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Regulations Implementing Building Energy Use Data Access, Benchmarking, and Public Disclosure Procedures of Assembly Bill 802 (Williams, 2015)

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. Building Energy Use Data Access, Benchmarking, and Public Disclosure

Section 1680. Purpose.

This article implements procedures, pursuant to Public Resources Code section 25402.10, for providing energy use data, benchmarking energy performance, and publicly disclosing energy performance for buildings in California.

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

Section 1681. Definitions.

(a) Active: A Utility Account is considered “Active” if (1) it is receiving Energy at the time of the request, and (2) the postal address that the Utility Account is currently serving received Energy at any time during 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) Covered Building: Any structure used or intended to support or shelter any use or occupancy, other than a condominium project as described in section 4125 or 6542 of the California Civil Code, that received Energy from a Utility during the period for which Energy use data is requested, and has (1) no residential Utility Accounts, or (2) 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 submetering, such that their Energy use cannot be tracked individually, shall be considered one Covered Building.

(d) Disclosable Building: A Covered Building of any property type defined by ENERGY STAR Portfolio Manager that has more than 50,000 square feet of Gross Floor Area, and has (1) no Active residential Utility Accounts, or (2) 17 or more Active residential Utility Accounts of each Energy type serving the building. Notwithstanding the foregoing, neither of the following is a Disclosable Building: (1) a building in which more than half of the Gross Floor Area is of a type or usage exempted through the process specified in section 1684(c), or (2) a building in which more than half of the Gross Floor Area is used for scientific experiments requiring controlled environments, or for manufacturing or industrial purposes.

(e) 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.

(f) 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.

(g) Gross Floor Area: The total building square footage, measured between the principal exterior surfaces of the enclosing fixed walls of the building(s). This includes all areas inside the building, 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.

(h) Operator: Defined the same as "Owner's Agent."

(i) Owner's Agent: A Person with authorization from the building owner to act on behalf of the building owner.

(j) Person: An individual, corporation, government or governmental subdivision or agency, estate, trust, partnership, limited liability company, association, organization, or other legal or commercial entity.

(k) Portfolio Manager Property ID: A unique identifier assigned by the United States Environmental Protection Agency to each property entered in Portfolio Manager.

(l) Utility: An entity providing Energy to a building. An Energy aggregator that does not directly bill an individual customer is not considered a Utility 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 treated as separate Utility Accounts under this Article.

(2) Where a single postal address is served by multiple Utility Accounts of a single Energy type, those Utility Accounts will be treated as a single Utility Account under this Article.

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

Reference: Sections 25116 and 25402.10, Public Resources Code.

Section 1682. 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) Verification that the Person making the request is authorized to receive Energy use data for the building.

(i) This may be demonstrated through an attestation that the person submitting the request is the building owner or Owner's Agent, or is authorized to act on behalf of the building owner or Owner's Agent.

(ii) If the Person making the request is the customer of record for all Utility Accounts that are the subject of the request, authorization to access Energy use data for the building may instead be verified by providing, at the Utility's discretion, a unique password, account number, or other unique identifier for the accounts that are the subject of the request.

(iii) A Utility may accept or require electronic submission of the information or attestation required by this subdivision.

(C) An indication of whether the building had an Active Utility Account serving multiple postal addresses, as described in 1681(m)(1), during the period for which Energy use data is requested, and if so, the number of unique postal addresses served by the Utility Account.

(D) The written permission of any Utility customers for accounts serving a postal address in the building that have been obtained by the building owner as described in subdivision (b)(4) of this section.

(E) If there are fewer than three Utility Accounts serving the building, an indication of whether the request is made for compliance with the Benchmarking and Public Disclosure requirements in section 1683.

(2) The request in subdivision (a)(1) of this section 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 to the building owner or Owner's Agent the last four characters of the meter number for each meter serving the building.

(2) For each Energy type, the Utility shall identify, aggregate, and provide all Energy use data for the requested building, in monthly intervals, for at least the previous calendar year, and all available data for the calendar year in which data is requested, by one of the following methods:

(A) Utilities not using ENERGY STAR Portfolio Manager's Data Exchange Services shall send the data to the building owner or Owner's Agent using the spreadsheet template provided by ENERGY STAR Portfolio Manager.

(B) Utilities using ENERGY STAR Portfolio Manager's Data Exchange Services 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) of this section, a Utility shall review the request to determine whether it contains all of the information required by subdivision (a)(1) of this section, and determine whether permission has been provided if required by subdivision (b)(4) of this section.

(A) If the request contains all of the information specified in subdivision (a)(1) of this section:

(i) If the request is one for which permission is not required pursuant to subdivision (b)(4) of this section, or if the building owner has obtained permission from each utility customer as specified in subdivisions (b)(4)(A)(i) or (b)(4)(B) of this section as applicable, 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.

(ii) If the request is one for which permission is required pursuant to subdivision (b)(4) of this section and permission has not already been granted by each Utility customer other than the building owner with a Utility Account serving a postal address in the building, the Utility shall notify the building owner or Owner's Agent that it will request permission.

(B) If the request does not contain all of the information specified in subdivision (a)(1) of this section, the Utility shall notify the person who submitted the request that the request is missing information or contains incorrect information and must be resubmitted, specifying what information is missing or incorrect.

(4) If a Utility receives a request for Energy use data for a building that has (1) fewer than three Active Utility Accounts of any Energy type the Utility provides, none of which are residential, or (2) fewer than five Active Utility Accounts of any Energy type the Utility provides, at least one of which is residential, the Utility shall not provide the information listed in subdivisions (b)(1) and (b)(2) of this section for that Energy type unless permission is obtained from each Utility customer other than the building owner with a Utility Account serving a postal address in the building.

(A) If a building owner or Owner's Agent makes a request for Energy use data that is not for compliance with the Benchmarking and Public Disclosure requirements in section 1683:

(i) The building owner or Owner's Agent may obtain written permission directly from a Utility customer and submit that permission to the Utility. The permission may be granted through a provision in the lease or through a separate document.

(ii) If the building owner or Owner's Agent has not obtained permission from any customer pursuant to subdivision (b)(4)(A)(i) of this section, the Utility shall, within 14 calendar days of receiving a data request, send to each customer who has not already granted permission a request for permission to share the customer's Energy use data with the building owner or Owner's Agent. If any customer has not provided an affirmative response within 30 calendar days of the Utility request, the Utility shall notify the building owner or Owner's Agent that Energy use data will not be provided because permission was not obtained.

(B) If a building owner or Owner's Agent makes a request for Energy use data for compliance with the Benchmarking and Public Disclosure requirements in section 1683, permission may be demonstrated as specified in subdivision (b)(4)(A) of this section, provided that each customer additionally grants permission for aggregated Energy use data to be publicly disclosed.

(C) If a building owner is the holder of an Active Utility Account in a Covered Building, the permission 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 facilitates compliance with the Benchmarking and Disclosure requirements in section 1683.

(5) A Utility must not require anything from the building owner or Owner's Agent other than the information listed in subdivision (a) of this section.

(6) A Utility shall provide the information required by these regulations within 28 calendar days of receiving a complete request. If permission is required pursuant to subdivision (b)(4) of this section, a Utility shall provide the information required by these regulations within 28 calendar days of receiving permission.

(7) A Utility is not required to provide the information specified in subdivisions (b)(1) and (b)(2) of this section more than once in a three-month period, unless the information is requested for compliance with the Benchmarking and Public Disclosure requirements in section 1683.

(8) A Utility may, at its discretion, allow a building owner or Owner's Agent to request that aggregated Energy use data be provided by recurring automatic upload. As a condition of requesting automatic upload, the building owner or Owner's Agent must agree to notify the Utility if any of the following occurs, in which case the Utility shall stop providing Energy use data by recurring automatic upload:

(A) The number of Utility Accounts receiving Energy in the building falls below three for a building with no residential Utility Accounts, or below five for a building with at least one residential Utility Account.

(B) A Utility customer who has granted permission to have aggregated Energy use data shared with the building owner or Owner's Agent revokes this permission.

(C) A new Utility Account is opened in a building that previously had only one Active Utility Account, the owner of which had given permission for Energy use data to be shared with the building owner pursuant to this program, if the owner of the second Utility Account has not granted permission for Energy use data to be shared with the building owner or Owner's Agent.

(D) The Person receiving Energy use data is no longer the building owner or Owner's Agent.

(9) If a Utility is unable to send the information listed in subdivision (b)(2) of this section due to an interruption in ENERGY STAR Portfolio Manager, the Utility shall notify the building owner or Owner's Agent of the interruption and send the information listed in subdivision (b)(2) of this section directly to the building owner or Owner's Agent by a secure electronic method.

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

Section 1683. Benchmarking and Public Disclosure.

(a) Schedule.

(1) The owner of a Disclosable Building with no residential Utility Accounts shall comply with subdivision (b) of this section in 2018 and annually thereafter.

(2) The owner of any other Disclosable Building shall comply with subdivision (b) of this section in 2019 and annually thereafter.

(b) 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 and complete all required fields as specified by Portfolio Manager for each Disclosable Building.

(B) By March 1 of the year specified in subdivision (a) of this section, and by each March 1 thereafter, request Energy use data for the building as described under section 1682(a). A building owner or Owner's Agent who already has complete Energy use data for the building may upload or enter it into Portfolio Manager instead of requesting it from a Utility serving the building.

(2) For Disclosable Buildings with (1) three or more Active Utility Accounts, or (2) fewer than three Active Utility Accounts where all Utility customers have granted permission to have their Energy use data publicly disclosed consistent with section 1682 (b)(4)(B), the building owner or Owner's Agent shall do the following:

(A) If the Utility did not provide data through Data Exchange Services, upload the Energy use data for the previous calendar year into the ENERGY STAR Portfolio Manager account.

(B) Once the Energy use data has been uploaded into ENERGY STAR Portfolio Manager, run the automated data checking tools and correct any errors.

(C) By June 1 of the year specified in subdivision (a) of this section, and by each June 1 thereafter, on the Energy Commission benchmarking website, select the appropriate ENERGY STAR Portfolio Manager reporting link, log into ENERGY STAR Portfolio Manager, and complete the reporting steps specified therein, including selecting the building(s) to report, reviewing the information to be reported for accuracy, and sharing the information with the Energy Commission.

(3) For Disclosable Buildings with fewer than three Active Utility Accounts of any Energy type serving the building, where one or more Utility customers other than the building owner have not granted permission to have their Energy use data publicly disclosed consistent with section 1682(b)(4)(B), the building owner or Owner's Agent shall, on the Energy Commission benchmarking website, select the appropriate ENERGY STAR Portfolio Manager reporting link, log into ENERGY STAR Portfolio Manager, and complete the reporting steps specified therein, including selecting the building(s) to report, reviewing the information to be reported for accuracy, and sharing the information with the Energy Commission.

(4) For a Disclosable Building with fewer than three Active 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 or Owner's Agent shall do one of the following:

(A) Include the building owner's Energy use data in the report made to the Energy Commission pursuant to subdivision (b)(2) of this section.

(B) File a request for determination by the executive director of the Energy Commission that disclosure of the building owner's Energy use data would result in the release of proprietary information that can be characterized as a trade secret.

(i) If the executive director grants the request, the building owner or Owner's Agent shall, on the Energy Commission benchmarking website, select the appropriate ENERGY STAR Portfolio Manager reporting link, log into ENERGY STAR Portfolio Manager, and complete the reporting steps specified therein, including selecting the building(s) to report, reviewing the information to be reported for accuracy, and sharing the information with the Energy Commission.

(ii) If the executive director does not grant the request, the building owner or Owner's Agent shall complete the reporting process in subdivision (b)(2) of this section.

(5) If a building owner or Owner's Agent is unable to comply with subdivision (b) of this section 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.

(c) Public Disclosure.(1) For Disclosable Buildings with no Active residential Utility Accounts, the Energy Commission will not make building-level data received in 2018 public. For these buildings, the Energy Commission will publicly disclose building-level data received in 2019 and thereafter.

(2) For Disclosable Buildings with Active residential Utility Accounts, the Energy Commission will not make building-level data received in 2019 public. For these buildings, the Energy Commission will publicly disclose building-level data received in 2020 and thereafter.

(3) For a Disclosable Building, except as provided in subdivision (c)(4) of this section, the Energy Commission may make available on a public website the following information and derivatives thereof:

(A) Building address.

(B) County.

(C) Year built.

(D) Gross Floor Area.

(E) Latitude and longitude.

(F) Property or building name, if any.

(G) Property type.

(H) Property floor area (building and parking).

(I) Open "comments" field for the building owner or Owner's Agent to provide additional information about the building.

- (J) ENERGY STAR Portfolio Manager Property ID.
- (K) Percentage of space occupied (Occupancy).
- (L) Number of occupants.
- (M) Number of buildings (if served by one common Energy meter without submetering).
- (N) ENERGY STAR Score, for eligible buildings.
- (O) Monthly and/or annual site Energy use by Energy type.
- (P) Monthly and/or annual weather-normalized site and/or source Energy use intensity.
- (Q) Monthly and/or annual peak electricity demand.
- (R) Total greenhouse gas emissions.

(4) For those buildings described in subdivision (b)(3) of this section, and those for which the executive director has granted a trade secret determination as described in subdivision (b)(4)(B)(i) of this section, the Energy Commission may make available on a public website items (A) through (M) from subdivision (c)(3) of this section.

(d) If the Owner of a Disclosable Building benchmarks and reports Energy use data for that building to the United States Department of Housing and Urban Development in combination with Energy use data of other buildings on the same parcel, campus, or site, the Owner may comply with subdivisions (a) and (b) of this section for the same combination of buildings.

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

Section 1684. Exemptions.

(a) Exemptions for Building Owners. A building owner is exempt from the requirements of section 1683 for a building meeting any of these conditions:

- (1) The building did not have a certificate of occupancy or temporary certificate of occupancy for more than half of 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 was benchmarked pursuant to a local program listed on the Energy Commission website pursuant to subdivision (b) of this section.

(b) Local Benchmarking Program Exemption Process.

(1)(A) A local jurisdiction may request a determination from the executive director of the Energy Commission that compliance with its benchmarking program fulfills the requirements of section 1683. The executive director will approve the request if:

(i) The program includes annual public disclosure of, at a minimum:

1. For all Disclosable Buildings covered by the local benchmarking program, items (A), (C), (D), and (G) in section 1683(c)(3); and

2. For Disclosable Buildings covered by the local benchmarking program, except those buildings described in section 1683(c)(4), item (O) in section 1683(c)(3).

(ii) The local jurisdiction agrees to transmit to the Energy Commission all information that is publicly disclosed for a calendar year by August 1 of the following year.

(B) Where a local benchmarking program has been approved pursuant to this subdivision, any building benchmarked pursuant to that program in a given calendar year is exempt from compliance with section 1683 for that year. The Energy Commission shall list each local benchmarking program approved pursuant to this subdivision on its website.

(2) The Energy Commission may revoke a determination made pursuant to subdivision (b)(1) of this section if it determines that a local benchmarking program is not meeting the requirements of subdivisions (b)(1)(A) and (b)(1)(B) of this section. At least 30 calendar days before a determination is revoked, Energy Commission staff shall notify the local jurisdiction and the public that the Energy Commission will consider revoking the determination and provide an opportunity for public comment.

(3) If the Energy Commission revokes a determination pursuant to this subdivision, compliance with the local benchmarking program shall no longer constitute compliance with the requirements of section 1683, starting with the calendar year following the year in which the determination is revoked.

(4) If a determination is revoked, the Energy Commission shall indicate on its website the date of revocation and the calendar year in and after which compliance with the local program will no longer constitute compliance with section 1683.

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

Reference: Sections 25116 and 25402.10, Public Resources Code.

Section 1685. 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 person requesting energy use data.

(1) Failing to comply with the requirements of section 1683(a) or (b).

(2) Knowingly submitting false information to a Utility in a request for Energy use data.

(3) Knowingly sharing false information with the Energy Commission.

(b) Violations by a Utility.

(1) Failing to comply with the requirements of section 1682(b).

(2) Knowingly sharing false data with a building owner or Owner's Agent.

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

Reference: Sections 25116 and 25402.10, Public Resources Code.