

**Commonwealth of Massachusetts
Department of Energy Resources**

**Response to Comments on:
225 C.M.R. 24.00, Municipal Fossil Fuel Free Building Construction and
Renovation Demonstration Project**

May 10, 2023

Regulatory Authority: St. 2022, c. 179, § 84

I. INTRODUCTION

The Massachusetts Department of Energy Resources (Department) Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project regulation (225 CMR 24.00) establishes the framework, requirements, and timeline for cities and towns to participate in the Demonstration Project as authorized by St. 2022, c. 179, § 84.

On December 23, 2022, acting under statutory authority as noted above, DOER filed Notice of Public Review of the proposed 225 CMR 24.00 with the Secretary of State for the Commonwealth to be published in the Massachusetts Register, and posted the proposed regulation and associated model rule on its website.

DOER hosted a virtual public hearing on February 8, 2023, and public comments on the proposed regulation were due to DOER on February 10, 2023. DOER also accepted public comments on the associated model rule.

II. PURPOSE

The Department received 48 comments on the proposed regulation. The comments included recommendations on program and process design that in turn informed revisions to the regulation. The Response to Comments provides responses to common topics raised by commenters and further provides the Department's rationale for regulation changes made in response to comments, or where appropriate, the Department's rationale for retaining provisions as originally proposed. The Department is not responding directly to all comments received, but all comments were considered and are posted on our website. (<https://www.mass.gov/info-details/municipal-fossil-fuel-free-building-demonstration-program>).

III. COMMENTS

Comment: Numerous commenters suggested that the Department should consider clarifications or amendments that streamline and accelerate the application, review, and approval process and deadlines proposed in the regulation, especially taking into consideration municipal town meeting schedules. Commenters recommended specifically that the Department clarify whether previous Local Approval and Home Rule Petitions received and filed prior to the effective date of the regulations would be accepted.

Response: The Department considered these comments and determined it is reasonable and appropriate to make certain amendments to address these concerns. First, the Department is removing the Letter of Intent process, as it may cause delays and is no longer necessary based on input from communities to

date. Further, the proposed November deadline for applications has been changed to September 1, 2023 for Prioritized Communities. To streamline the application process, the Department clarifies that Local Approval and Home Rule Petitions filed prior to the effective date of these regulations satisfy application requirements. Finally, a provision has been added specifying that communities that do not currently meet the applicable housing requirements may submit an application, but must include information about current status and plans to achieve compliance by the February 11, 2024 deadline. The Department notes that the February 11, 2024 deadline to achieve compliance with the applicable housing requirements is statutory, and the Department does not have the discretion to extend this deadline.

Comment: Several comments noted concern or lack of clarity around requirements for fossil fuel-free by-law or ordinance submission, timing, Local Approval, review, and implementation.

Response: The Department determined that clarification of requirements and processes related to by-law or ordinance submissions was reasonable. As noted in the previous response, the regulation has been amended to clarify that previously filed Home Rule Petitions and associated Local Approvals are acceptable and do not need to be resubmitted or updated. The Department recognizes that many communities seeking participation in the Demonstration Project will undertake Local Approval processes for updated by-law or ordinances restricting fossil fuels at a date after the effective date of the regulation, either through adopting the recommended model rule as proposed by the Department, or adopting their own fossil-fuel free by-law or ordinance. The Department clarifies that a draft or proposed by-law or ordinance is acceptable at the point of application and added additional details about submission requirements. The Department further clarifies that applicants must include their approach and timelines for acquiring Local Approval of said by-law or ordinance, and that applicants must provide a final, approved by-law when Local Approval is received. The Department will review proposed and final by-laws for consistency with the regulation and the statute, but otherwise, the contents of the by-law or ordinance are at the discretion of, and are the responsibility of, the enacting municipality in terms of other applicable lawful compliance. For example, in the case of a town that must seek by-law approval from the Attorney General pursuant to G.L. c.40 § 32, a town's final by-law remains subject to such review and approval processes.

Comment: Numerous commenters are concerned that the regulation will create unnecessary delays if approvals for Participating Communities are done serially in the order in which Home Rule Petitions have been previously filed, and suggested that the regulation be amended to allow applications to be considered on a rolling basis, allowing communities that meet all applicable requirements to proceed. Commenters were particularly concerned that, if at any point in the process a community did not meet the applicable housing requirements, the Department would cease approving participation at that point in the order of Home Rule Petitions previously filed, as listed in 225 CMR 24. 03(1), until such time as that community met the requirements.

Response: The Department agrees that delaying approval of communities that meet all applicable requirements is inconsistent with the overall purpose of the Demonstration Project as enacted in St. 2022, c. 179, § 84. The Department has added clarifying language stating that it shall withhold approval of any application by a city or town applying to participate in the Demonstration Project that does not meet the housing requirements, as stated in § 84, and will proceed with review and approval of additional communities meeting applicable requirements on a rolling basis. The Department will provide written notice to any applicant for which approval is withheld on this basis. Any applicant for which approval is withheld shall have until February 11, 2024, to address the necessary housing requirements, consistent with § 84.

Comment: Numerous commenters expressed concern about the definition of “Major Renovations” and suggested that the Department provide clarification on its applicability.

Response: The Department has amended the definition to make clear that fossil fuel free requirements apply to Major Renovations as well as new construction. The Department has made corresponding updates to the model rule.

Comment: Several commenters requested that the regulation or model rule be clarified to affirm a municipality’s ability to customize the model rule and include exemptions or other changes that are specific to each community.

Response: The Department recommends that applicants adopt the model rule, as this approach creates a straightforward pathway utilizing existing building code language and supports consistency across the Demonstration Project. However, as proposed, the regulation does not require a municipality to adopt the model rule approach and would allow a municipality to include additional language such as details about a waiver and exemption process. The Department clarified within the regulation that municipalities are free to modify the model rule; however, any such modifications must be explained in the application and must not conflict with the requirements as stated in § 84 and in 225 CMR 24.00. For example, a by-law or ordinance must include an exemption for the building types named in the statute and regulation.

Comment: Commenters sought clarification on the process to demonstrate compliance with the housing requirements set forth in 225 CMR 24.05.

Response: The Department is retaining the proposed regulation. The Department clarifies that it will coordinate with DHCD on acceptable methods or documentation that are reasonable and appropriate to demonstrate compliance. The Department will also coordinate with DHCD to determine whether direct notification of status to communities is possible. The Department will communicate any updates to interested parties at a later date, as applicable.

Comment: Several commenters raised questions or suggested language changes about the Substitute Community application, review, and selection process, including application and review/approval deadlines, and additional selection criteria to consider.

Response: The Department considered the comments on the subject matter carefully and will retain the provisions in the regulations as proposed. The criteria for Substitute Community selection as drafted are sufficiently broad to incorporate some of feedback provided. In addition, the Department believes that the Substitute Community approval timeline as originally proposed is appropriate and necessary within the context of the statute’s emphasis on Prioritized Communities and associated timelines.

Comment: Several commenters suggest the Department consider expanding the pilot program, or alternatively, that the Department work with the Legislature to lift the cap on 10 communities for the pilot, allowing any community wanting to participate that was eligible to do so.

Response: While the Department recognizes the broad interest in the Demonstration Program, the law is clear that no more than 10 communities can be approved to participate at this time.

IV. Conclusion

The Department appreciates stakeholder’s time and participation in the regulatory process to develop the Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project. The Department carefully considered all comments received and has revised certain portions of the regulation

in response to comments. The Department also made technical and typographical changes to improve clarity of the regulations.