

Building Energy Reporting Draft Regulation 225 CMR 27.00

225 CMR 27.00: BUILDING ENERGY REPORTING

Section

27.01: Purpose and Application

27.02: Definitions

27.03: Covered Parcels List

27.04: Reporting Requirements and Process

27.05: Reporting Exemptions

27.06: Building Ownership Changes and Building Ownership Designations

27.07: Disputing Inclusion in Covered Parcels List and Alternative Compliance Plans

27.08: Data Verification

27.09: Personally Identifying Building Owner and Lessee Information

27.10: Annual Building Database and Report

27.11: Enforcement and Penalties

27.12: Inspection

27.13: Severability

27.01 Purpose and Application

The purpose of 225 CMR 27.00 is to establish a process for Distribution Companies, Municipal Utilities, and Building Owners to report the Energy Usage of Large Buildings to the Department for publication on the Department's website.

27.02 Definitions

Building. An energy consuming structure located within a Parcel or a single, continuous energy-consuming structure that spans multiple Parcels.

Building Owner. The person, persons, entity, or entities listed as the owner of a Parcel on the Covered Parcels List.

Covered Parcel. A Parcel containing a Large Building that is included on the Covered Parcels List.

Covered Parcel List. The list published by the Department pursuant to 225 CMR 27.03.

Department. The Department of Energy Resources, established by M.G.L. c. 25A.

Designated Building Owner: A person or entity that has been designated by the Building Owner as the energy reporting entity pursuant to 225 CMR 27.06(2)-(3).

Distribution Company. A distribution company, gas company, or steam distribution company as those terms are defined in M.G.L. 164, § 1, provided, however, a Distribution Company shall not include a Municipal Utility.

Energy. Electricity, natural gas, steam, hot or chilled water, heating oil, propane or other products that are used for heating, cooling, lighting, industrial and manufacturing processes, water heating, cooking, clothes drying or other purposes.

Energy Usage. The amount of Energy sold by a Distribution Company, Municipal Utility, renewable energy generated on the Building site or off-site, or other sources, consumed for any Building. The definition includes Energy sold to individual lessees and common areas of a Building in aggregate.

Gross Floor Area. The total floor area contained within a Building measured to the external face of the external walls.

Large Building. One or more Buildings located on a Parcel with a combined Gross Floor Area equal to or greater than 20,000 square feet.

Municipal Utility. A municipal lighting plant established pursuant to the provisions of M.G.L. c. 164, including municipal lighting plants that provide gas or gas and electric service.

Parcel. The plot boundaries of a piece of land.

Personally Identifying Information. Information that could reasonably be used to identify a person including but not limited to name, address, telephone number, email address, Social Security number, birth date, utility account information, or any combination of information that could be used to identify a person, provided that a Building Owner's name and address shall not be included in this definition.

Qualified Energy Professional. An individual or individuals who hold an active qualification of at least one of the credentials listed in the Department's Guideline on Building Energy Reporting. The Department may approve additional qualifications not listed in the Department's Guideline on Building Energy Reporting on a case-by-case basis.

Steam Distribution Company. A steam distribution company as defined in M.G.L. 164, § 1.

27.03: Covered Parcels List

- (1) Covered Parcels List. Annually by March 30, the Department shall publish a Covered Parcels List on the Department's website that includes all Parcels in the Commonwealth containing Large Buildings subject to the provisions of 225 CMR 27.00.

The Covered Parcels List shall include the building address, square footage, Building Owner, and any additional information deemed relevant by the Department to effectuate the goals of 225 CMR 27.00.

- (2) Newly Constructed Buildings. A newly constructed building shall be included on the Covered Parcels List the first full calendar year following the issuance of a Temporary Certificate of Occupancy for the building or Certificate of Occupancy for the building, whichever is earlier.
- (3) Creation of Covered Parcels List. The Department will determine a process for acquiring the information required to identify Parcels containing Large Buildings and generate the Covered Parcels List. The Department will utilize information sources that may include but are not limited to, municipal assessor databases, MassGIS assessor data, and other state or municipal sources of property data.

27.04: Reporting Requirements and Process

- (1) Distribution Companies. Annually by June 30, Distribution Companies shall report to the Department all Energy Usage provided by the Distribution Company and the associated cost information for all Buildings contained on a Covered Parcel that have an account with the Distribution Company for the previous calendar year.

Such Energy Usage shall be provided for each Building on the Covered Parcels List and shall be submitted in a manner established by the Department.

- (a) Additional Reporting Requirement for Steam Distribution Companies. Annually by June 30, Steam Distribution Companies shall also provide the volume of steam produced by each generation source for the previous calendar year.

- (2) Municipal Utilities. Annually by June 30, Municipal Utilities shall report to the Department all Energy Usage provided by the Municipal Utilities and the associated cost information for all Buildings contained on a Covered Parcel that have an account with the Municipal Utility for the previous calendar year.

Such Energy Usage shall be provided for each Building on the Covered Parcels and shall be submitted in a manner established by the Department.

- (3) Building Owners. Annually by June 30, Building Owners shall provide all Energy Usage and the associated cost information that is not provided by a Distribution Company or Municipal Utility for all Buildings contained on Covered Parcels where they are listed as the Building Owner.

Energy Usage shall be reported using Energy Star Portfolio Manager or any other Department approved program in a manner to be specified by the Department.

- (a) Energy Usage Information Not Provided by a Distribution Company or Municipal Utility. In the event that a Distribution Company or Municipal Utility does not report the Energy Usage for a Building on a Covered Parcel pursuant to 225 CMR 27.04(1)-(2), the Department may issue a written notice requiring the Building Owner to report such Energy Usage by a date to be determined by the Department.
- (b) Exemptions for Energy Usage from an Unresponsive Lessee. A Building Owner shall not be penalized for failing to report any Energy ordered, delivered and charged directly to a lessee if the owner sends a written request for Energy Usage information to the lessee not later than April 30 of the same year, does not receive a response from the lessee by June 25 of the same year and provides evidence of the request to the Department.

27.05: Reporting Exemptions

(1) Buildings Exempt from Reporting Requirements.

- (a) Buildings located on Covered Parcels that meet any of the below criteria shall not need to have their Energy Usage reported pursuant to 225 CMR 27.04 and shall not have their Gross Floor Area included in the calculation of whether a Parcel contains a Large Building:
 - 1. the Building was vacant for a full calendar year;
 - 2. the Building was demolished during the previous calendar year;
 - 3. the Building was vacant for more than 50% of the year due to natural causes, including but not limited to fire, flood, and wind damage;
 - 4. the Building Owner has filed or been dissolved in bankruptcy;
 - 5. other unique or unforeseen circumstances that warrant an exclusion as determined by the Department from the Building Energy Reporting Requirements.
- (b) If a Building meets one or more of the criteria listed in 225 CMR 27.05(1)(a)1.-5., the Distribution Company, Municipal Utility, or Building Owner shall submit a letter to the Department by June 30 of the compliance year stating which criteria the Building meets and providing any applicable documentation.

- (2) Separately Metered Electric Vehicle Charging Stations. Energy Usage derived from electric vehicle charging stations located on a Covered Parcel but not contained within a Building shall not be reported pursuant to 225 CMR 27.04 unless the Energy Usage is measured by a Building's meter.

27.06: Building Ownership Changes and Building Ownership Designations

(1) Change in Ownership

- (a) An existing or new Building Owner shall notify the Department of any changes in ownership for a Covered Parcel. Such notice shall include:
 1. evidence sufficient to demonstrate the transfer of the rights and obligations to the new owner; and
 2. the name, address and contact information of the new owner.
 - (b) Upon review and approval of such notice, the Department shall update the new owner to be the Building Owner for purposes of 225 CMR 27.00.
 - (c) If the Department does not receive notice that complies with 225 CMR 27.06(1)(a), all compliance obligations under 225 CMR 27.00 shall remain with the Building Owner listed in the Covered Parcels List.
- (2) Designation of Third-Party as Building Owner. A Building Owner seeking to designate a third-party as Building Owner for purposes of compliance with 225 CMR 27.00 shall submit notice to the Department by April 30th of the compliance year. Such notice must be signed by the Building Owner and designee and state that the designee accepts full responsibility for compliance with the provisions of 225 CMR 27.00 including any penalties for non-compliance. Upon review and approval of such notice, the Department shall update the designee to be the Building Owner for purposes of 225 CMR 27.00.
 - (3) Change in Designated Building Owner. A Designated Building Owner wishing to change their designation as Building Owner shall submit notice to the Department by April 30th of the compliance year. Such notice shall be signed by the Designated Building Owner and the new designee and state that the new designee accepts full responsibility for compliance with the provisions of 225 CMR 27.00 including any penalties for non-compliance. Upon review and approval of such notice, the Department shall update the designee to be the Building Owner for purposes of 225 CMR 27.00.

27.07: Disputing Inclusion in Covered Parcels List and Alternative Compliance Plans

- (1) Disputing Inclusion in Covered Parcels List. If a Distribution Company, Municipal Utility, or Building Owner wishes to dispute the inclusion of a Parcel on the Covered Parcels List or any information regarding that Parcel contained in the Covered Parcels List, by April 30th of the compliance year, they shall submit a letter to the Department detailing their concerns. Such letter shall contain any relevant documentation.
- (2) Alternative Compliance Pathways
 - (a) Deadline Extension. A Distribution Company, Municipal Utility, or Building Owner may submit a request for an extension of the deadline to report the information required under 225 CMR 27.04. Such deadline extension request must include an explanation of why the entity is not reasonably able to comply

with the June 30 reporting deadline and include a proposed extension date. The Department shall review and grant such requests on a case-by-case basis.

- (b) Requested Modification of Reporting Requirements. A Distribution Company, Municipal Utility, or Building Owner may submit a request for a modification of any of the requirements under 225 CMR 27.00. Such a request must include an explanation of why the entity is not reasonably able to comply with the relevant provision of 225 CMR 27.00. The Department shall review and grant such requests on a case-by-case basis.

27.08: Data Verification

- (1) Self-Certification. All Building Owners shall be required to self-certify all Energy Usage data submitted pursuant to 225 CMR 27.04(3).
- (2) Third-Party Data Verification.
 - (a) The first year a Building Owner reports Energy Usage data to the Department pursuant to 225 CMR 27.04(3), the Building Owner shall additionally submit a third-party verification of their reported Energy Usage.
 - (b) Every fifth year following the first year a Building Owner reports Energy Usage data to the Department pursuant to 225 CMR 27.04(3), the Building Owner shall additionally submit a third-party verification of that year's and the previous four year's Energy Usage data.
- (3) Qualified Energy Professionals. All third-party verification performed pursuant to 225 27.08(2) shall be performed by a Qualified Energy Professional.

27.09 Personally Identifying Building Owner and Lessee Information

Personally Identifying Information regarding Building Owners and lessees submitted to the Department pursuant to 225 CMR 27.00 shall be excluded from any reports published by the Department and shall not be deemed public records as defined in M.G.L. c. 4, § 26; provided however that aggregates of such information may be included in reports published by the Department and shall be public records.

27.10 Annual Building Database and Report

- (1) Annually by October 31, the Department shall make available on its website energy use information and the associated greenhouse gas emissions for the previous calendar year for each Building on a Covered Parcel. The information shall be published in database format, fully text-searchable and readily sortable by municipality, zip code and all the data elements in the database. The information shall also be published in map format.

- (2) Annually by October 31, the Department shall make available on its website an annual comprehensive report on Large Building Energy Usage utilizing the information and data collected under 225 CMR 27.00.

27.11: Enforcement and Penalties

- (1) Distribution Companies. If a Distribution Company fails to provide Energy Usage information for one or more Buildings on Covered Parcels pursuant to 225 CMR 27.04(1), the following enforcement measures will be taken:
- (a) The Department shall provide notice to the Distribution Company of all Buildings for which it is missing Energy Usage data.
 - (b) A Distribution Company shall respond to the notice in subpart (a) within 30 days of receipt, or at a later date approved by the Department, with a plan detailing how it intends to provide the missing Energy Usage data.
 - (c) If a Distribution Company (i) fails to comply with subpart (b) or (ii), within 90 days of the issuance of the written notification in subpart (a), fails to make a good faith effort to progress its plan provided pursuant to subpart (b), the Department may issue a fine of up to \$150.00 per Covered Parcel per day that the missing Energy Usage information is not provided.
- (2) Municipal Utilities. If a Municipal Utility fails to provide Energy Usage information for one or more Buildings on Covered Parcels pursuant to 225 CMR 27.04(2), the following enforcement measures will be taken:
- (a) The Department shall provide notice to the Municipal Utility of all Buildings for which it is missing Energy Usage data.
 - (b) A Municipal Utility shall respond to the notice in subpart (a) within 30 days of receipt, or at a later date approved by the Department, with a plan detailing how it intends to provide the missing Energy Usage data.
 - (c) If a Municipal Utility (i) fails to comply with subpart (b), or (ii) within 90 days of the issuance of the written notification in subpart (a), fails to make a good faith effort to progress its plan provided pursuant to subpart (b), the Department may issue a fine of up to \$150.00 per Covered Parcel per day that the missing Energy Usage information is not provided.
- (3) Building Owners
- (a) If a Building Owner fails to provide Energy Usage information pursuant to 225 CMR 27.04(3), the following enforcement measures will be taken:
 - 1. The Department shall provide notice to the Building Owner of their failure to provide Energy Usage information.
 - 2. If, after 30 days from the issuance of the written notification in subpart (a), the Building Owner does not submit the missing Energy Usage Information, the Department may issue a fine of up to \$150.00 per day that the missing Energy Usage information is not provided.

- a. A Building Owner may not pass through a fine assessed pursuant to 225 CMR 27.11(3)(a)2. to a lessee of a unit within a Building on a Covered Parcel that comprises less than 5 per cent of the total Gross Floor Area of the Building.
- (b) If a Building Owner fails to submit third-party verification of its Energy Usage information pursuant to 225 CMR 27.08(2), the following enforcement measures will be taken:
 1. The Department shall provide notice to the Building Owner of their failure to provide third-party verification of their Energy Usage data.
 2. If, after 30 days from the issuance of a written notification pursuant to 225 CMR 27.11(3)(b)1., the Building Owner does not provide the missing third-party verification, the Department may issue a fine of up to \$150.00 per day that the third-party verification is not provided.
- (c) If a Building Owner's submission of third-party verification pursuant to 225 CMR 27.08(2) identifies a discrepancy with the Building Owner's Energy Usage information submitted pursuant to 225 CMR 27.04(3), the following enforcement measures will be taken:
 1. For the first violation, a written warning may be issued;
 2. For any subsequent violation, the Department may issue a fine of up to \$150.00 per day that Energy Usage is not provided.
- (4) Lessees. If a lessee that comprises greater than 5% of the total gross floor area of a Building on a Covered Parcel fails to respond within 30 days to a written request for Energy Usage information submitted by a Building Owner pursuant to 225 CMR 27.04(3)(b), the following enforcement actions will be taken:
 - (a) The Department shall provide notice to the lessee of their failure to provide Energy Usage information.
 - (b) If, after 30 days from the issuance of the written notification in subpart (a), the lessee does not submit the missing Energy Usage information, the Department may issue a fine of up to \$150.00 per day that the missing Energy Usage information is not provided.

27.12: Inspection

- (1) Document Inspection. The Department may audit the accuracy of all information submitted pursuant to 225 CMR 27.00. The Department may request and obtain from any Owner, Municipal Utility, or Distribution Company information that the Department determines necessary to monitor compliance with and enforcement of 225 CMR 27.00.
- (2) Audit and Site Inspection. Upon reasonable notice to a Building Owner or designee, the Department may conduct audits, which may include inspection and copying of

records and/or site visits to a Building including, but not limited to, all files and documents that the Department determines are related to compliance with 225 CMR 27.00.

27.13 Severability

If any provision of 225 CMR 27.00 is declared invalid, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

REGULATORY AUTHORITY

225 CMR 27.00: St. 2022, c. 179, § 41 and M.G.L. c. 25A, § 6.

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