTIONS

A building meeting any of the following conditions is exempt from the reporting requirement of subdivisions (c) and (d):

- (1) The building did not have a certificate of occupancy or temporary certificate of occupancy during the calendar year for which reporting to the Energy Commission is required.
- (2) The building is scheduled to be demolished one year or less from the reporting date.
- (3) The building is covered by a local building Energy use benchmarking program listed on the Energy Commission website.

(f) ALTERNATIVES TO ENERGY STAR PORTFOLIO MANAGER

In the event that the Energy Commission determines that ENERGY STAR Portfolio Manager is unsuitable to meet the needs of this program, the Energy Commission may designate other benchmarking tools in addition to, or instead of, ENERGY STAR Portfolio Manager for the requirements of this program.

Section 1683. VIOLATIONS AND ENFORCEMENT

The Energy Commission may enforce any of the following violations through the measures identified in Public Resources Code section 25321, after notifying the offending party of the violation and providing 30 days to correct the violation:

(a) VIOLATIONS BY A BUILDING OWNER:

- (1) Failure to complete the submission as required in 1682(c).
- (2) Intentionally sharing incorrect or incomplete data with the Energy Commission.

(b) VIOLATIONS BY A UTILITY:

- (1) Failure to comply with the requirements of 1681 (b).
- (2) Intentionally sharing incorrect or incomplete data with the Building Owner or Owner's Agent.

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