

Building Energy Reporting and Disclosure

Draft Regulations and Public Meetings

City of Boston Environment Department

In May 2013, the City Council passed, and Mayor Menino signed, the Building Energy Reporting and Disclosure Ordinance (BERDO). Part of Boston's Climate Action Plan, the ordinance, when fully implemented, will require all buildings larger than 35,000 square feet or 35 dwelling units to report their annual energy and water use to the City through EPA's Portfolio Manager. The City will then make this information public. Additionally, every five years, buildings will need to conduct an energy assessment or energy action; buildings that are already efficient or are making progress on energy efficiency will be exempt. Energy reporting and disclosure is one tool for Boston to increase energy efficiency, cut energy costs, and reduce greenhouse gas emissions.

The BERDO regulations provide details of how building owners can comply with the ordinance's requirements. This release of the draft regulations initiates a process for obtaining public comment and approving final regulations as follows:

- October 29: Meeting of the BERDO Advisory Committee. Open to the public. Public testimony will not be taken. [9:30 AM; Boston City Hall, Room 900]
- November 12: Meeting of the Air Pollution Control Commission. Open to the public and public testimony. [9:00 AM; Boston City Hall, Room 900]
- November 15: Final date for written comments (see below).
- Early December: Second meeting of the Advisory Committee. Open to the public. [Details to be announced].
- December 18: Meeting of the Air Pollution Control Commission. Open to the public. [2:00 PM; location to be announced].

Oral testimony may be presented at the November 12 meeting of the Air Pollution Control Commission, at 9:00 AM in City Hall, Room 900. Written comments are due by November 15. Please address them to the Air Pollution Control Commission, and send them to energyreporting@cityofboston.gov, or to Nikhil Nadkarni, Environment Department, City Hall, Room 709, Boston, MA 02201.



CITY OF BOSTON

AIR POLLUTION CONTROL COMMISSION

BOSTON CITY HALL

BOSTON, MASSACHUSETTS 02201

BUILDING ENERGY REPORTING AND DISCLOSURE REGULATIONS

1.01 ***Introduction.*** The following regulations are promulgated by the City of Boston Air Pollution Control Commission (“the Commission”) pursuant to the authority granted to it under Chapter VII, Section 7-2.2(m) of the City of Boston Code. These regulations implement Section 7-2.2 of the City of Boston Code, An Ordinance Amending the Air Pollution Control Commission Ordinance in Relation to Reporting and Disclosing the Energy and Water Efficiency of Buildings.

1.02 ***References.*** References to Section 7-2.2 are to Chapter VII, Section 7-2.2 of the City of Boston Code.

1.03 ***Definitions.*** Terms defined in Section 7-2.2 have the same meanings for purposes of these regulations and those definitions are hereby incorporated by reference. For the purposes of this section, the following additional terms are defined as follows:

Covered building means a residential or non-residential building, as those terms are defined in Section 7-2.2, that is subject to the energy and water performance reporting requirements of Section 7-2.2 for the previous calendar year.

Default data means energy use data that are calculated using the default values in Tables 1 and 2, or space use attributes obtained from Portfolio Manager default values. Default data may not reflect actual energy consumption for a particular building.

Energy use intensity means energy consumption divided by the floor area for which that consumption is applicable.

Partial data means any consumption data for a given energy type or any water that are not complete for an entire building.

Qualified energy professional means an individual qualified to perform energy assessments required by Section 7-2.2(f), as further detailed in 1.09(a).

Simple payback. Simple payback refers to the number of years for the projected energy cost savings of a conservation measure to equal the amount invested in such measure.

Space type refers to the primary activity for which a given space is utilized.

Space use attributes refers to any information relating to a building's physical, operational, and facility-related characteristics required for assessing the energy or water performance of a given space type in Portfolio Manager.

Utility means a company distributing, supplying, or transmitting energy or water to a building.

Water use refers to water consumption excluding any emergency fire pipe usage.

Whole building data means complete energy consumption data for a given energy type or complete water data for an entire building.

1.04 *Energy and Water Reporting in Portfolio Manager.*

(a) **Duty to Report.** Owners of covered buildings must annually report such building's energy and water use through Portfolio Manager for the previous calendar year, as required by Section 7-2.2(d), in accordance with this subsection.

(b) **Reporting through Portfolio Manager.** No later than May fifteenth of each reporting year, owners of covered buildings must open a Portfolio Manager account and must complete the following steps in Portfolio Manager for each such building:

(1) Create a building profile and enter building details, including any building identification number that may be supplied by the Commission;

(2) Enter all space types, with applicable gross floor area, calculated in accordance with 1.04(c), within the building and complete the requisite space use attributes for each such space type; and

(3) Enter energy and water use data for the previous calendar year as described in 1.04(e).

(c) **Calculation of Gross Floor Area.** Owners of covered buildings must calculate gross floor area, and assign the appropriate floor area to each space type, if the building contains multiple space types. Gross floor area includes rentable space, lobbies, common areas, stairways, restrooms, storage areas, elevator shafts, basement space, and mechanical/electrical rooms. It excludes all parking areas, unroofed courtyards, outdoor balconies, exterior loading docks, and unroofed light wells. Parking areas, while not included in gross floor area, shall be listed, if present, where prompted by Portfolio Manager. For atria, gross floor area includes only the area of atrium floors. For tenant spaces, interior demising walls should be measured to the centerline of the wall. Gross floor area may differ from the area listed in the Boston Assessing Department records that determine whether a building or buildings qualify as covered buildings under Section 7-2.2(d).

(d) **Requesting Space Use Attribute Information from Tenants.** Owners of covered buildings shall request from tenants any space use attribute information necessary for reporting data for the applicable space type of such tenant-occupied space. Such request may be made using a form to be provided by the Commission. Any space use attribute for which the

owner has current, accurate information may be omitted from said request to tenants. The owner shall make request for the previous calendar year no earlier than January first and no later than January thirty-first of any year in which the owner is required to report. The obligation to request space use attribute information from tenants is independent of the obligation to request energy consumption information from tenants.

(1) **Absence of Space Use Attribute Information.** If a tenant fails to respond to such request or omits any requested space use attribute information, and any space use attribute is unknown to the owner, then the owner shall select “Use Default” in Portfolio Manager for said attribute. When, however, Portfolio Manager does not provide a default, the owner may estimate an appropriate value. This use of an estimated value must be denoted as a “Temporary Value” in Portfolio Manager.

(e) **Reporting Energy and Water Consumption.** Owners of covered buildings must enter such building’s energy and water use data for the previous calendar year in Portfolio Manager. Energy and water consumption data must be entered such that it encompasses January first to December thirty-first of the previous calendar year.

(1) **When Whole-Building Data are Available from a Utility.** When an owner obtains whole-building energy or water consumption data directly from a utility, then the owner must report those data and shall not request data for such energy type or for water from tenants. Owners shall comply with any requirements set by the utility for requesting such data when whole building data are available from a utility. The provision of whole-building data by a utility does not relieve an owner of the responsibility to verify its accuracy.

(i) **Direct Upload by Utilities.** If such service is available, owners may authorize a utility to upload such whole building energy or water use data directly to Portfolio Manager. The direct upload of such data by a utility does not relieve an owner of the duty to enter other required information into Portfolio Manager.

(2) **Requesting Energy Use Data from Tenants When Whole-Building Data Are Not Available from a Utility.** If whole-building data are unavailable from a utility for a given energy type, then for any tenant-occupied space that is separately metered for such energy type, owners of covered buildings shall request such data from such tenants for the previous calendar year no earlier than January first and no later than January thirty-first of any year in which the owner is required to report. Such request may include a request for permission for a utility to release tenant data directly or indirectly to the owner, and may be made using a form to be provided by the Commission.

(i) **Mid-Year Vacancy.** If the owner who is required to request tenant data under this subsection receives notice that a tenant intends to vacate a building before the end of a calendar year, then the owner must request from said tenant any necessary energy use or space use data from January first of that year

to the date the tenant vacates the space, at least 21 days before the tenant vacates the unit.

(3) **When an Owner Does Not Obtain Whole-Building Data.** When an owner has not been able to obtain whole-building data for any energy type under 1.04e (1) or (2), then the owner must report such energy type as provided in this subsection.

(i) **Common Area Energy Use.** The owner shall submit data for such energy type for all common areas and all centrally metered areas.

(ii) **Calculating Energy Use in Tenant Spaces.** For each energy type used in separately metered tenant space, the owner must report the known data and then use one of the following methods to determine that type of energy use for the areas in which it is unknown, for each month.

(A) **With Significant Partial Data for a Space Type.** If an owner has actual energy use data for at least 67 percent of a given space type, the owner shall extrapolate the energy data for the remainder of gross floor area with the same space type. This extrapolation will be the average energy use intensity of the floor areas for which it is known, multiplied by all floor area of said remainder, multiplied by 120 percent.

(B) **Without Significant Partial Data for a Space Type.** If an owner does not have actual energy use data for at least 67 percent of any particular space type, the owner shall utilize the default values in Tables 1 and 2 below. For non-residential spaces, the appropriate energy use per square foot per month from Table 1 shall be multiplied by the floor area of that space type for which energy use is unknown. For residential spaces, the appropriate energy use per unit per month from Table 2 shall be multiplied by the number of units for which energy use is unknown.

Table 1: Non-Residential Default Values

	Electricity	Natural gas	Fuel oil	District heat	If all energy uses are unknown
	kWh per square foot per month	Cubic feet per square foot per month	Gallons per square foot per month	kBTU per square foot per month	Total kBTU per square foot per month
Space type					
Education	0.78	3.82	0.03	11.663	10.2
Food Sales	4.94	5.02	0.023	9.908	20.0
Food Service	3.84	14.12	0.023	9.908	25.8
Health Care	1.94	10.09	0.004	9.908	21.2
Inpatient Health Care	2.32	11.74	0.004	9.908	24.9
Outpatient Health Care	1.61	5.02	0.023	9.908	9.5
Lodging	1.35	4.89	0.012	9.908	10.0
Mercantile	1.52	3.60	0.023	9.908	9.7

DRAFT

Retail (Other Than Mall)	0.88	4.23	0.023	9.908	6.5
Enclosed or Strip Mall	2.26	3.36	0.023	9.908	10.2
Office	1.63	3.88	0.008	8.153	11.5
Public Assembly	1.25	3.64	0.022	9.908	9.4
Public Order and Safety	1.53	4.37	0.023	9.908	11.6
Religious Worship	0.28	3.84	0.029	9.908	5.2
Service	0.69	6.22	0.023	9.908	8.0
Warehouse and Storage	0.59	2.58	0.005	9.908	4.2
Other	2.33	8.55	0.023	9.908	16.4
Vacant	0.24	2.30	0.023	9.908	2.1

Table 2: Residential Default Values

	Electricity	Natural gas	Fuel oil	District heat	If all energy uses are unknown
	kWh per unit per month	Cubic feet per unit per month	Gallons per unit per month	kBTU per unit per month	Total kBTU per unit per month
Residential Units	450.4	4,100	37.2	8,412	6,470

Values are taken from U.S. Energy Information Administration’s 2003 Commercial Buildings Energy Consumption Survey and 2009 Residential Energy Consumption Survey, and are multiplied by 120%. Original non-residential values are for New England or Northeast where available, national values otherwise. Original residential values are based on Northeast multifamily buildings of five units or greater.

(iii) **Noting When Whole-Building Energy Use Data are Not Available.**

Owners shall indicate in Portfolio Manager:

(A) Any energy values that are extrapolated data, by marking them as “Estimation”; and

(B) Any energy values that are default data, by listing in the “Notes” section all of the entries for which default values were used.

(iv) **Documentation.** Owners of all buildings submitting default or extrapolated data shall maintain records documenting their having requested data from all tenants, in accordance with the provisions of Section 7-2.2(g).

(f) **Vacant Space.** Owners of covered buildings must account for any vacant or unoccupied space in Portfolio Manager in accordance with EPA instructions.

(g) **Contextual Information.** Owners may supply contextual information regarding their energy and water use, including hyperlinks, in the “Notes” section of Portfolio Manager, and may designate any such information such owners wish to be included in the Commission’s

disclosure. The Commission shall issue guidance regarding the acceptable length and format of contextual information and include such information in public disclosures.

1.05 *Tenant Reporting Obligations.*

(a) Tenants in covered buildings are subject to the following obligations:

(1) **Duty of Tenants to Report Energy and Water Use and Space Use Attributes.** If whole-building energy or water use data are not available from a utility and an owner has accordingly requested such data for the previous calendar year from a tenant pursuant to section 1.04(e)(2), or if an owner has requested space use attributes for the previous calendar year from tenants pursuant to 1.04(d), tenants shall report such data to the owner no later than February twenty-eighth of the year in which the owner has requested such data. Tenants shall use the units and format of data reporting requested by the owner, including the units and format of the Commission-supplied form if so requested.

(2) **Mid-Year Vacancy.** When a tenant vacates a unit or other space before the end of the calendar year and the owner has accordingly requested data for a given energy type or space use pursuant to 1.04(e)(2)(i), the tenant must report such data to the owner within thirty days of the request.

(3) **Sub-Lease.** Tenants who sub-lease their space are responsible for collecting any data on use attributes, energy use, and water use requested by an owner pursuant to 1.04(e)(2) from the sub-tenant and submitting it to the owner.

(b) Owners shall report in writing to the Commission if a non-residential tenant fails to respond to the data request of the owner within the time period specified in 1.05(a)(1), by providing the tenant's name and contact information, and documentation of the owner's request.

1.06 *Submission of Energy and Water Report.*

(a) **Contents of Energy and Water Report.** Owners of covered buildings shall submit a report to the Commission by May fifteenth of each reporting year, containing information for the previous calendar year, related to building identification, occupancy, space use attributes, energy use intensity, energy use by fuel, greenhouse gas emissions, Energy Star rating (where available), use of estimated or default data, and water consumption.

(b) **Electronic Submission of Energy and Water Report Through Portfolio Manager.** Owners shall submit energy and water reports through Portfolio Manager using a template and submission link to be distributed and publicized by the Commission, or any analogous mechanism designated by the Commission.

(c) **New Information.** If, after having submitted a report to the Commission, a building owner receives new or updated information that would require an update to a building's energy and water report, then the owner shall, within 30 days of receiving the new information, enter the additional or corrected data into Portfolio Manager, report the updated data to the Commission, and notify the Commission accordingly.

(d) **Requesting an Extension of Time.** Owners of covered buildings may request, on such form as the Commission shall designate, an extension of the due date for an energy and water report and the Commission may grant such extension at its discretion. Such request must state good cause for why the owner is unable to complete the report by the May 15 deadline and must be made at least 45 days before that deadline. In no case will an extension of greater than 60 days be granted.

1.07 *Special Conditions.*

(a) **Delegating Reporting Duties to Single Tenant.** If the owner of a covered building has leased the building to a single tenant and that tenant has assumed management of the entire building, the owner may, at the request of and with the consent of the tenant, delegate all responsibility regarding reporting to that tenant. The owner shall note such delegation in the “Notes” section of Portfolio Manager.

(b) **Multiple Buildings on Single Tax Lot.** Multiple buildings on a single tax lot shall have energy and water use reported as follows:

(1) Any buildings that are separately energy metered or sub-metered must be reported individually.

(2) Any buildings that are not separately energy metered or sub-metered shall, if practicable, be reported as separate buildings, with energy and water use apportioned by the gross floor area of each building. The apportioned data shall be marked as an “Estimation.”

(c) **Buildings on Multiple Tax Lots that Share Systems.** Multiple buildings on multiple tax lots that share utility systems and are not separately metered or sub-metered shall have energy and water use reported as follows:

(1) If all the buildings are classified as the same building type in Portfolio Manager, then they shall if practicable be reported as individual buildings, with energy and water use apportioned by the gross floor area of each building. The apportioned data shall be marked as an “Estimation.”

(2) If all the buildings are not classified as the same building type in Portfolio Manager, they must be reported as a campus as defined in Portfolio Manager.

(d) **Newly-Constructed Buildings.** Owners of newly-constructed buildings are first required to comply with the reporting requirement for the first full calendar year following the year the building receives its Certificate of Occupancy. This provision shall not apply if it would require the owner to report energy and water use at an earlier date than would otherwise be required under the schedule in Section 7-2.2(d).

(e) **Change of Ownership.** When a building changes ownership, the previous owner shall provide to the new owner any energy, water, and space use data that has been collected and is necessary for completing the next required energy and water report.

1.08 ***Energy Assessment or Action Requirement.***

(a) **Energy Assessment or Action.** Owners of covered buildings shall complete energy assessments or actions, as required by Section 7-2.2(f), in accordance with the provisions of this subsection.

(b) **Energy Assessment or Action Schedule.** Owners of covered buildings not covered by an exemption as specified in 1.08(g) shall complete an energy assessment or action for each such building within five years of the first reporting deadline for such building and within every five-year period thereafter. The five-year periods in which each assessment or action must be completed shall begin at the end of the previous five-year period and not at the date that the previous assessment or action was completed. Owners may choose between an assessment or an action, and are not required to complete both.

(c) **Exemptions.** Owners of covered buildings are not required to complete an energy assessment or action for a given filing period, if any of the following exceptions apply:

(1) The building has earned EPA Energy Star certification from the United States Environmental Protection Agency for at least three of the five years preceding the date by which an assessment or action would otherwise be due.

(2) The building has received certification or re-certification at the Silver level under the Leadership in Energy and Environmental Design (LEED) rating system for Existing Buildings Operation and Maintenance published by the United States Green Building Council during the five-year period, with at least 15 points achieved in the rating category of Energy and Atmosphere.

(3) The building generates an amount of energy equal to or greater than the amount it consumes, as measured on an annual basis.

(4) The building is eligible to receive an Energy Star rating and such building's rating has improved by at least 15 points during the five-year period.

(5) The building is not eligible to receive an Energy Star rating, and such building is highly energy efficient compared to other buildings of the same use, as the Commission shall determine on a case-by-case basis.

(6) The building is included in an institutional master plan, as described in Article 80.D. of the Boston Zoning Code, and a corresponding comprehensive energy management plan with an overall energy reduction or greenhouse gas reduction goal of at least 15 percent over 5 years and demonstrated progress in implementation.

(7) The building is to be fully demolished within six months of when the assessment or action would otherwise be due.

(8) The building is fully vacant for the five-year period.

(d) **Procedures to Apply for Exemption.** To claim an exemption from the assessment or action requirement under section 1.08(g), an owner must notify the Commission of the specific exemption it is claiming no later than May 15 of the year in which the energy assessment or action is due. The exemption application shall be on a form to be provided by the Commission and be accompanied by supporting documentation as applicable:

- (1) To claim an exemption on account of an Energy Star certification, no additional documentation is required.
- (2) To claim an exemption on account of LEED certification, the owner must submit a copy of the relevant certification or confirmation of listing in the LEED project directory, including the completed scorecard.
- (3) To claim an exemption based on energy generated being equal to or greater than consumption, documentation of the amount of renewable energy generated on site is required.
- (4) To claim an exemption based on an improvement in Energy Star rating, no additional documentation is required.
- (5) To claim an exemption as a highly energy efficient building, the owner must submit documentation comparing the building's energy use intensity with those of a set of similar buildings.
- (6) To claim an exemption based on inclusion in an institutional master plan and corresponding energy management plan, the owner must submit documentation substantiating such inclusion.
- (7) To claim an exemption for imminent demolition, the owner must submit an affidavit stating the planned date of demolition.
- (8) To claim an exemption for a fully vacant building, the owner must submit an affidavit stating the length of time that the building has been vacant.

(e) **Temporary Exemption due to Financial Distress.** Owners of financially distressed buildings may apply for an extension of not more than one year beyond the date when an assessment or action would otherwise be due. A building shall be considered to be financially distressed if it currently is or has been subject to one of the following:

- (1) The building qualified for sale at a public auction due to arrears of public taxes within two years of the date an assessment or action is due;
- (2) The building is controlled by a court-appointed receiver due to financial distress;
- (3) The building is owned by a financial institution through default by the borrower;

- (4) The building has been acquired by deed in lieu of foreclosure;
- (5) The building has a senior mortgage which is subject to a notice of default.

1.09 **Energy Assessment Requirements.** Owners of covered buildings who choose to complete energy assessments shall comply with the requirements of this section.

(a) **Energy Assessment Professional Requirements.** The energy efficiency assessment shall be performed or supervised by a qualified energy professional who is not on the staff of the building being audited. Qualified energy professionals include individuals who hold at least one of the following qualifications:

- (1) Association of Energy Engineers Certified Energy Manager and at least two years' experience performing energy efficiency audits; or
- (2) Licensed Professional Engineer and one of the following:
 - (A) At least two years' experience performing energy efficiency audits;
 - (B) American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) Building Energy Assessment Professional;
 - (C) ASHRAE High Performance Building Design Professional;
 - (D) ASHRAE Commissioning Process Management Professional Certification;
 - (E) Association of Energy Engineers Certified Energy Manager;
 - (F) Association of Energy Engineers Certified Energy Auditor;
 - (G) For the purposes of assessing residential buildings only, Building Performance Institute Multifamily Building Analyst.
- (3) Other qualifications as the Commission may from time to time deem as appropriate.

(b) **Energy Assessment Requirements.** The energy assessment must be either:

- (1) An ASHRAE Level 2 Audit, as specified by the *Procedures for Commercial Building Energy Audits*, published by ASHRAE; or
- (2) An assessment that follows similar procedures approved by the Commission. Building owners or energy assessment providers who wish to propose new assessment procedures shall apply to the Commission on a form to be provided by the Commission. Assessments shall be similar in breadth and quality to an ASHRAE Level 2 Audit, and shall at minimum contain the following:

(A) All reasonable energy conservation measures that would reduce building energy consumption, including building upgrades and changes in operations, maintenance, or behavior;

(B) A description of each measure, including identification of the building components that would be affected;

(C) The energy savings expected to result from each measure;

(D) The cost savings expected to result from each measure;

(E) The costs of implementing each measure;

(F) The simple payback period or net present value of each measure;

(G) Rebates and incentives available to the owner for each measure;
and

(H) Specific actions the building owner can take to implement each measure.

(c) **Assessment Report.** The qualified energy professional performing or supervising the assessment shall prepare, sign, and deliver a report to the owner containing the information listed in 1.09(b). This report shall also include the date the assessment was performed and the qualifications of the qualified energy professional, as described in 1.09 (a).

(d) **Delivery of Summary of Assessment Report to Commission.** The owner shall deliver a summary of the assessment report prepared in accordance with 1.08(e) to the Commission within 90 days of receiving such report. Such summary shall be on such form as the Commission may provide and shall contain:

(1) The date(s) the assessment was performed;

(2) Building identification;

(3) Certification by the qualified energy professional that the assessment meets the applicable standards;

(4) The name and qualifications of the qualified energy professional, as described in 1.09 (a); and

(5) A list of all reasonable measures available to the owner with a simple payback of not more than ten years, including the expected energy savings, cost savings, and implementation cost of each measure.

(e) **Procedure to Deliver Report to Commission.** The owner shall deliver the report to the Commission in a format to be specified by the Commission.

1.10 **Energy Action Requirements.** Owners of covered building who choose to complete energy actions shall comply with the requirements of this section.

(a) **Energy Action Professional Requirements.** The energy action must be documented in a report, as described in 1.10 (c), and this report must be signed by a registered professional meeting the requirements of 1.09 (a).

(b) **Energy Action Requirements.** The energy action must meet at least one of the following criteria:

(1) The building owner must implement an energy efficiency project, including building upgrades or changes in operations, maintenance, and behavior, that reduces annual energy use intensity by at least 15 percent; or

(2) If the building is eligible to receive an Energy Star rating, the building owner must implement an energy efficiency project that improves the building's rating by at least 15 points; or

(3) The building owner must connect the building to a district steam or district cogeneration network that results in at least a 15 percent reduction in the building's annual greenhouse gas emissions; or

(4) The building owner must install renewable energy on the building site such that it increases the supply of renewable energy by at least 15 percent of annual energy consumption.

(c) **Energy Action Report.** The owner shall submit a report documenting the energy actions taken and the dates these actions were taken, using a form to be provided by the Commission. The report shall be submitted prior to the end of the five-year period, with supporting documentation as applicable:

(1) To document a reduction in energy use intensity, the energy and water reports submitted to the Commission during the five-year period must demonstrate at least a 15 percent reduction in energy use intensity over the period, and no additional documentation is required.

(2) To document an increase in Energy Star rating, the energy and water reports submitted to the Commission during the five-year period must demonstrate an increase of at least 15 points in Energy Star rating over the period, and no additional documentation is required.

(3) To document connection with district steam or cogeneration, the owner must submit documentation of initial connection, the building's district energy consumption for the 12 months after connection, and the greenhouse gas emissions rate of the consumed energy.

(4) To document the installation and use of on-site renewable energy, the owner must submit documentation of the date of installation, and the energy and water

reports submitted to the Commission must demonstrate an additional 15 percent of the building's energy use, or greater, being supplied by said renewable source.

1.11 *Preservation of Records.*

(a) **Required Records.** Owners of covered buildings shall maintain the following records for a period of at least five years:

- (1) The U.S. EPA Portfolio Manager confirmation email for proof of submission date;
- (2) Proof of the date of request of energy or space use attribute data from any separately-metered tenant;
- (3) Any back-up information substantiating the energy and water data and space use attribute information entered into Portfolio Manager;
- (4) Requests for extensions of the due date for reporting;
- (5) A copy of any exemption application under 1.08 (d);
- (6) A copy of any energy efficiency assessment report prepared by a qualified energy professional; and
- (7) A copy of any energy action report.

(b) **Inspection of Records by the Commission.** Building owners shall make the records listed in subsection 1.09(a) available for inspection by the Commission during normal business hours, following reasonable notice by the Commission.

1.12 *Enforcement and Penalties.*

(a) **Penalties.** The violation of any provision of these regulations by any owner or non-residential tenant is subject to the imposition of penalties by the Commission.

(b) **Notice of Violation.** Upon receipt of a written notice of violation of these regulations from the Commission, a building owner or non-residential tenant shall, within 30 days, either:

- (i) correct the violation(s) identified in the notice; or
- (ii) request, in writing, a hearing for the determination of whether the building owner or tenant violated these regulations.

(c) **Corrections to Report.** The Commission may notify the owner of errors in energy use data, use attributes, building information, calculations, or results. The owner shall be provided 30 days to correct the errors identified by the Commission, submit the updated report to the Commission as described in 1.06, and notify the Commission of the updated submission.

(i) Intentional or repeated submission of misrepresentative data or falsified reports shall not be considered errors.

(d) **Hearing Procedures.** Upon receipt of a request for a hearing under subsection 1.10(b), the Commission or its designee shall within 60 days hold a hearing to be conducted according to the requirements of M.G.L. c. 30A. If the Commission or its designee determines at such hearing that the owner or non-residential tenant has violated these regulations, that person shall have 30 days from the issuance of the final decision to correct that violation.

(e) **Failure to Comply with Notice of Violation.**

(i) If an owner or non-residential tenant who does not request a hearing fails to correct a violation of any provision of these regulations within 30 days of receiving written notice of such violation, then that person has failed to comply with the notice of violation.

(ii) If an owner or non-residential tenant who requested a hearing and received an adverse decision in such hearing, fails to correct the noticed violation within 30 days of the issuance of such final decision, then that person has failed to comply with the notice of violation.

(g) **Imposition of Penalties.** Any owner or non-residential tenant who fails to comply with a notice of violation shall be subject to a fine, in accordance with the schedule in Section 7-2.2(j)(4).

(h) **Residential Tenants Not Subject to Penalties.** Residential tenants are not subject to the imposition of penalties for the failure to comply with any provision of these regulations.