

400 CMR 9.00: QUALIFIED DATA CENTERS

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9.01: Purpose and Scope

400 CMR 9.00 establishes the procedures for owners and operators of Qualified Data Centers to apply to and receive Certification from EOED for purposes of qualifying for the Qualified Data Center Sales Tax Exemption pursuant to M.G.L. c. 23A, § 70 and M.G.L. c. 64H, § 6(zz).

9.02: Definitions

The following words and phrases shall have the meanings in 400 CMR 9.00 set forth as follows, unless the context clearly indicates otherwise:

Certification. The written certification issued by EOED pursuant to 400 CMR 9.00 certifying that an owner or operator of a proposed Qualified Data Center is eligible to claim the Qualified Data Center Sales Tax Exemption, and setting forth any conditions or limitations on the applicability of the Qualified Data Center Sales Tax Exemption consistent with M.G.L. c. 23A, § 70 and M.G.L. c. 64H, § 6(zz).

Colocation Tenant. A person, partnership, company, corporation or other entity that contracts with or leases from the owner or operator of a Qualified Data Center to use or occupy all or part of a Qualified Data Center.

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

Computer Software. Software purchased, leased, utilized or loaded at a Qualified Data Center, including, but not limited to, maintenance, licensing and software customization.

Construction Costs. Costs of materials, labor, services and equipment purchased or leased to construct a Qualified Data Center, including, but not limited to, the cost of Data Center Building, accessory building, building improvement, land development, site improvement, site utility infrastructure, building materials, steel, concrete, gravel, engineering services, heavy equipment, cranes, transportation equipment, excavation, storm water system and management, access roads, bridges, fencing, lighting, landscaping and other costs to construct the facility.

Data Center Building. A free-standing building which is part of a Data Center.

Data Center. A building or series of buildings that houses and supports the high-performance servers, storage systems, networking equipment, and related computing infrastructure and equipment necessary for storing, processing, and distributing data and applications.

Eligible Data Center Equipment. Computers and equipment supporting computing, networking, data processing or data storage, including, but not limited to:

- (a) servers and routers, computer servers and routers, connections, chassis, networking equipment, switches, racks, fiber optic and copper cables, trays, conduits and other enabling machinery, equipment and hardware;
- (b) component parts, replacement parts and upgrades;

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- (c) cooling systems, cooling towers, chillers, mechanical equipment, HVAC equipment, refrigerant piping, fuel piping and storage, adiabatic and free cooling systems, water softeners, air handling units, indoor direct exchange units, fans, ducting, filters and other temperature control infrastructure;
- (d) power infrastructure for transformation, generation, distribution or management of electricity used for the operations and maintenance of a Qualified Data Center, including, but not limited to, substations, switchyards, transformers, generators, uninterruptible power supplies, backup power generation systems, battery systems, energy efficiency measures, supplies, fuel piping and storage, duct banks, switches, switchboards, testing equipment and related utility infrastructure;
- (e) monitoring and security equipment;
- (f) water conservation systems, including, but not limited to, equipment designed to collect, conserve and reuse water;
- (g) modular data center equipment and preassembled components of any item described in this paragraph, including, but not limited to, components used in the manufacturing of modular data centers; and
- (h) any other personal property or equipment that is used or consumed in the operation and maintenance of the Qualified Data Center.

EOED. The Executive Office of Economic Development.

Eligible Expenditures. Expenditures eligible for the Qualified Data Center Sales Tax Exemption consisting of:

- (a) Eligible Data Center Equipment for use in a Qualified Data Center;
- (b) Computer Software for use in a Qualified Data Center;
- (c) electricity for use or consumption in the operation of a Qualified Data Center; or
- (d) Construction Costs incurred for the construction, renovation or refurbishment of a Qualified Data Center.

Material Noncompliance. The failure of a Qualified Data Center to substantially achieve the investment requirements and minimum number of jobs required for Certification as a Qualified Data Center.

Permanent Full-time Employee. An individual, who works in Massachusetts and is paid wages by the owner or operator of the Qualified Data Center, who:

- (a) at the inception of the employment relationship, does not have a termination date which is either a date certain or determined with reference to the completion of some specified scope of work;
- (b) works at least 35 hours per week; and
- (c) receives employee benefits at least equal to those provided to other full-time employees of the owner or operator of the Qualified Data Center; provided, however, that "Permanent Full-time Employee" shall not include contractors or part-time employees who may be included in a calculation of the owner or operator of the Qualified Data Center's full-time equivalent workforce.

Qualification Period. A 20-year period of time beginning on the effective date of the Certification by the Secretary of the Qualified Data Center for the first Data Center Building, and expiring at the end of the 20th full calendar year following the calendar year in which the Certification became effective; provided, that if the Qualified Data Center is comprised of more than one Data Center Building, the Qualification Period for each subsequent Data Center Building that is constructed at the Qualified Data Center shall start when each Data Center Building begins commercial operations, as evidenced by receipt of a certificate of occupancy, and shall continue for a period of 20 full calendar years, expiring at the end of the 20th full calendar year following the calendar year each respective Data Center Building began commercial operations.

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Qualified Data Center. A Data Center in the Commonwealth that has received a Certification after demonstrating that the Data Center:

- (a) is owned or leased by:
 - 1. the operator of the Data Center; or
 - 2. a person, partnership, company, corporation or other entity under common ownership of the operator of the Data Center;
- (b) is comprised of one or more Data Center Buildings that consist in the aggregate of not less than 100,000 square feet and that are located on a single parcel, or on contiguous parcels, where the total eligible Qualified Data Center Costs of the Data Center are at least \$50,000,000 within a ten-year period from the effective date of the Certification by the Secretary as a Qualified Data Center;
- (c) is constructed or Substantially Refurbished;
- (d) Creates or maintains a minimum of 100 Permanent Full-Time Employees in the Commonwealth within five years of the effective date of the initial Certification of the Qualified Data Center; and
- (e) is used to house computer information technology equipment, networking, data processing or data storage, including, but not limited to, servers and routers for the storage, management and dissemination of data and information where the facility has the following characteristics:
 - 1. uninterruptible power supplies, generator backup power, or both;
 - 2. sophisticated fire suppression and prevention systems; and
 - 3. enhanced security; provided, that a Qualified Data Center shall be considered to have enhanced security if it has restricted access to the facility to selected personnel, permanent security guards, video camera surveillance, an electronic system requiring pass codes, keycards or biometric scans or similar security features.

Qualified Data Center Costs. Expenditures made for the construction, refurbishment, renovation or improvement of a facility to be used as a Qualified Data Center, including, but not limited to, the cost of land, land development, site improvement, site utility infrastructure, construction of each Data Center Building, accessory building, building improvement and Eligible Data Center Equipment.

Qualified Data Center Sales Tax Exemption. The tax exemption authorized pursuant to M.G.L. c. 64H, § 6(zz).

Secretary. The secretary of economic development or the Secretary's duly authorized representative.

Substantially Refurbished. A rebuild, modification or construction of not less than 100,000 square feet of an existing facility that is a Qualified Data Center where the total eligible Qualified Data Center Costs are not less than \$50,000,000 within a ten-year period from the effective date of the Certification by the Secretary as a Qualified Data Center including, but not limited to:

- (a) installation of computer information technology equipment, networking, data processing or data storage, including servers and routers, environmental control, Computer Software and energy efficiency improvements; and
- (b) building improvements.

9.03: Application for Certification of Qualified Data Centers

- (1) An owner or operator of a Data Center may establish its qualifications as a Qualified Data Center by applying for and receiving Certification from EOED.
- (2) Applications for Certification shall be made on a form required by EOED, in consultation with the Commissioner of Revenue, and shall include:
 - (a) The business entity name, address and telephone number of the owner or operator applying for Certification as a Qualified Data Center.
 - (b) The address of the site where the proposed Qualified Data Center is or will be located including, but not limited to, information sufficient to identify the facility composing the Qualified Data Center and the expected commercial operations date of each Data Center Building that will be located at the Qualified Data Center.

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- (c) The anticipated aggregate square feet of the proposed Qualified Data Center for which the Qualified Data Center Sales Tax Exemption is being sought; provided, that in determining whether the facility has the required square footage, the total square footage of the Qualified Data Center shall include the space that houses the computer information technology equipment, networking, data processing or data storage, including, but not limited to, servers and routers and the following spaces that support the operation of enterprise information technology equipment including, but not limited to, office space, meeting space, loading dock space and other support facilities.
- (d) The proposed construction schedule and anticipated investments in the Qualified Data Center evidencing Qualified Data Center Costs that exceed \$50,000,000 within a ten-year period from the effective date of the Certification.
- (e) The anticipated number, type and hiring schedule of jobs that the Qualified Data Center will create and maintain within the first year of operations after Certification, and every five years from Certification during the Qualification Period, including a projection of how many Permanent Full-time Employees will work at the Qualified Data Center.
- (f) A schedule and budget for the Eligible Expenditures of the proposed Qualified Data Center, which shall set forth all anticipated expenditures eligible for exemption under the Qualified Data Center Sales Tax Exemption.
- (g) For a proposed Qualified Data Center that will include more than one Data Center Building,
 - 1. the projected date that construction will commence for each Data Center Building, and
 - 2. the projected date that each Data Center Building will commence operation.
- (h) An affirmation, signed by the authorized executive, representing and applying on behalf of the owner or operator of the proposed Qualified Data Center, that the proposed Qualified Data Center is expected to satisfy the requirements for Certification; and
- (i) Any other information EOED determines necessary to determine the applicant's eligibility for Certification or the impacts of the proposed Qualified Data Center.

(3) Applications for Certification shall also provide the following information to the Executive Offices of Economic Development and Energy and Environmental Affairs to promote the efficient planning and deployment of electric generation, transmission, and distribution infrastructure:

- (a) An estimate of the peak electricity demand and annual electricity consumption of the proposed Qualified Data Center once completed, as well as the peak electricity demand of any portion of the proposed Qualified Data Center that will come online before the completion of the entire facility; and
- (b) Any commitments or contracts to support the deployment of incremental power generation located in New England by the owner or operator of the proposed Qualified Data Center, including on-site power generation.

Information provided by the applicant pursuant to 400CMR9.03(3) may be shared with the Department of Energy Resources, the Department of Public Utilities or other agencies of the Commonwealth, as appropriate, to inform capital investment and policy-making decisions.

(4) Within 15 business days of receiving an application, EOED will notify the applicant if it deems the application to be complete. If EOED determines the application is not complete, it will notify the applicant of the information required to be provided in order to deem the application complete.

9.04: Issuance of Certifications

- (1) EOED shall in its sole discretion determine whether an applicant is eligible for Certification.
- (2) Within 60 business days of receiving a completed application, EOED shall approve or deny an application for Certification. Failure to approve or deny a completed application within 60 business days shall constitute approval for Certification as a Qualified Data Center.

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(3) EOED may deny an application for Certification only if EOED determines that the proposed facility does not meet the criteria for a Qualified Data Center. If an application is denied Certification, EOED shall provide written reasons for its denial and an opportunity for the applicant to cure deficiencies within 30 calendar days.

(4) If EOED determines an application meets the requirements for Certification as a Qualified Data Center, it will issue a Certification to the owner or operator of the Qualified Data Center, with a copy to the Commissioner, containing the following information:

- (a) The Certification's effective date and termination date;
- (b) The total square footage of the Qualified Data Center;
- (c) The total amount of anticipated Qualified Data Center Costs associated with the Qualified Data Center, provided such costs shall exceed \$50,000,000 within a ten-year period from the effective date of the Certification;
- (d) The anticipated Eligible Expenditures which will be eligible for the Qualified Data Center Sales Tax Exemption;
- (e) The beginning and ending dates of the Qualification Period; provided that the Qualification Period for a Data Center comprising more than one Data Center Building shall include a Qualification Period specific to each Data Center Building based on the dates each Data Center Building is expected to be in operation. The Qualification Period for the first Data Center Building must commence no more than five years after the date on which a completed application was submitted. EOED may require separate applications and issue separate Certifications for each Data Center Building in a multi-building Data Center.
- (f) Any conditions or limitations that EOED determines are reasonably necessary to ensure that the Qualified Data Center is constructed and operated consistent with M.G.L. c. 23A, § 70 and M.G.L. c. 64H, § 6(zz).

(5) Once the Data Center has been certified, the entity approved to incur Eligible Expenditures on behalf of the Data Center must present an exempt use certificate at the time of purchase to the vendor in accordance with 830 CMR 64H.8.1: *Resale and Exempt Use Certificates* in order to claim the exemption.

9.05: Reporting and Compliance

(1) The Qualified Data Center shall annually, or on such other period specified in the Certification, file a report with EOED during the Qualification Period, signed by an authorized representative of the owner or operator of the Qualified Data Center attesting to the veracity and accuracy of the information provided, under pains and penalties of perjury, with the following information:

- (a) The actual number and type of jobs created and maintained at the Qualified Data Center and at other locations in Massachusetts, including Permanent Full-time Employees, construction jobs or other types of employment;
- (b) The actual investments in Qualified Data Center Costs associated with the Qualified Data Center;
- (c) The actual Eligible Expenditures made that are exempt under the Qualified Data Center Sales Tax Exemption; provided, documentation acceptable to EOED may be required to substantiate the reported Eligible Expenditures;
- (d) Any other information EOED required to be reported by the terms of the Certification.

(2) EOED may require, and rely upon without independent investigation, a cost accounting of the Eligible Expenditures that shall include an accountant's certification, in the form of an opinion, confirming the accuracy of the reported Eligible Expenditures.

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(3) In the event that EOED finds a certified Qualified Data Center is in Material Noncompliance, has failed to meet any other material obligation set forth in the Certification or the reported information is materially inconsistent with representations made in an application, EOED may revoke the Certification. Prior to revoking a Certification, EOED shall provide written notice to the owner or operator of the Qualified Data Center stating the basis for the revocation and offering an opportunity for a hearing to contest the basis for revocation. The revocation of a Qualified Data Center's Certification is effective as of the first day of the tax year in which EOED provides said written notice. The Commissioner shall, as of the effective date of the revocation, disallow any exempt purchases afforded to the Qualified Data Center pursuant to the Qualified Data Center Sales Tax Exemption for that tax year under its Certification. Any entity claiming the Qualified Data Center Sales Tax Exemption during the tax year when revocation becomes effective shall be required to pay the tax that was due on such purchases, including any applicable penalties and interest imposed under M.G.L. c. 62C. *See 830 CMR 62C.33.1: Interest, Penalties, and Application of Payments.*

9.06: Change of Ownership

If a Qualified Data Center is sold or otherwise transferred to a new owner or operator prior to the expiration of the Qualification Period identified in a Certification, the Qualified Data Center Sales Tax Exemption benefits shall remain in effect and apply to a subsequent owner or operator for the remaining duration of the Qualification Periods upon approval by EOED to assign the Certification, with any additional conditions or limitations EOED may require to ensure such Qualified Data Center remains eligible for Certification.

9.07: Recordkeeping

The owner or operator of a Qualified Data Center shall retain records necessary to substantiate eligibility for the Qualified Data Center Sales Tax Exemption, including but not limited to the Certification issued by EOED, employment records sufficient to show that the Qualified Data Center meets the minimum number of Permanent Full-time Employees required to maintain Certification and documentation substantiating expenditures on Qualified Data Center Costs.

9.08: Public Records

All applications for Certification, and any other documentation and materials submitted to EOED in connection with such application, will be deemed a public record and may be subject to public disclosure under M.G.L. c. 66, commonly known as the Public Records Law.

9.09: Severability

The provisions of 400 CMR 9.00 are severable. If any provisions of 400 CMR 9.00 or the applications of such provisions to any person or circumstance are held invalid or unconstitutional, the other provisions of 400 CMR 9.00, or the application of such provisions to any person or circumstance other than that as to which it is held invalid or unconstitutional, will not be affected thereby.

REGULATORY AUTHORITY

400 CMR 9.00: M.G.L. c. 23A, § 70 and c. 64H, § 6(zz)