

Express Terms for the 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 1680-1684**

July 22, 2014

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 to a nonresidential building, or an agent authorized to act on behalf of a person possessing title.
- (b) "Data Verification Checklist" means a report generated by Portfolio Manager that summarizes a property's physical and operating characteristics.
- (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.
- (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).
- (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.
- (i) "Prospective lessee" means a person who has submitted an application to lease an entire building.
- (j) "Prospective lender" means a person who has received an owner's application to finance an entire building.
- (k) "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 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, **20142016**, 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 Data Checklist 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 generate the building's 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.

- (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.
- (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.