**Chapter 35, GREEN BUILDING REQUIREMENTS, of Title 20 DCMR, ENVIRONMENT, is amended as follows:**

**New Sections 3517 through 3521 are added to read as follows:**

**3517** **Building Energy Performance Standards (BEPS)**

**3518** **Building Energy Performance Compliance Pathways**

**3519** **Building Energy Performance Reporting and Verification**

**3520** **Building Energy Performance Exemptions and Compliance Delays**

**3521** **Building Energy Performance Alternative Compliance Penalty, Violations, Fines, and Enforcement**

**3517** **Building energy performance standards (BEPS)**

3517.1 Every six (6) years, DOEE shall, pursuant to Subsection 301(b) of the Act (D.C. Official Code § 8-1772.21(b)), establish the BEPS. DOEE shall publish notice of the BEPS in the *D.C. Register* before the relevant Compliance Cycle begins.

3517.2 A building owner shall determine whether the building has met the 2021 BEPS as described in § 3530.

3517.3 A building that does not meet the BEPS shall have a Compliance Cycle of five (5) years from the effective date of the BEPS to meet the performance requirements set forth in § 3518 and the procedural requirements set forth in § 3519.

3517.4 Sections 3517 through 3521 shall apply to buildings in accordance with the following schedule:

(a) Beginning January 1, 2021, all privately-owned buildings with at least fifty thousand square feet (50,000 sq. ft.) of gross floor area and all District-owned or District instrumentality-owned buildings with at least ten thousand square feet (10,000 sq. ft.) of gross floor area;

(b) Beginning January 1, 2027, all privately-owned buildings with at least twenty-five thousand square feet (25,000 sq. ft.) of gross floor area; and

(c) Beginning January 1, 2033, all privately-owned buildings with at least ten thousand square feet (10,000 sq. ft.) of gross floor area.

3517.5 To assess applicability of § 3517.4, a building owner, including for District-owned and District instrumentality-owned buildings, shall determine the building size in accordance with 20 DCMR § 3513 (Energy Performance Benchmarking of Privately-Owned Buildings).

**3518** **BUILDING ENERGY PERFORMANCE COMPLIANCE PATHWAYS**

3518.1 An owner of a building that does not meet the BEPS shall implement one (1) of the following compliance pathways to meet the building energy performance requirements:

(a) A performance pathway, which includes meeting the reporting milestone described in § 3519.5 and achieving energy savings according to the following metrics, as determined through Portfolio Manager:

(1) For a building that can earn an ENERGY STAR® score, a greater than twenty percent (20%) decrease in Site Energy Use Intensity Adjusted to Current Year (Adjusted Site EUI)averaged over the last two (2) years of the Compliance Cycle, as compared to the Adjusted Site EUI averaged over the two (2) years preceding the first year of the Compliance Cycle; or

(2) For a building that cannot earn an ENERGY STAR® score, a greater than twenty percent (20%) decrease in in the Weather Normalized Site Energy Use Intensity (Normalized Site EUI) averaged over the last two (2) years of the Compliance Cycle, as compared to the Normalized Site EUI averaged over the two (2) years preceding the first year of the Compliance Cycle;

(b) For high-performing property types, a standard target pathway, which includes meeting the reporting milestone described in § 3519.5 and achieving energy savings according to the following metrics, as determined through Portfolio Manager:

(1) If a building can earn an ENERGY STAR® score, an increase in its ENERGY STAR® score to the level established as the BEPS for the applicable BEPS Period in the last year of the Compliance Cycle; or

(2) If a building cannot earn an ENERGY STAR® score, a decrease in its Weather Normalized Source Energy Use Intensity (Normalized Source EUI) to the level established as the BEPS for the applicable BEPS Period in the last year of the Compliance Cycle;

(c) A prescriptive pathway to achieve energy savings comparable to the requirements in § 3518.1(a), which includes meeting reporting milestones described in § 3519.6 across four (4) phases and completing DOEE-approved energy efficiency measures set forth in a final action plan agreement signed by DOEE and the building owner and;

(d) An alternative compliance pathway as proposed by a building owner and approved by DOEE that is designed to achieve energy savings comparable to the requirements in § 3518.1(a); or

(e) Only for the BEPS Period beginning on January 1, 2021, buildings that receive a delay of compliance pursuant to § 3520.7 may follow a 2021 option for the pathways described in § 3518.1(a) and (b), with the following adjustments:

(1) The performance pathway described in § 3518.1(a) shall use the Site EUI average for the period from 2018 to 2019 as the baseline to compare with the Site EUI for 2026 to determine whether the twenty percent (20%) reduction or comparable energy savings requirement has been met; and

 (2) The standard target pathway described in 3518.1(b) shall achieve energy performance in 2026 equal to or greater than the 2021 BEPS.

3518.2 Throughout a Compliance Cycle, a building owner shall consistently exclude gross floor area and energy consumption of spaces in accordance with the criteria in Portfolio Manager for excluding a space, unless that gross floor area and energy consumption was included in the District Benchmark Results and Compliance Report used to determine whether the building met the BEPS.

3518.3 A building owner shall not, in the process of complying with this chapter, implement a measure that poses a threat to the health and safety of a building occupant or user, including by reducing indoor environmental quality.

**3519** **Building Energy Performance Reporting and Verification**

3519.1 This section establishes reporting and verification requirements for building owners to meet the building energy performance requirements. For the BEPS Period beginning in 2021, all buildings that receive a delay under § 3520.7 shall have all deadlines set forth in this section extended by one (1) year.

3519.2 The owner of a building that does not meet the BEPS shall select a compliance pathway described under § 3518.1 for DOEE review and approval through the Online BEPS Portal no later than April 1, one (1) year from the start of the Compliance Cycle.

(a) DOEE shall not approve selection of the prescriptive pathway until the building owner submits an energy audit to DOEE as described in § 3519.6(a).

(b) A building that receives a one-year delay of compliance under § 3520.7(g) shall select one of the pathways described in § 3518.1(c) - (e).

3519.3 If a building owner does not select a compliance pathway as specified in § 3519.2 or does not receive DOEE approval for a pathway, DOEE shall assign a pathway for the building.

3519.4 A building owner may change a pathway, including a DOEE-assigned compliance pathway, during a Compliance Cycle for good cause shown by submitting a pathway change application through the Online BEPS Portal and receiving approval from DOEE. A building owner may not change pathways until approval is received from DOEE.

3519.5 For a building following either a performance or standard target pathway, a building owner shall submit a report of completed actions to DOEE through the Online BEPS Portal no later than April 1, five (5) years from the start of the Compliance Cycle.

3519.6 For a building following a prescriptive pathway, a building owner shall submit the following documents to DOEE through the Online BEPS Portal:

(a) No later than April 1, one (1) year from the start of the Compliance Cycle, an energy audit that:

(1) Accurately reflects building energy use at the time the plan is submitted to DOEE; and

(2) Is conducted by a professional who possesses one (1) of the following licenses, credentials, or certifications and who is in good standing with the licensing, credentialing, or certifying entity at the time that the energy use audit is conducted:

 (A) Certified Energy Auditor (CEA);

 (B) Certified Energy Manager (CEM); or

(C) Any other additional license or training program credentials recognized by the Department and posted on the Online BEPS Portal.

(b) No later than April 1, two (2) years from the start of the Compliance Cycle, an action plan that includes a final list of energy efficiency measures selected for implementation and an operations and maintenance program;

(c) No later than April 1, four (4) years from the start of the Compliance Cycle, an implementation report that includes permit drawings, permits, inspection reports, or other documentation identified in the approved pathway pertaining to the implementation of selected energy efficiency measures;

(d) No later than April 1, five (5) years from the start of the Compliance Cycle, an evaluation, monitoring, and verification report that includes a narrative describing the savings achieved and any corrective actions taken and an updated operations and maintenance program that reflects the energy efficiency measures implemented; and

(e) Additional documentation as identified by DOEE in its approval of the building pathway.

3519.7 For a building pursuing the prescriptive pathway, all retro-commissioning activities that are part of the approved pathway must be conducted by:

(a) A professional that meets the Minimum Qualifications for a Commissioning Authority as defined by Department of Consumer and Regulatory Affairs (DCRA), or

(b) A professional possessing other additional license or training program credentials recognized by DOEE and posted to its website.

3519.8 For an alternative compliance pathway, a building owner shall sign an alternative compliance pathway agreement prepared by DOEE, and shall complete and submit all documentation in a manner and timeframe required by the agreement.

3519.9 A building owner may use a complete and accurate District Benchmark Results and Compliance Report as required under §§ 3513 through 3516 of this chapter to demonstrate that the building has met its pathway target for a Compliance Cycle.

3519.10 A building owner shall provide any supporting documentation as requested by DOEE to determine compliance with this section.

3519.11 Any report, plan, or documentation submitted as required by §§ 3519.5 through 3519.10 must be complete and accurate.

3519.12 DOEE may deny or revoke approval of a pathway and designate a different pathway specified in § 3518.1 if a building owner:

(a) Fails to submit a complete and accurate report, plan, or documentation as required by §§ 3519.5 through 3519.10;

(b) Fails to implement a requirement of a DOEE-approved compliance pathway; or

(c) Failed to demonstrate energy savings required by a DOEE-approved pathway for the previous Compliance Cycle.

3519.13 If ownership of a building covered by § 3517.3 is transferred during a Compliance Cycle, the seller shall provide the buyer with the following information prior to the transfer or sale:

(a) Any information, plans, or reports submitted to DOEE as required by §§ 3519.2, 3519.5, 3519.6, and 3519.8;

(b) The most recent complete and accurate District Benchmark Results and Compliance Report as required under §§ 3513 through 3516 of this chapter; and

(c) Information describing any progress toward meeting the energy performance requirements as applicable under § 3518.

3519.14 If ownership of a building covered by § 3517.13 is transferred during a Compliance Cycle, the buyer shall notify DOEE of the transfer or sale within sixty (60) days after the completion of closing.

**3520** **BUILDING ENERGY PERFORMANCE EXEMPTIONS AND COMPLIANCE DELAYS**

3520.1 A building owner may apply for DOEE approval through the Online BEPS Portal for an exemption from, or delay of, compliance with the performance and procedural requirements specified in § 3518 and § 3519.

3520.2 A building owner seeking an exemption or delay shall submit a request describing the exemption or delay sought, and the reason(s) the exemption or delay is being requested. The request shall include documentation that substantiates the basis for the request, such as financial information, deeds, building and construction permits, technical reports, invoices, or other documentation that supports the request being sought.

3520.3 An exemption may be granted only if the building owner demonstrates to the satisfaction of DOEE, based upon the documentation presented, that the building is completely demolished prior to the beginning of the applicable Compliance Cycle or during the Compliance Cycle.

3520.4 A delay may be granted only if the building owner demonstrates to the satisfaction of DOEE, based upon the documentation presented, that the building meets at least one of the criteria specified in § 3520.7

3520.5 DOEE shall grant a delay in compliance from the performance and procedural requirements specified in § 3518 and § 3519 for up to three (3) years upon a showing of good cause for delay as specified in § 3520.7.

3520.6 For qualifying affordable housing buildings, DOEE may grant a delay in compliance of more than three (3) years upon a showing of good cause for delay as specified in § 3520.7.

3520.7 For a building owner to demonstrate good cause for granting a delay of compliance under § 3520.5 or § 3520.6, the building owner must provide substantial evidence that one or more of the following circumstances exist and that the circumstance(s) make meeting the requirements of § 3518.1 by the end of the Compliance Cycle practically infeasible:

(a) Financial distress;

(b) A change of ownership of the property during a Compliance Cycle;

(c) The building undergoes a major renovation;

(d) The building becomes unoccupied;

(e) The building is pending demolition;

(f) There is a change in property type;

(g) For the BEPS Period beginning in 2021, the building was consuming energy during the COVID-19 public health emergency declared on March 11, 2020 by Mayor’s Order 2020-045;

(h) The building is on the DC Inventory of Historic Sites maintained by the District Office of Planning or is designated as contributing to a historic district; or

(i) The building is implementing an innovative approach to energy efficiency.

3520.8 For the BEPS Period beginning in 2021, an owner of a building subject to compliance under § 3517.4(a), in keeping with § 3520.7(g), shall receive a one (1)-year delay of compliance upon DOEE receipt of the building’s 2020 District Benchmark Results and Compliance Report, unless the building owner requests not to receive this delay. A delay of compliance granted pursuant to this subsection shall not preclude DOEE from granting additional delays in compliance under §§ 3520.5 or 3520.6; provided, that, for a building other than a qualifying affordable housing building, all delays may not, in total, exceed three (3) years.

3520.9 DOEE may attach additional conditions to a delay of compliance, including adjustments to the building’s compliance pathway, or additional reporting and verification requirements to move a building toward compliance with the BEPS.

3520.10 A delay approved during one Compliance Cycle does not delay the requirement for a building to meet the BEPS established for the next BEPS Period or the requirements of the next Compliance Cycle.

**3521** **BUILDING ENERGY PERFORMANCE ALTERNATIVE COMPLIANCE PENALTY, VIOLATIONS, FINES, AND ENFORCEMENT**

3521.1 A building owner that fails to demonstrate complete implementation of a compliance pathway as required by § 3518.1 at the end of a Compliance Cycle shall be assessed an alternative compliance penalty.

(a) The maximum penalty for a building shall be ten dollars ($10) per each square foot of gross floor area of the building calculated by ENERGY STAR® Portfolio Manager for the District Benchmark Results and Compliance Report submitted by the building owner at the end of the Compliance Cycle or at the end of a delay granted by DOEE pursuant to §§ 3520.5 or 3520.6, whichever is later. The maximum penalty shall be no greater than seven million five hundred thousand dollars ($7,500,000).

(b) A College/University Campus or Hospital Campus shall pay a maximum penalty of no greater than seven million five hundred thousand dollars ($7,500,000);

(c) The maximum penalty set in § 3521.1(a) and (b) shall be reduced proportionally to the building or campus performance relative to its pathway target as described in § 3521.2.

3521.2 The maximum penalties under § 3521.1 shall be adjusted according to the compliance pathway and according to the following chart:

|  |  |  |
| --- | --- | --- |
| Pathway | Adjustment Factor | Example |
| Performance pathway under §§ 3518.1(a) or 3518.1(e)(1) | The penalty shall be adjusted by calculating the percent of Site EUI reduction achieved divided by twenty percent (20%).  | Building A achieves a ten (10%) reduction in Site EUI. Its penalty is reduced by fifty percent (50%) (10/20 = 50%). |
| Standard Target Pathway under §§ 3518.1(b) or 3518.1(e)(2) | The penalty shall be adjusted at two points:1. A building approved for the Standard Target Pathway would require less than a twenty percent (20%) reduction in Source EUI to meet the BEPS, and will receive an adjustment to its penalty for its initial performance relative to the BEPS. 2. Savings achieved at the end of the Compliance Cycle divided by savings required to meet BEPS. | 1. Building B starts ten (10) points away from the BEPS at the beginning of the Compliance Cycle. All buildings of building B’s property type could meet the BEPS with at most a twenty percent (20%) reduction in Source EUI if they started the Compliance Cycle at fifteen (15) points away from the BEPS.(1-(10/15) = 33%)2. Building B gains four (4) points by the end of the Compliance Cycle but needs ten (10) total to meet the standard. Therefore, adjusted penalty is then reduced again by forty percent (40%).(4/10= 40%)3. The final penalty is reduced by sixty percent (60%), and thus is forty percent (40%) of the maximum alternative compliance penalty described in § 3521.1. (1-33%)\*(1-40%)) = 40% |
| Prescriptive pathway under § 3518.1(c) | The penalty shall be adjusted by calculating the number of prescriptive pathway points actually earned divided by total needed. | Building C completes measures worth fifteen (15) points but needs twenty-five (25) to meet the energy performance requirements. Its penalty is reduced by sixty percent (60%) (15/25 = 60%). |
| Alternative compliance pathway under § 3518.1(d) | The penalty shall be adjusted using adjustment factors described in the alternative compliance pathway approval from DOEE, and shall be no less stringent than penalties for other pathways as described under § 3519.8.  |  |

3521.3 Notwithstanding § 3521.2, a building owner may be assessed the maximum alternative compliance penalty in accordance with § 3521.1, regardless of the building’s performance relative to its pathway target, in addition to any other applicable fines, if the building owner:

(a) Knowingly withholds information or submits inaccurate information;

(b) Fails to submit a complete and accurate District Benchmark Results and Compliance Report at the end of the Compliance Cycle or at the end of a delay granted by DOEE pursuant to §§ 3520.5 or 3520.6; or

(c) Implements a measure that poses a threat to the health and safety, including the reduction of indoor environmental quality, of a building occupant or user pursuant to § 3518.3.

3521.4 A building owner violating a provision in §§ 3517 through 3520 shall be fined according to the schedule set forth in Title 16 (Consumer, Commercial Properties, and Civil Infractions) of the District of Columbia Municipal Regulations.

3521.5 DOEE may enforce the requirements of this section, including assessment of a fine or alternative compliance penalty, by issuing one or more of the following:

 (a) Notice of violation;

 (b) Enforcement notice; or

 (c) Notice of infraction.

3521.6 DOEE may issue a notice of violation to notify a building owner of a violation under §§ 3517 through 3520 and any potential fine or penalty if the violation is not corrected. A notice of violation does not impose a fine.

3521.7 DOEE may issue an enforcement notice to assess a fine or penalty for a violation under §§ 3517 through 3520. An enforcement notice may be appealed to DOEE pursuant to the instructions provided in the notice.

3521.8 If a fine or penalty is not resolved under §§ 3521.6 or 3521.7, DOEE may issue a notice of infraction. A building owner that receives a notice of infraction may request a hearing or adjudication pursuant to the Office of Administrative Hearings Establishment Act of 2001 (D.C. Official Code § 2-1831.01 *et seq.*) and the Office of Administrative Hearings Rules (1 DCMR § 2800 *et seq*).

3521.9 A building owner may appeal to the District of Columbia Court of Appeals only after exhausting all administrative remedies.

3521.10 In addition to or instead of a civil infraction, the Attorney General for the District of Columbia may commence a civil action for damages, cost recovery, reasonable attorney and expert witness fees, and injunctive or other appropriate relief to enforce compliance with §§ 3517 through 3520.

**Section 3599, DEFINITIONS, is amended as follows:**

**The following definitions are added to read as follows:**

**Building Energy Performance Standards or BEPS** –the level of energy efficiency set forth by DOEE as an ENERGY STAR® score or Normalized Source EUI value for each property type, as provided in Subsection 301(b) of the Act (D.C. Official Code § 8-1772.21(b)).

**Building Energy Performance Standards Period or BEPS Period** – the period of time in which specific BEPS are in effect, which shall run from the date DOEE establishes BEPS until the next DOEE establishment of BEPS.

**Building Energy Performance Standards Program or BEPS Program** – the DOEE program overseeing and implementing BEPS**.**

**Compliance Cycle** – a period of five (5) years from the date of the establishment of BEPS during which, in the absence of a delay of compliance granted by DOEE, a building must meet the performance requirements set forth in § 3518 and procedural requirements set forth in § 3519.

**Energy audit** – An evaluation of a building that identifies potential energy efficiency measures for building systems and operations in accordance with the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 211-2018 Level 2.

**High-performing property type** – a property type for which the BEPS is more energy-efficient than the U.S. EPA’s National Median for that property type.

**Limited-equity cooperative (LEC)** –a cooperative required by a government agency or nonprofit organization to limit the resale price of membership shares for the purpose of keeping the housing affordable to incoming members that are low- and moderate-income.

**Major renovation** – any repair, alteration, or addition of a building that:

 (1) Significantly affects multiple core building systems; and

(2) Costs at least twenty-five (25) percent of the value of the building, as determined based on the District Office of Tax and Revenue records, before the repair, alteration, or addition is started.

**Online BEPS Portal** – a web-based application created by DOEE for a building owner to submit required reporting and verification documents pertaining to BEPS, accessible through the DOEE BEPS Program webpage.

**Operation and maintenance program** – A plan meeting the specifications found in American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 100-2018, Chapter 6, that addresses every applicable building system and element as outlined in Annex D and follows the implementation requirements laid out in Annex L that address the functions, duties and labor associated with the daily operations and normal repairs, replacement of parts and structural components, and other activities needed to preserve an asset so that it continues to provide acceptable services and achieves its expected life.

**Qualifying affordable housing –** a building that is primarily residential, contains five (5) or more dwelling units, and can demonstrate that:

(1) Use restrictions or other covenants require that at least fifty percent (50%) of the building’s dwelling units are occupied by households with household income of less than fifty percent (50%) of the area median income (AMI);

(2) At least fifty percent (50%) of the dwelling units rent at levels affordable to households with incomes less than or equal to fifty percent (50%) of the AMI.; or

(3) The building is a Limited-equity Cooperative (LEC) that meets the definition of affordable housing pursuant to Subsection 301(k) of the Clean Energy Omnibus Amendment Act of 2018 (D.C. Official Code § 8-1772.21(k)).

**Site Energy Use Intensity or Site EUI** – the annual amount of energy a building consumes onsite, as reported on a building’s utility bills, divided by the building’s gross floor area, as determined through Portfolio Manager.

**Site Energy Use Intensity Adjusted to Current Year or Adjusted Site EUI** – the Site EUI a building would be expected to have if its operations were the same as in the current time period, as determined through Portfolio Manager.

**Weather Normalized Site Energy Use Intensity or Normalized Site EUI** – the Site EUI a building would have consumed during thirty (30) year average weather conditions, as determined through Portfolio Manager.

**The following definition is amended to read as follows:**

**Building owner** – an individual, partnership, corporation, trust, association, firm, joint stock company, organization, commission, or other entity either possessing title or designated to govern a building.

All persons desiring to comment on the proposed rulemaking should file comments in writing not later than thirty (30) days after publication of this notice in the *D.C. Register*. Comments should be clearly marked “Public Comments: BEPS” and filed with DOEE, Benchmarking, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, Attention: Building Performance and Enforcement Branch, or e-mailed to info.BEPS@dc.gov. All comments will be treated as public documents and will be made available for public viewing on the Department’s website at [www.doee.dc.gov](http://www.doee.dc.gov). If a comment is sent by e-mail, the e-mail address will automatically be captured and included as part of the comment that is placed in the public record and made available on the Department’s website.