

DISTRICT DEPARTMENT OF THE ENVIRONMENT

SECOND NOTICE OF PROPOSED RULEMAKING

Energy Performance Benchmarking of Privately-Owned Buildings

The Director of the District Department of the Environment (DDOE), in accordance with the authority in section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4) (2008 Repl.)); ~~Section~~section 4 of the Green Building Act of ~~2007~~2006 (Act), effective March 8, ~~2006~~2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.03 (2008 Repl. & 2011 Supp.)); Mayor's Order 2010-1, dated January 5, 2010; the Clean and Affordable Energy Act of 2008 (CAEA), effective October 22, 2008 (D.C. Law 17-250; D.C. Official Code §§ 8-1773.01; *et seq.* (2011 Supp.)); and ~~Section—section (c)(2)(b)(2)(A)~~ of the Green Building Compliance, Technical Corrections—Emergency, and Clarification Amendment Act of ~~2011 (GBTCEAA), 2012~~, effective ~~October 11, 2011~~June 5, 2012 (D.C. ~~Act~~Law ~~19-0164; 58139; 59 DCR ———~~), ~~signed by the Mayor on October 11, 2011. (Temporary and Permanent versions of this legislation have also been introduced), 2555)),~~ hereby gives notice of the intent to adopt, in not less than thirty (30) days from the publication of this notice in the *D.C. Register*, this proposed rulemaking to add a new section 3513, entitled “Energy Performance Benchmarking of Privately-Owned Buildings,” to chapter 35 (Green Building Requirements) of title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR), and to amend section 3599 (Definitions) of chapter 35 (Green Building Requirements) of title 20 (Environment) of the DCMR. As required by section 12(b) of the Act, prior to the issuance of a Notice of Final Rulemaking, this rulemaking will be submitted to the Council of the District of Columbia for a review period of up to forty five (45) days from the date of publication of this notice in the *DC Register*, excluding weekends and holidays.District of Columbia Municipal Regulations (DCMR).

A prior Notice of Proposed Rulemaking was published in the *D.C. Register* on October 21, 2011 (58 DCR 9057). The thirty (30) day comment period ended on November 21, 2011, during which a public meeting was held and six (6) sets of formal comments were received. DDOE has determined that substantive changes to the previously proposed regulations are necessary pursuant to the comments. A summary of the comments and DDOE's responses, along with a version of the proposed rulemaking with all changes tracked, may be viewed on DDOE's website at <http://ddoe.dc.gov>.

Summary

The proposed regulations implement the provisions of the Act and its amendments, which mandate that, according to building size and a defined schedule, owners of privately-owned buildings annually benchmark their buildings using the United States Environmental Protection Agency (U.S. EPA) ENERGY STAR® Portfolio Manager benchmarking tool (Portfolio Manager); that the benchmark and ENERGY STAR® statements of energy performance for each building be submitted to DDOE; and that, beginning with the second annual filing for a given building, DDOE make the results available to the public. In addition, the proposed regulations set forth DDOE's implementation and enforcement of the benchmarking requirements.

Buildings, energy use, and greenhouse gas emissions

Buildings account for a major portion of a city's energy use, ~~exacting~~imposing both local ~~as well~~ ~~as~~and global environmental costs. This fact was underscored in the District's 2006 Greenhouse Gas Inventory report, which found that buildings (primarily large commercial buildings) account for seventy-four percent (74%) of greenhouse gas emissions released in the District. When fossil-fuel based energy is generated to power buildings, pollutants such as smog-producing sulfur and nitrogen oxides are produced and eventually end up in a region's air and waterways. High levels of ground-level ozone, which contribute to serious health problems among vulnerable populations, are also associated with the production of energy used to power buildings.

Energy use also has a significant impact on a building's operations budget, costs that are borne by building owners and their tenants. For tenants of commercial office buildings, energy inefficiency means additional lease costs, and the loss of dollars that affect the bottom-line of building owners, tenants, and investors. Energy inefficiency ~~also~~ disproportionately affects low-income residents, who often must forgo such necessities as health care and food to pay high utility bills in inefficient buildings.

Increasing the energy efficiency of the District's building stock is an essential component of any effort to make the District more efficient and environmentally sustainable. To begin to address this critical area of energy use, the Act ~~required~~requires that, beginning in 2008, public buildings be designed to achieve a rating of seventy-five (75) or higher rating using U.S. EPA's ENERGY STAR[®] Target Finder tool, an energy modeling tool that enables a design team to model and plan future energy performance. After construction, these buildings ~~were~~are further required to be annually benchmarked using the Portfolio Manager benchmarking tool. The ~~DC~~Council of the District of Columbia then took the ~~next~~ environmentally progressive step of enacting the CAEA, which amended the Act to include the set of efficiency tracking requirements for existing private and public sector buildings that ~~this regulation addresses~~these regulations address.

The CAEA initiated benchmarking requirements beginning in Fiscal Year 2009 for the District's public buildings of ten thousand square feet (10,000 sq. ft.) in size or larger. Beginning with calendar year 2010, private buildings over two hundred thousand square feet (200,000 sq. ft.) are required to report data, with the law expanding coverage to include private buildings over fifty thousand square feet (50,000 sq. ft.) by 2013.

The CAEA's expanded benchmarking requirements for public buildings, and new requirements for the private sector, are intended to make energy and water performance information for the city's largest buildings readily available to the public. Easily accessible information about building performance will lead to better-informed decisions by parties who buy, lease, or manage buildings. Transparent energy and water performance information can, in particular, highlight the need for improvements in low-scoring buildings, and inform and encourage building owners to make their buildings more efficient and competitive in the marketplace. Greater awareness about energy and water use in buildings and follow-up conservation measures will lead to reduced energy consumption and its accompanying positive environmental and financial impacts.

The U.S. EPA's Portfolio Manager

Portfolio Manager, the U.S. EPA's online energy benchmarking system, is a widely accepted tool that enables building owners to track energy use in their buildings and compare a building's energy performance against similar buildings nationwide. Portfolio Manager is used by building owners throughout the country as a tool to track and evaluate energy and water consumption, develop energy management goals over time, and identify strategic opportunities for cost savings. Additionally, the U.S. Green Building Council references Portfolio Manager as the measurement tool to verify energy performance under the Leadership in Energy and Environmental Design (LEED) for Existing Buildings, Operations and Maintenance standard.

Portfolio Manager energy performance is reported as either a score on a scale of one (1) to one hundred (100) relative to similar buildings nationwide, or as an Energy Use Intensity (EUI) result when the inventory of similar buildings is not sufficient to allow for a comparative statistical scoring. Portfolio Manager accounts for the impact of local weather variations, as well as for changes in key physical and operating characteristics of each building type. From on-site fuel combustion, purchased electricity, and heating and cooling data, Portfolio Manager can calculate building greenhouse gas emissions such as carbon dioxide, methane, and nitrous oxide. Portfolio Manager can also track energy and water use trends as compared with the costs of these resources, thus providing a helpful tool for understanding the relative costs associated with a given level of building performance.

Outline of the Energy Benchmarking ~~Regulation~~Regulations

~~This regulation provides~~These regulations provide specific instructions to the owners and tenants of privately-owned buildings on how to fulfill the ~~District benchmark~~District's benchmarking requirements. ~~The regulation identifies~~ These regulations identify the building size-based timeline that triggers ~~benchmark~~benchmarking requirements with each successive year, and ~~establishes~~establish a schedule for requesting and reporting building information necessary to complete annual benchmarking. ~~The regulation identifies~~These regulations and accompanying guidance documents developed by DDOE (available on DDOE's website – <http://ddoe.dc.gov>) ~~identify~~ identify District-specific building information ~~that should to~~ be ~~incorporated~~entered into a building owner's Portfolio Manager account to generate acceptable benchmark results, including standard fields in Portfolio Manager ~~fields, requisite for energy, water use, and space use attributes~~ information, and voluntary renewable energy information. ~~The regulation.~~ These regulations also ~~provides~~provide general guidance on how to report information to DDOE, which is further elaborated in the accompanying guidance documents.

~~This regulation establishes~~These regulations establish the requirements for residential as well as non-residential reporting, ~~and addresses~~address issues related to partial and incomplete benchmark reporting, and set standards for reporting verification. ~~Finally, the regulation addresses the~~ Lastly, these regulations address DDOE's authority to assess a fine of not more than one hundred dollars (\$100) for each calendar day that a building owner or non-residential tenant fails to provide the benchmarking information required by the Act, ~~given to DDOE by the GBTCEAA~~authorized by the Green Building Compliance, Technical Corrections, and Clarification Amendment Act of 2012.

~~This regulation is~~These regulations are designed to ease implementation by integrating established Portfolio Manager tools. Many building owners and managers in the District are

already using the Portfolio Manager system. Variation from the “standard” Portfolio Manager requirements is limited to requiring building owners to report most data fields that are identified as optional within Portfolio Manager. This additional reporting is required for benchmarking in the District, because DDOE considers the data sufficiently important to ensure merit robust reporting.

DDOE will provide additional guidance, reference documents, and resource information on Portfolio Manager at [www.http://ddoe.dc.gov/energybenchmarking](http://ddoe.dc.gov/energybenchmarking). Various forms ~~required by the regulations supporting these regulations~~ will be provided in an electronic format. on this website. Final reporting will be done through a “District Benchmark Reporting Template” that interacts directly with the building owner’s Portfolio Manager account and can be completed and submitted online by the building owner.

Selected Section-by-Section Explanations

Subsections 3513.1 and 3513.2 defineset forth the application of benchmarking requirements usingthrough a phasing-in process based on building size ~~based phase in prescribed by the Act, as amended by the CAEA.~~ For ~~purpose~~ the purpose of reporting, a building owner should calculate the gross square foot area of the building’s primary spaces as defined by Portfolio Manager in order to determine if the building meets the ~~size thresholds in Section 3513.1. When calculating building size in order to determine if a building meets the~~ two hundred thousand (200,000), one hundred fifty thousand (150,000), one hundred thousand (100,000), or fifty thousand (50,000) square feet size thresholds in subsection 3513.1. For the purpose of determining the reporting threshold ~~for reporting~~, secondary spaces, such as parking garages, ~~are~~ should not be included. However, these secondary spaces must be accounted for since they contribute to the complete energy profile of a building. Thus when benchmarking a building, building owners must fully report and account for secondary spaces within Portfolio Manager; ~~even if this increases the reported gross square foot area above the threshold delineated in the Act. These secondary spaces contribute to the complete energy profile of a building; therefore, the District is requiring this information as part of the benchmark calculations. This requirement is consistent with the intent of the Act, which was to account for all of the energy use associated with operations and use of a building.~~

If several structures occupy a single tax lot and are served by shared utility systems (or at least one common energy or water meter without separate metering or sub-metering), such that each building’s energy or water use cannot be individually tracked, then their primary spaces should be considered to be one building for the purpose of determining if the size thresholds in subsection 3513.1 are met.

Subsection 3513.3 provides an overview of the steps building owners should follow to fulfill District ~~based benchmark reporting~~ requirements. ~~District benchmarking~~ These reporting requirements go beyond ~~standard~~ Portfolio Manager, ~~and include~~ Manager’s minimum requirements by including mandatory reporting of water data ~~and most~~ along with some space use attributes that Portfolio Manager identifies as “optional.” The requirement to report water usage reflects the growing importance of tracking and managing water use in the District. The collection of most space use attributes is intended to provide a more robust analysis and allow completion of benchmarking when only partial ~~building~~ information is available. This

subsection clarifies that when multiple buildings share systems or common utility meters such that benchmarking the individual buildings is impossible, the buildings should be benchmarked together in Portfolio Manager as a single building or campus. (Complex campuses may have specialized procedures for submitting data to DDOE, which are elaborated in the accompanying guidance documents).

Subsection 3513.4 Subsection 3513.4 details the elements that must be included in a complete District Benchmark Results and Compliance Report. Building owners must submit a report that includes their Building ID number as directed by DDOE, and either a one (1) to one hundred (100) score result for building types for which a Portfolio Manager benchmark score is available or an Energy Use Intensity (EUI) number for building types for which a Portfolio Manager benchmark score is not available. However, for instances where insufficient information is available to achieve either a Portfolio Manager benchmark score or an EUI result, then the building owner must explain why the requirements of the Act were not met in reasonably sufficient detail. The online filing template will include an option to provide such an explanation. Furthermore, building owners are required to include information on any non-residential tenants who fail to supply them with required data, for the purposes of enforcement, as detailed in subsection 3513.14. Building owners should also report whether whole-building data was included for all utilities, or, if partial-building data was used, which utilities were only partial and which utilities covered the whole-building.

Subsection 3513.5 identifies the timeframe and processes that building owners must use to obtain full building information for benchmarking when owners do not have direct access to that information. ~~The~~ Since data pertaining to all non-residential tenant spaces must be collected, the subsection applies to both owners of non-residential buildings, and owners of residential buildings that have at least one non-residential tenant. This subsection references the DDOE-developed guidance forms that District Data Collection Worksheet, and the Non-Residential Tenant Information Form. The worksheet and form both detail all the information a building owner is required to use obtain, and the latter may be used by the building owner to obtain the necessary information from tenants, and clarifies that building owners are required to report benchmarking results, even when tenant information is not received. DDOE will update these forms and worksheets annually.

Subsection 3513.56 clarifies that non-residential tenants are required to provide energy, water, and space use information to building owners, including information on sub-leased space, and are subject to fines for noncompliance.

~~Subsection 3513.6 identifies the date for benchmarking reports to be released to DDOE, April 1, for years 2012~~ Subsection 3513.7 clarifies the circumstances in which building owners may report partial-building data. In all cases, whole-building benchmark reporting is preferred. Where aggregate whole-building data is available from the utility company, the building owner must request that data and use it to benchmark the building, provided the utility company has made this service available more than sixty (60) days prior to the reporting deadline. The subsection then identifies an alternate reporting method for owners of non-residential buildings when a reasonable effort has been made by that owner to obtain tenant information but that information has not been received, and for owners of residential buildings that are not master-metered. As

outlined in the rule, non-residential building owners may use partial-building reporting within established parameters. Finally, until such time as they are able to obtain aggregated data from the utility company, residential building owners who do not have master meters need to report data only from the meters they control.

Subsection 3513.8 identifies the date for benchmarking reports to be submitted to DDOE: April 1, for years 2013 and thereafter. To give building owners and tenants sufficient time to gather utility information to fulfill benchmarking requirements, the GBTCEAA Green Building Compliance, Technical Corrections, and Clarification Amendment Act of 2012 amended the Act and changed this date from January 1 to April 1~~7~~of each year.

Subsection 3513.9 identifies the steps that an owner must take to correct the report they submitted to DDOE in the event they receive updated data. The most likely circumstance where this subsection applies is when a tenant did not provide the building owner with the required energy and space use data as required by subsection 3513.6, but then does provide the building owner with this data later, upon receiving a Notice of Violation as described in subsection 3513.14. A building owner might also receive corrected data from a utility company in the event the utility company discovered an error in its meter readings, or a building owner might need to correct an inaccurate building square footage figure.

Subsection 3513.10 allows a building owner to delegate responsibility for benchmarking the building to a tenant, when that tenant both leases the entire building and is responsible for the management of the building.

Subsections 3513.7~~11~~ and 3513.8 ~~specify when~~12 cover reporting ~~is required~~requirements for new buildings, for buildings with a change of ownership, and ~~change of~~for vacating non-residential tenants.

~~Subsection 3513.9 identifies an alternate reporting path for owners of residential and non-residential buildings when a reasonable effort has been made by that owner to obtain tenant information, but that information has not been received. As outlined in the rule, non-residential building owners may use partial-building reporting within established parameters. Residential building owners are provided with two (2) alternative approaches for benchmarking: an extrapolation method that is based on ten percent (10%) of the tenant units' information and common facilities, or a partial building method that is based on only common area and common utility information. In all cases, whole building benchmark reporting is preferred, and DDOE anticipates increasing availability of aggregated building data from utilities over time.~~

~~Alternate methods for residential and non-residential buildings are provided only after reasonable effort has been made by a building owner to obtain full whole building information. Of the two (2) alternate methods available to owners of residential buildings, the extrapolated method for calculating energy performance is preferred over partial building reporting, as this method incorporates representative living units within a building as well as common spaces.~~

~~Subsection 3513.10 requires building owners to submit a report with a one (1) to one hundred (100) score result for building types for which a Portfolio Manager benchmark score are~~

~~available. Alternatively, building owners with a building of a type for which a Portfolio Manager benchmark score is not available, are required to submit a report with an EUI result. However, in the event that circumstances occur that result in insufficient information to achieve either a Portfolio Manager benchmark score or an EUI result, then the building owner must explain why the requirements of the Act were not met in reasonably sufficient detail to avoid fines. The online filing template will include an option to provide such an explanation.~~

~~Subsection 3513.1113~~ establishes record-keeping requirements for building benchmark information. Benchmark information ~~is to~~must be maintained for the ~~purpose~~purposes of inspection and audit ~~as requested by DDOE.~~

Subsection 3513.~~1214~~ establishes a process for notifying building owners and non-residential tenants of noncompliance and for issuing fines of not more than one hundred dollars (\$100) per day. The subsection also allows for appeals by building owners and non-residential tenants pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§ 2-1831.01; *et seq.* (2007 Repl. & 2011 Supp.)).

~~Finally, Subsection~~Lastly, subsection 3513.~~1315~~ clarifies that, for reporting of 2010 and 2011 data to be submitted in ~~2011~~2012, building owners ~~shall release~~must request the data ~~to DDOE needed to benchmark their buildings~~ by the effective date of ~~this regulation~~these regulations, and submit reports to DDOE within sixty (60) days from the effective date of these regulations. As noted above, in all subsequent years, the compliance date for release of data to DDOE will be April 1.

Chapter 35, GREENTGREEN BUILDING REQUIREMENTS, of title 20, ENVIRONMENT, of the DCMR is amended by adding a new section 3513, entitled “Energy Performance Benchmarking of Privately-Owned Buildings,” to read as follows:

3513 ENERGY PERFORMANCE BENCHMARKING OF PRIVATELY-OWNED BUILDINGS

3513.1 ~~An~~Pursuant to D.C. Official Code § 6-1451.03, an owner of a privately-owned building shall annually ~~benchmark~~measure the performance of the building using the ENERGY STAR® Portfolio Manager (Portfolio Manager) benchmarking tool, according to the following schedule ~~(D.C. Official Code § 6-1451.03(e)(2)(B) (2008 Repl. & 2011 Supp.):~~

- (a) All buildings over two hundred thousand square feet (200,000 sq. ft.) of gross floor area, beginning ~~in~~with 2010 data and thereafter;
- (b) All buildings over one hundred fifty thousand square feet (150,000 sq. ft.) of gross floor area, beginning ~~in~~with 2011 data and thereafter;
- (c) All buildings over one hundred thousand square feet (100,000 sq. ft.) of gross floor area, beginning ~~in~~with 2012 data and thereafter; and

- (d) All buildings over fifty thousand square feet (50,000 sq. ft.) of gross floor area, beginning ~~in~~with 2013 data and thereafter.

3513.2

When determining the size of a building to determine the application of § 3513.1, a building owner shall:

- (a) Calculate the gross floor area of a building ~~is~~as defined by Portfolio Manager; ~~and~~
- (b) ~~Not~~Include primary spaces but not include secondary spaces, as defined by Portfolio Manager; ~~and~~
- (c) Include the combined gross floor area, not including secondary spaces, of any set of buildings that share building systems or at least one common energy or water meter without separate metering or sub-metering, such that their energy or water use cannot be individually tracked and they must be benchmarked as one building or campus in Portfolio Manager.

3513.3

According to the schedule in § 3513.1, and the requirements specified in § 3513.4 through § 3513.68, a building owner whose building falls under the benchmarking requirements for the previous calendar year shall:

- (a) Open a Portfolio Manager account;
- (b) Request from any non-residential tenants or utility companies the information necessary to fulfill the requirements of § 3513.3(c);
- (c) Enter into Portfolio Manager the building information required by the District Data Collection Worksheet, including:
 - (1) Energy and water utility information, in accordance with § 3413.7;
 - (2) Space use attributes information; and
 - (3) Garage or other secondary space information associated with a building's energy and water use; ~~and~~
- ~~(d)~~ Benchmark in Portfolio Manager as one building, property, or campus, following guidance from the United States Environmental Protection Agency (U.S. EPA) and the District Department of the Environment (DDOE), any set of buildings that are served by shared utility systems or at least one common energy or water meter without separate metering or sub-metering, such that the buildings' individual energy or water use cannot be individually tracked, or are of a space type that U.S. EPA recommends be benchmarked as a campus; and

- (e) Authorize the transfer of a District Benchmark Results and Compliance Report to the District, via the District Benchmark Reporting Template, exclusive of any financial information.

3513.4

The District Benchmark Results and Compliance Report must include the following:

- (a) For a building type for which:
 - (1) A Portfolio Manager benchmark score is available, a score result between one (1) and one hundred (100); or
 - (2) A Portfolio Manager benchmark score is not available, an Energy Use Intensity (EUI) result; or
 - (3) Insufficient information is available to achieve either a Portfolio Manager benchmark score or an EUI result, an explanation of why the requirements of § 3513.3(c) were not met in reasonably sufficient detail to avoid the penalties of § 3513.14;
- (b) Information on any non-residential tenants who did not provide needed data as required by §3513.6, including the tenant’s name, contact information, and gross floor area leased; and
- (c) Whether whole-building data was included for all utilities, or, if partial-building utility data was included, which set(s) of utility data were partial, and which covered the whole building.

3513.5

A non-residential building owner, or an owner of a residential building with non-residential tenants, shall request the information about tenant spaces required for the owner to fulfill the requirements of § 3513.3(c). The following applies:

- (a) Beginning in ~~2012~~2013 and thereafter, and by February 1 of each year, a building owner shall request ~~from a tenant~~the space use, energy, and water consumption information ~~required for the owner to fulfill~~listed on the requirements of § 3513.3(c). The following applies:
 - (a) ~~An owner of a Non-Residential Tenant Information Form from all non-residential building shall request the information using tenants, and may use the Non-Residential Tenant Notification Letter and Non-Residential Tenant Information Form; to request this information; or~~
 - (b) ~~An owner of a residential building shall request the information using the Residential Tenant Notification Letter and Residential Tenant Information Form; and~~

~~(c) — The failure of a tenant to report to a building owner the information required under § 3513.3(c) shall not relieve a building owner of the performance benchmarking obligations under D.C. Official Code § 6-1451.03(c) (2008 Repl. & 2011 Supp.)~~

~~3513.5 (b) Beginning in 20122013 and thereafter, and withinby February 1 of each year, provided that one or more utility companies have made access to aggregated utility data available to building owners prior to that date, the building owner may request utility data from the utility company or companies, and is only required to request from non-residential tenants space use information and any utility data not available in aggregate form.~~

~~3513.6~~ Within thirty (30) days of receiving a ~~Non-Residential Tenant Notification Letter~~ and request for the data listed on the Non-Residential Tenant Information Form from the building owner, a non-residential tenant shall provide a complete and accurate ~~Non-Residential Tenant Information Form~~ information to the building owner. - The following applies:

- (a) Tenants who sublease their space are responsible for collecting and reporting sub-tenant information and submitting it to the building owner; and
- (b) Failure of a non-residential tenant to ~~submit a timely, complete, and accurate~~ provide the information listed on the Non-Residential Tenant Information Form to the building owner as required by this section; shall subject the tenant to fines under § 3513.1214.

~~3513.6~~3513.7 A building owner shall enter data in Portfolio Manager in accordance with the following:

- (a) Whenever possible, building owners should benchmark their building(s) using whole-building utility data:
 - (1) Whole-building utility data can be obtained by receiving data from all tenants, from master meters, or from a utility company; or
 - (2) If a utility company has made aggregated utility data available to building owners prior to February 1 of that calendar year, then a building owner must benchmark using whole-building utility data for that utility;
- (b) When a non-residential building owner does not have whole-building information sufficient to fulfill the requirements of § 3513.3(c), and has made a reasonable effort to obtain from a non-residential tenant the information required by § 3513.5, but that information has not been received from that tenant, the building owner shall not be relieved of their

benchmarking obligations, and shall instead submit a partial-building benchmarking report; and

(c) A partial-building benchmarking report shall include any available whole-building information (including any available aggregated utility data), any non-residential tenant information received (where applicable), and all common area information.

3513.8 Beginning in ~~2012~~2013 and thereafter, and by April 1 of each year, a building owner shall timely authorize the transfer to the District of a ~~timely, complete, and accurate~~ District Benchmark Results and Compliance Report, ~~exclusive of any financial information, for the previous calendar year.~~

~~3513.7~~3513.9 If, after submitting a District Benchmark Results and Compliance Report to the District as required in § 3513.8, a building owner receives new or updated information that would require an update to a building's benchmark report, then the building owner shall, within thirty (30) days of receiving the new information, enter the additional or corrected data into Portfolio Manager and authorize the transfer to the District of an updated District Benchmark Results and Compliance Report, and shall notify DDOE accordingly.

3513.10 In cases where a building owner has leased a building to a single tenant and that tenant has assumed management of the entire building, the building owner may, at the request of and with the consent of the tenant, delegate all responsibility regarding this section to that tenant, and notify DDOE accordingly.

3513.11 Consistent with the requirements of § 3513.1, a building owner shall fulfill the requirements of § 3513.3 ~~for~~beginning with the first full calendar year after:

- (a) The building receives its Temporary Certificate of Occupancy or Certificate of Occupancy, whichever comes first; or
- (b) The building changes ownership.

3513.8~~12~~ If a building owner receives notice that a non-residential tenant intends to vacate a building before the information required by § 3513.4~~5~~ is due, then:

- (a) The building owner shall request that the tenant ~~complete a~~provide the information on the Non-residential Residential Tenant Information Form for the period the tenant occupied the building; and
- (b) The tenant shall provide the ~~form~~information listed on the Non-Residential Tenant Information Form to the building owner as soon as practicable prior to vacating the leased space in the building; or, if such information is not available prior to vacating such space, as soon as practicable after the tenant vacates the building.

~~3513.9~~ When a building owner does not have complete whole building information sufficient to fulfill the requirements of § 3513.3(c), and has made a reasonable effort to obtain from a tenant the information required by § 3513.4, and that information has not been received from a tenant, then:

~~(a)~~ The owner of a non-residential building shall use partial building benchmark reporting, which shall include available whole building information, common area information, and available tenant information to fulfill District benchmarking requirements;

~~(b)~~ The owner of a residential building shall use extrapolation benchmark reporting or partial building benchmark reporting, provided that, the owner shall first make a reasonable effort to use extrapolation benchmark reporting before using partial building benchmark reporting;

~~(1)~~ Extrapolation benchmark reporting shall be performed as follows:

~~(A)~~ A building owner shall obtain energy, water, and space use information for all common areas and for a minimum of ten percent (10%) of residential units in each apartment line in the building; and

~~(B)~~ For a utility type that is not metered for the whole building, extrapolation must be performed for each month as follows:
Total energy or water use = $[(U1 / N1) * T1] + [(U2 / N2) * T2] + [(U3 / N3) * T3] \dots [(Un / Nn) * Tn]$, where:

~~(i)~~ U is the total utility usage (energy or water) collected by a building owner for the month for 10% or more of the apartments in the specified apartment line for a given utility type;

~~(ii)~~ N is the number of apartments in the specified apartment line for which the utility use was collected;

~~(iii)~~ T is the total number of apartments in the specified apartment line;

~~(iv)~~ 1 refers to apartment line 1;

~~(v)~~ 2 refers to apartment line 2; and

~~(vi)~~ n refers to the total number of apartment lines in the building, or the final apartment line under consideration in the building;

~~(2) Residential partial building benchmark reporting shall only include available whole building information and common area information.~~

~~3513.10~~ When submitting a District Benchmark Results and Compliance Report:

~~(a) A building owner reporting on a building type for which:~~

~~(1) A Portfolio Manager benchmark score is available, shall submit a report with a score result between one (1) and one hundred (100); or~~

~~(2) A Portfolio Manager benchmark score is not available, shall submit a report with an Energy Use Intensity (EUI) result; and~~

~~(b) For which insufficient information is available to achieve either a Portfolio Manager benchmark score or an EUI result, the building owner shall explain why the requirements of § 3513.3(c) were not met in reasonably sufficient detail to avoid the penalties of § 3513.12 as part of the District Benchmarking Results and Compliance Report to the District.~~

~~3513.11~~3513.13 A building owner shall comply with the following record retention requirements:

(a) Preserve benchmark results and supporting records for a period of at least three (3) years. The records shall include:

(1) The ~~United States Environmental Protection Agency (U.S. EPA)~~ and DDOE Portfolio Manager confirmation ~~email~~email demonstrating proof-of-submission date;

(2) A copy of the building owner's energy, water, and space use attribute information entered into Portfolio Manager;

(3) Copies of applicable tenant information forms and letters; and

(4) Additional information used to support the information required by § 3513.3(c); and

(b) Make benchmark results and supporting records available for inspection and audit by DDOE during normal business hours, following reasonable notice by DDOE.

~~3513.12~~14 Enforcement of this section shall proceed as follows:

(a) The Director shall issue a written Notice of Violation to any building owner or non-residential tenant that is determined to be in violation of this section;

(b) If the Director determines that ~~a second violation of this section has occurred, and the Director has issued a warning notice to the building owner or tenant for the initial violation~~ has not been corrected within thirty (30) calendar days of the issuance of a Notice of Violation, a building owner or non-residential tenant shall be ~~subject to the fines set forth in this subsection for a violation of a requirement of this section. The following fines shall apply:~~

(a) ~~A building owner or non-residential tenant shall be assessed a penalty by DDOE~~ fine of not more than one hundred dollars (\$100) per calendar day, during which a ~~timely, complete, and accurate~~ District Benchmark Results and Compliance Report has not been timely submitted to the District, ~~pursuant to § 2(b)(2)(B) of the Green Building Technical Corrections Emergency Amendment Act of 2011, effective October 11, 2011 (D.C. Act 19-164; 58 DCR _____), signed by the Mayor on October 11, 2011;~~ and

(bc) A building owner or non-residential tenant who receives a ~~notice of infraction~~ fine may request a hearing or adjudication pursuant to ~~instructions contained in the notice of infraction, which shall be conducted pursuant to~~ the Office of Administrative Hearings Establishment Act of 2001, ~~effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code §§§ 2-1831.01, et seq. (2007 Repl. & 2014.) (2012 Supp.))~~ and the Office of Administrative Hearings rules (1 DCMR § 2800 *et seq.*).

~~3513.13 Sections 3513.4 and 3513.6 notwithstanding and during 15~~ During calendar year ~~2014~~ 2012 only, ~~notwithstanding the provisions of § 3513.5 and § 3513.8,~~ a building owner shall ~~authorize, by sixty (60) days from~~ the effective date of ~~this regulation, authorize these regulations,~~ the transfer to the District of a ~~timely, complete, and accurate~~ District Benchmark Results and Compliance Report, ~~exclusive of any financial information.~~

Section 3599, DEFINITIONS, of chapter 35, GREEN BUILDING REQUIREMENTS, of title 20, ENVIRONMENT, of the DCMR is amended as follows:

Subsection 3599.1 is ~~added~~ amended to ~~before~~ include the ~~list of terms and their following~~ definitions ~~to read as follows:~~

~~3599.1 The following terms and phrases shall have the meaning ascribed:~~

~~The following definitions are added to section 3599 (Definitions) in alphabetical order:~~

~~**Apartment line**—residential units that are stacked one above another, and that have substantially similar shapes and square footage.~~

~~**Benchmark results**—the outcome generated by Portfolio Manager that includes either Energy Use Intensity (EUI) and or a one (1) to one hundred (100) benchmark score.~~

Aggregated utility data – total whole-building energy or water data for a specified period as provided by the utility company or a third party for the building for a given utility type.

Building – any structure used or intended for supporting or sheltering any use or occupancy

Building owner – an individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, or other private entity either possessing title or designated to govern a privately-owned building, or an agent authorized to act on behalf of the private entity.

Director – the Director of the District Department of the Environment (DDOE), or the Director’s representative, agent, or designee.

District Benchmark Results and Compliance Report – the Portfolio Manager report that includes benchmark results, identifies reporting methodology, and confirms completion of a building’s benchmarking to the District.

District Benchmark Reporting Template – the template developed by DDOE in partnership with the United States Environmental Protection Agency (U.S. EPA), that exports from Portfolio Manager the building information required for building owners to fulfill District benchmarking requirements.

District Data Collection Worksheet – the list of data fields required to fulfill District benchmarking requirements.

ENERGY STAR® Portfolio Manager benchmarking tool, or Portfolio Manager – the system developed by the U.S. EPA that rates the energy and water performance of a building using the U.S. EPA’s national Energy Performance Rating system.

~~**Extrapolated benchmark reporting**—an alternative benchmarking method that includes available whole building information, common area information, and additionally, available tenant information that accounts for at least ten percent (10%) of residential units in each apartment line in the building.~~

Non-Residential Tenant Information Form – the District form used by a building owner may use to collect the information required for benchmarking from a non-residential tenant.

Non-Residential Tenant Notification Letter – the District form letter ~~used by~~ a building owner may use to inform a non-residential tenant that the tenant is required to provide the information required for benchmarking.

~~**Partial-building benchmark reporting**—an alternative benchmarking method that includes available whole building information, common area information, and for non-residential buildings only, available tenant information.~~

~~**Residential Tenant Information Form**—the District form used by a building owner to collect the information required for benchmarking from a residential tenant.~~

~~**Residential Tenant Notification Letter**—the District form letter used by a building owner to request the information required for benchmarking from a residential tenant.~~

Space use attributes – information such as the conditioned floor area, weekly operating hours, ~~the~~ number of occupied units, and ~~the~~ number of computers in use as defined by the Portfolio Manager, according to a building type.

Tenant – a person ~~leasing, renting, or occupying a non-residential~~ entity entitled to the possession, occupancy, or residential apartment, condominium, cooperative, office, the benefits of any rental unit owned by another person or other space in a building ~~entity.~~

~~**U.S. EPA**—the United States Environmental Protection Agency.~~

Utility —~~a company~~ – an entity distributing, supplying, or transmitting electricity, natural gas, or other fuel for heating, cooling, or power generation, or water to a building.

~~**Whole-building information**—information on space use attributes~~ **Utility data – energy** or onwater consumption data from one (1) or more of the building’s utilities, that is complete meters for an entire building a specified period.

All persons desiring to comment on DDOE’s proposed regulations should file comments in writing not later than thirty (30) days after the publication of this notice in the *D.C. Register*. Comments should be labeled “Energy ~~Star~~ **Benchmarking** Regulations” and filed with the DDOE, 1200 First Street NE, 5th floor, Washington D.C. 20002, Attention: ~~Jennifer Todd~~ **Marshall Duer-Balkind**, or preferably, by e-mail to jennifer.todd@de.govinfo.benchmark@dc.gov.

DDOE’s policy is that public comments, whether mailed, delivered, or submitted electronically, will be made available for public viewing on its website as DDOE receives them and without change, unless the comment contains copyrighted material, confidential business information, or other information whose disclosure is restricted by statute. When DDOE identifies a comment

containing copyrighted material, DDOE will provide a reference to that material on the website.
The copyrighted material will be available in hard copy to the public.