

**Commonwealth of Massachusetts
Department of Energy Resources**

**Response to Comments on:
225 C.M.R. 27.00, Building Energy Reporting**

October 2024

Regulatory Authority: M.G.L. Ch. 25A § 20

I. INTRODUCTION

An Act Driving Clean Energy and Offshore Wind (The Acts of 2022 ch.179, § 41) inserted M.G.L ch. 25A, §20, requiring the Department of Energy Resources (Department) to design and implement a program requiring the reporting of energy use data for all buildings in the Commonwealth over 20,000 square feet. The law went into effect on July 1, 2024 and covered entities are required to report Energy Usage to the Department in 2025.

The law requires electric, gas, and steam utilities to report usage data on behalf of all Covered Buildings. It requires Covered Building owners to report usage for delivered fuels such as oil, propane, and wood.

On August 26, 2024, the Department released a draft regulation implementing its Building Energy Reporting (BER) policy and sought public comment on the draft. On Wednesday, September 25, 2024, a virtual public hearing was held for those who wished to verbally share their input on the draft.

II. PURPOSE

The Department received 35 comments on the proposed regulation. The Department evaluated the comments received. The comments included recommendations on program design that the Department has determined supportive of 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 changes to the draft regulation made in response to comments. The Department is not responding directly to all comments received, but all comments were considered and are posted on our website at <http://mass.gov/buildingenergyreporting>.

III. PUBLIC STAKEHOLDER COMMENTS AND DEPARTMENT RESPONSE

A. Existing Benchmarking Policies or Performance Standards

Comment: Commenters expressed a desire for Buildings already complying with Boston’s Building Emissions Reduction and Disclosure Ordinance (BERDO) and Cambridge’s Building Energy Use Disclosure Ordinance (BEUDO) to be exempt from their reporting requirement under 225 CMR 27.04(3).

Response: The regulations have been revised to include an alternative pathway to compliance for Buildings subject to BERDO, BEUDO, or other municipal benchmarking or performance policies. These Buildings may satisfy their reporting obligations under 225 CMR 27.04(3) by sharing the submitted EnergyStar Portfolio Manager data for Boston or Cambridge with the Department. The Department plans to provide further guidance on how this process will work.

IV. Building Performance Standards

Comment: A commenter urged the Department to adopt building performance standards with a defined timeline to achieve phased-in compliance milestones. In addition, the Department was encouraged to create an advisory board composed of community members and stakeholders.

Response: Building performance standards are outside the scope of 225 CMR 27.00 and the Department does not have the statutory authority to implement these.

V. Campus Reporting

Comment: Commenters shared that Building Owners and managers of multi-building campuses with shared energy systems and/or energy metering should have an opportunity to consolidate buildings into a single reporting entity.

Response: The regulation has been revised to clarify reporting options. Once the Covered Building List is published, Building Owners or their designees will have the opportunity to request that multiple Buildings be designated as a “Campus” and report as a single entity.

VI. COVERED PARCELS AND COVERED BUILDINGS

A. Buildings with Gross Floor Area Under 20,000 SF

Comment: The draft regulation defined a Large Building as one or more Buildings located on a Parcel with a combined Gross Floor Area equal to or greater than 20,000 square feet. Numerous commenters requested clarification of this language while others requested the definition be limited to a single Building with a Gross Floor Area equal to or greater than 20,000 square feet, as these requirements could be onerous for the Building Owners of smaller Buildings located on a parcel with multiple Buildings that collectively totaled a Gross Floor Area equal to or greater than 20,000 square feet.

Response: The regulation has been revised to address these comments. The definition of Large Building has been updated to encompass only a single building with a Gross Floor Area equal to or greater than 20,000 square feet. Buildings with a Gross Floor Area of less than 20,000 square feet may report their Energy Usage if they are designated by the Building Owner as part of a Campus, but such a designation would be voluntary on the part of the Building Owner.

B. Unique Building and Parcel Identification Numbers

Comment: Several commenters suggested the use of unique identification numbers for each Building and Parcel covered under the regulation.

Response: The Department will utilize the U.S. Department of Energy's Universal Building Identifier (UBID) and Universal Lot Identifier (ULID) system, which assigns unique identifiers to each building and parcel and associates each UBID and ULID with geospatial data.

VII. ENERGY DATA

A. Data Quality Concerns

Comment: Numerous commenters, including the investor-owned utility companies, noted that utility company records may not be consistently reliable when determining which meters belong to which building. Numerous commenters referenced the challenges building owners and municipalities have experienced in the municipal building energy reporting context with acquiring accurate building level information from Distribution Companies. Multiple commenters also emphasized that Building Owners are the only entity in a position to verify that a multi-metered building has been correctly aggregated and that the Energy Usage reported for those Buildings is correct.

Response: The regulation has been revised to address these comments. The Department has updated the regulation to require Distribution Companies and Municipal Utilities to report Building Energy Usage at the meter level (and included an exception provision for circumstances where such meter level reporting is not possible or practicable). Additionally, Building Owners will have the opportunity to review and submit corrections to the aggregated Building Energy Usage submitted by a Distribution Company or Municipal Utility for their Buildings. The Department believes this will significantly improve the quality of the data included in the Annual Building Database and Report. The Department plans to provide further guidance on how the Building Owner review process will work.

B. Data Privacy

Comment: Commenters expressed concern at the potential for tenant personal identifying information being made available to landlords, such as meter-level usage data, particularly in the case of multifamily residential buildings.

Response: Revisions to the regulation address this concern. In general, tenant level Energy Usage information will be provided by Distribution Companies or Municipal Utilities to the Department and aggregated by the Department for usage in its Annual Building Database and Report. Tenant level Energy Usage data will not be made available to the public or a Building Owner. The Department has removed a provision that allowed it to request Building Owners to submit Distribution Company or Municipal Utility provided Energy Usage in the event that the Department was unable to acquire the information from a Distribution Company or Municipal Utility. The only other circumstance in which a Building Owner might be responsible for providing tenant level Energy Usage data is if a tenant has delivered fuels that are ordered, delivered, and charged directly to the tenant. The Department anticipates that this scenario would be limited almost exclusively to commercial and industrial tenants.

VIII. Energy Cost Reporting

Comment: Numerous commenters expressed concern at the need to report energy costs as a matter of both confidentiality and also complexity.

Response: The regulation has been revised to address these comments. Language requiring energy cost data to be submitted to the Department has been removed from the final regulation.

IX. Massachusetts Municipally-Owned Electric Companies (MLPs)

Comment: Several MLP-affiliated stakeholders commented that they did not believe MLPs are subject to Building Energy Reporting Regulation.

Response: The proposed language is being retained in the regulation. The Department disagrees with commenters regarding its statutory authority to apply the requirements of this section to MLPs. The Department understands the language of M.G.L. c. 25A Sec. 20 as granting the Department discretion to determine applicability of the section in order to comply with its requirements. The law directs the Department to collect and publish Energy Usage data from all Large Buildings in the Commonwealth, and as such the statute is most plainly read as statewide in application, especially in the context of the goals and requirements of the statute. In addition, where the Legislature has intended to exempt MLPs from certain provisions of G.L. Ch. 25A, they have explicitly done so.¹ The law does not exempt MLP service territories, and buildings meeting applicable requirements are subject to the requirements of the section, without regard to their utility structure. The Department notes its willingness to work collaboratively with MLPs to understand any administrative burdens or obstacles to their compliance with these requirements and create administrative solutions where practicable.

X. Third-Party Data Verification

¹ See, e.g., Ch. 25A Sec. 11H; see also 25A Sec. 11F (i); Sec. 25A Sec. 11F1/2(d); 25A Sec. 17(d).

Comment: Numerous commenters shared that third-party data verification may not be necessary for the first reporting year or would be onerous for some building owners to procure. Other commenters requested clarification on what qualifications or certifications would be required to be considered eligible to be a third-party data verifier and what their duties would be.

Response: The Department agrees with these commenters and the proposed provision regarding third-party data verification has been removed from the final regulation.

XI. Emissions

Comment: Commenters requested clarification on how building emissions would be calculated and whether the method would align with those done by existing local benchmarking programs and building performance standards.

Response: The Department will publish a Guideline of emissions factors used in its Annual Building Database and Report and will update them as needed.

XII. Emergency Generation

Comment: Commenters expressed the need to clarify the handling of backup emergency generators. One commenter requested that these be excluded, while numerous other commenters asked for confirmation whether or not they would be included in the regulation.

Response: The proposed regulation has been revised to clarify the application of this section. The definition of “Energy” has been updated to explicitly include emergency and backup generation.

XIII. Reporting Timeline

Comment: Several commenters noted that having the reporting deadline of June 30, 2025 for both utility companies and building owners does not allow adequate time for building owners to review the data and address any disputes or corrections they may have.

Response: The proposed timeline for Compliance Year 2025 will remain as June 30, 2025. Beginning Compliance Year 2026, Distribution Companies, Municipal Utilities, and Steam Distribution Companies will be required to provide energy usage data annually on May 30.

XIV. Enforcement and Penalties

A. Fines to Building Owners

Comment: Commenters expressed that building owners should not be fined for not providing Energy Usage data in the event that the Distribution Company, Municipal Utility, or Steam Distribution Company does not provide the data in accordance with the regulation.

Response: As an initial matter, fines and penalties under the regulation are only assessed at the Department's discretion and it is the Department's intent to work with compliance entities and avoid fines where possible. In addition, language in the regulation was edited to clarify each party's responsibility.

B. Passing Through Fines to Residential Tenants

Comment: Several commenters noted that Building Owners should not be permitted to pass fines on to residential tenants in the event that a Distribution Company does not provide energy usage data and the Building Owner requests a residential tenant to provide this information to the Building Owner.

Response: Revisions to the regulation address this concern. The Department has removed a provision that allowed it to request Building Owners to submit Distribution Company or Municipal Utility provided Energy Usage from Building Owners in the event that the Department was unable to acquire the information from a Distribution Company or Municipal Utility. The only other circumstance in which a tenant might be responsible for providing tenant level Energy Usage data to the Building Owner is if a tenant has delivered fuels that are ordered, delivered, and charged directly to the tenant. The Department anticipates that this scenario would be limited almost exclusively to commercial and industrial tenants.

C. Building Owner's Responsibility if Distribution Company Fails to Supply Energy Use Data

Comment: Comments expressed that Building Owners should not be held responsible for submitting whole building energy use data in the event that a Distribution Company fails to do so by the reporting deadline.

Response: Revisions to the regulation address this concern. The Department has removed a provision that allowed it to request Building Owners to submit Distribution Company or Municipal Utility provided Energy Usage in the event that the Department was unable to acquire the information from a Distribution Company or Municipal Utility.

D. The Department's Right to Audit

Comment: Joint comments from the investor-owned utilities recommended a five-year look back period for the scope of auditing Distribution Company records in order to balance the opportunity for the Department to audit information and a reasonable timeframe for the scope of that audit and record retention. The Distribution Companies also suggested that the Department

identify with more specificity the documentation that will be subject to auditing and address any possible data privacy concerns with sharing that documentation.

Response: The regulation has been partially revised to address this comment. The five-year timeframe has been added to the final regulation. The Department has declined to modify the type of documents it may request in an audit but notes that its intent is to work with the appropriate entity to ensure any audits conducted pursuant to this section are done in a reasonable manner and properly account for data privacy concerns.

XV. Exempt Building Uses

Comment: A commenter noted that it was unclear in the draft regulations whether or not the use type(s) of the Building would be collected. Additionally, a different commenter noted that the original definition of “Building” is broad and may cover unintended buildings.

Response: The Department agrees that certain Building Uses may not be appropriate for Building Energy Reporting. The Department will include Building Use in the Covered Buildings List and will create an Exempt Building Uses Guideline to detail the types of Building Uses that are exempt from reporting. The Department will also allow Building Owners to submit a request for a Covered Building’s Building Use to be updated to an exempt Building Use.

XVI. Additional Future Guidance

Comment: Numerous commenters asked questions or requested specific details about program implementation.

Response: The Department appreciates all feedback received to date and will continue to work with stakeholders to develop additional Guidelines prior to the deadlines to report Energy Usage data to the Department. Draft guidelines will be open for a public comment period of three weeks, and will include details on:

- Distribution Company, Steam Distribution Company, and Municipal Utility Reporting
- Building Owner Reporting
- Additional Owner Disclosure
- Exempt Building Uses
- Methodology for Calculating Greenhouse Gas Emissions

Additionally, questions on compliance may be directed to doer.ber@mass.gov.