

225 CMR 27.00: BUILDING ENERGY REPORTING

Section

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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 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 in the Covered Buildings List as the owner or Designated Building Owner of a Covered Building.

Building Use. The primary or combination of primary ways a Building is used.

Campus. A collection of Buildings on one or more Parcels served by a single energy meter or plant.

Compliance Year. The calendar year in which the previous Reported Year's Energy Usage must be reported to the Department pursuant to 225 CMR 27.04.

Covered Buildings List. The list of Large Buildings for which the Department requires Energy Usage disclosure that is published pursuant to 225 CMR 27.03.

Covered Building. A Large Building that is included on the Covered Buildings List.

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 pursuant to 225 CMR 27.06(2)-(3) as responsible for compliance with 225 CMR 27.00.

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, renewable, or other products as approved by the Department that are used for heating, cooling, lighting, industrial and manufacturing processes, water heating, cooking, clothes drying, emergency or backup generation, or other purposes as approved by the Department.

Energy Usage. For the listed reporting entities, Energy Usage shall mean:

- (a) for a Distribution Company, the amount of Energy measured by a Distribution Company's meter;
- (b) for a Municipal Utility, the amount of Energy measured by a Municipal Utility's meter; or
- (c) for a Building Owner, all other Energy that is not provided by a Distribution Company or Municipal Utility, including, but not limited to, any on-site generation, delivered fuel, or other sources consumed for any Building including Energy delivered 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. Further clarification on the definition of Gross Floor Area may be established by the Department in the Department's *Gross Floor Area Guideline*.

Guideline. A set of clarifications, interpretations, procedures, and forms developed by the Department to assist in compliance with the requirements of 225 CMR 27.00. The Department may issue new or revised Guidelines after providing notice and a minimum of twenty-one-day public comment period on a draft version. Each Guideline shall be effective on its date of issuance or on such date as specified therein, except as otherwise provided in 225 CMR 27.00.

Large Building. A Building located on one or more Parcels with a 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 or Designated Building Owner's name and business address shall not be included in this definition.

Reporting Entity. A person or entity that has been designated by the Building Owner pursuant to 225 CMR 27.06(4) as the entity responsible for reporting Covered Building Energy Usage to the Department.

Reported Year. The calendar year for Covered Building Energy Usage reported to the Department pursuant to 225 CMR 27.04.

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

27.03: Covered Buildings List

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

The Covered Buildings List shall include the building address, Gross Floor Area, Building Owner, Building Owner's business address, Building Use, 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 Buildings List in a Compliance Year if the Temporary Certificate of Occupancy for the Building or Certificate of Occupancy for the Building was issued at any point prior to that Compliance Year's Reported Year.
- (3) Creation of Covered Buildings List. The Department will determine a process for identifying Large Buildings and generate the Covered Buildings List using that process. 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.
- (4) Building Owner Notice of Inclusion on the Covered Buildings List. In addition to the publication of the Covered Building List pursuant to 225 CMR 27.03(1), the Department shall send notice to Building Owners of their reporting obligations under 225 CMR 27.00. Such notice shall include the Covered Building(s) subject to reporting requirements, reporting deadlines, instructions for reporting, and other relevant information regarding a Building Owner's obligations under 225 CMR 27.00. Failure of a Building Owner to receive such notice shall not relieve the Building Owner of any reporting obligations under 225 CMR 27.04(3).
- (5) Designating Buildings as a Campus. A Building Owner may submit a request to have a group of Buildings designated as a Campus and report its Energy Usage pursuant to 225 CMR 27.04(5). Such request must detail how the group of Buildings meet the definition of a Campus, the extent to which reporting can be done at the Building level, and include a proposal for how the Campus will report Energy Usage pursuant to 225 CMR 27.04(5). The Department shall evaluate such requests and associated Campus reporting plans on a case-by-case basis.

27.04: Reporting Requirements and Process

- (1) Distribution Companies. Annually by May 30, each Distribution Company shall report to the Department all Energy Usage provided by the Distribution Company for all Covered Buildings for the previous calendar year. Such Energy Usage shall be reported at the meter

level for each Covered Building unless an exception is approved pursuant to 225 CMR 27.04(1)(c). Such Energy Usage shall be provided for each Covered Building and shall be submitted in a manner established by the Department in the Department's *Distribution Company Reporting Guideline*.

- (a) Additional Reporting Requirement for Steam Distribution Companies. Annually by May 30, Steam Distribution Companies shall also provide the volume of steam produced by each generation source for the previous calendar year.
 - (b) Compliance Year 2025. For Compliance Year 2025, the reporting deadline for 225 CMR 27.04(1) and 225 CMR 27.04(1)(a) shall be June 30, 2025.
 - (c) Request to Submit Building Level Energy Usage. A Distribution Company may request to submit Energy Usage aggregated to the Building level for a Covered Building or group of Covered Buildings. Such a request shall detail why the submission of meter level data for the Covered Buildings is not possible or practicable. The Department shall review such requests on a case-by-case basis.
- (2) Municipal Utilities. Annually by May 30, each Municipal Utility shall report to the Department all Energy Usage provided by the Municipal Utilities for all Covered Buildings for the previous calendar year. Such Energy Usage shall be reported at the meter level for each Covered Building unless an exception is approved pursuant to 225 CMR 27.04(2)(b). Such Energy Usage shall be provided for each Covered Building and shall be submitted in a manner established by the Department in the Department's *Municipal Utility Reporting Guideline*.
- (a) Compliance Year 2025. For Compliance Year 2025, the reporting deadline for 225 CMR 27.04(2) shall be June 30, 2025.
 - (b) Request to Submit Building Level Energy Usage. A Municipal Utility may request to submit Energy Usage aggregated to the Building level for a Covered Building or group of Covered Buildings. Such a request shall detail why the submission of meter level data for the Covered Buildings is not possible or practicable. The Department shall review such requests on a case-by-case basis.
- (3) Building Owners. Annually by June 30, Building Owners shall provide all Energy Usage that is not provided by a Distribution Company or Municipal Utility for all Covered Buildings where they are listed on the Covered Buildings List 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 in the Department's *Building Owner Reporting Guideline*.

- (a) Exemptions for Energy Usage from an Unresponsive Lessee. A Building Owner shall not be penalized for failing to report any Energy ordered by, delivered to 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 a Compliance 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.

(4) Additional Building Owner Supplied Information.

- (a) Verification of Distribution Company or Municipal Utility Covered Building Energy Usage Data by Building Owner. The Department will provide Building Owners with access to aggregated Energy Usage information provided by Distribution Companies or Municipal Utilities for their Covered Buildings. A Building Owner may verify, submit a correction to, or identify a discrepancy in the submitted Energy Usage information on or before August 31 of a Compliance Year for consideration in that Compliance Year's Annual Building Database and Report. Such submission shall contain any relevant documentation.
- (b) Additional Owner Disclosures. The Department may issue an *Additional Owner Disclosure Guideline* detailing a method to account for additional or offsetting Building Energy Usage attributable to operational resilience or emissions mitigation. Examples of additional owner disclosures may include, but are not limited to, subtracting electricity used by electric vehicles, accounting for use of a battery storage system, solar produced using various metering configurations, and other distributed generation.

- (5) Campus Reporting. Building Owners that have received approval to designate a collection of Buildings as a Campus pursuant to 225 CMR 27.03(5) shall report Energy Usage for all Buildings on that Campus pursuant to the plan approved by the Department under 225 CMR 27.03(5).

27.05: Reporting Exemptions

(1) Buildings Exempt from Reporting Requirements.

- (a) Covered Buildings that meet any of the below criteria shall not need to have their Energy Usage reported pursuant to 225 CMR 27.04:
 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 Building Owner may submit a letter to the Department by March 15 of the Compliance Year stating which criteria the Building meets and providing any applicable documentation. The Department will remove exempted Buildings from the Covered Buildings List prior to the March 30 publication date.

(2) Exempt Building Uses. The Department may issue an *Exempt Building Uses Guideline* that details the types of Building Uses that are exempt from reporting under 225 CMR 27.05(a)(5). Any such Guideline issued by the Department shall include a process for Building Owners to submit a request for a Covered Building's Building Use to be updated to an exempt Building Use.

27.06: Building Ownership Changes and Designations

(1) Change in Ownership.

(a) An existing or new Building Owner shall notify the Department of any changes in ownership for a Covered Building. Such notice shall include:

1. evidence sufficient to demonstrate the transfer of the rights and obligations to the new owner; and
2. the name, business 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 Buildings 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 30 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 30 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.

- (4) Designation of Third-Party as Reporting Entity. A Building Owner seeking to designate a third-party as reporting entity for purposes of reporting Building Energy Usage pursuant to 225 CMR 27.04(3) shall submit notice to the Department by April 30 of the Compliance Year. Such notice must be signed by the Building Owner and the Reporting Entity and state that the Reporting Entity accepts responsibility for reporting Energy Use in accordance with 225 CMR 27.00. Upon review and approval of such notice, the Department shall update the designee to be the Reporting Entity for purposes of 225 CMR 27.00. Responsibility for compliance with 225 CMR 27.00, including any penalties for non-compliance, shall remain with the Building Owner.

27.07: Disputing Inclusion in Covered Buildings List, Alternative Compliance Pathways, and Reporting Options

- (1) Disputing Inclusion in Covered Buildings List. If a Distribution Company, Municipal Utility, or Building Owner wishes to dispute the inclusion of a Large Building on the Covered Buildings List or any information regarding that Large Building or Parcel contained in the Covered Buildings List, such entity shall submit a request to the Department detailing their basis and supporting documentation for such exception not later than April 30 of the compliance year.
- (2) Alternative Compliance Pathways and Reporting Options
 - (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 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 such requests on a case-by-case basis.
 - (c) Covered Buildings Subject to Municipal Benchmarking Policies or Performance Standards. If a Building Owner is responsible for reporting the energy use of a Covered Building under Boston's Building Emissions Reduction and Disclosure Ordinance, Cambridge's Building Energy Use Disclosure Ordinance, or other

approved municipal ordinance or by-law, the Building Owner may satisfy their reporting requirement under 225 CMR 27.04(3) by submitting the same information they submit to the municipality for the Covered Building to the Department.

27.08: Data Verification

All Building Owners shall self-certify all Energy Usage data submitted by the Building Owner pursuant to 225 CMR 27.04(3).

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, § 7, clause twenty-sixth; provided however that aggregates of such information may be included in reports published by the Department and such reports 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 Reported Year for each Covered Building. 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.
- (3) The Department may issue a *Methodology for Calculating Greenhouse Gas Emissions Guideline* for calculating the associated greenhouse gas emissions from reported Building Energy Usage on the Department's website.

27.11: Enforcement and Penalties

- (1) Distribution Companies. If a Distribution Company fails to provide Energy Usage required under section 225 CMR 27.04(1) for one or more Covered Buildings, the Department may take the following enforcement measures:
 - (a) The Department provides 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 Building per day that the missing Energy Usage information is not provided.

(2) Municipal Utilities. If a Municipal Utility fails to provide Energy Usage required under section 225 CMR 27.04(2) for one or more Covered Buildings, the Department may take the following enforcement measures:

- (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 Building 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 required under section 225 CMR 27.04(3), the Department may take the following enforcement measures:
 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 Covered Building that comprises less than 5 per cent of the total Gross Floor Area of the Building.

(4) Lessees. If a lessee that comprises greater than 5% of the total gross floor area of a Covered Building 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)(a), the Department may take the following enforcement actions:

- (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 for the five calendar years following a Reported Year. The Department may request and obtain from any Building 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: M.G.L. c. 25A, § 20 and M.G.L. c. 25A, § 6.

Layman's Summary of Proposed 225 CMR 27.00

On August 11, 2022, the legislature passed An Act Driving Clean Energy and Offshore Wind (St. 2022, c. 179) (Act). Section 41 of the Act, codified as G.L. c. 25A, § 20, requires utilities for and building owners of “Large Buildings” in the Commonwealth to report the total amounts of energy consumed on an annual basis to the Department of Energy Resources (DOER) for inclusion in a public facing database on DOER’s website.

DOER’s understanding is that the Statute was modeled on the Building Emissions Reduction and Disclosure (BERDO) ordinance in Boston and the Building Energy Use Disclosure Ordinance (BEUDO) in Cambridge. However, in Boston and Cambridge, building owners are responsible for the reporting of all energy use data. In contrast, the Statute and 225 CMR 27.00 requires utilities to provide the majority of energy use data, with building owners only responsible for delivered fuels or other sources of consumption not provided by a utility.

The regulations cover which properties are subject to building energy reporting requirements, the reporting process for utilities and building owners, alternative compliance pathways, the enforcement provisions for entities that fail to comply with their reporting obligations, the treatment of personally identifying information that is reported to DOER, and other provisions related to the administration of these regulations.