

PRESENTATION AND Q&A ON UPDATED BENCHMARKING RULEMAKING AND BEPS RULEMAKING

Presented by DOEE
December 15, 2020



ONLINE MEETING ETIQUETTE

- The meeting is being recorded and a video and transcript will be posted to our website at doee.dc.gov/service/beps
- Questions throughout the meeting:
 - All attendees have been muted upon entry
 - All questions will be handled through the chat box.
- Attendance
 - All Task Force Members and public attendees - please use the chat box at this time to register your name and organization. Add your email if you'd like to be added to our contact list.

AGENDA

- Administrative Items
- Benchmarking rulemaking presentation and Q&A
- Building Energy Performance Standards rulemaking presentation and Q&A
- Closing

BENCHMARKING RULEMAKING

- Posted in DC Register on December 4, 2020 -
<https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N100435>
- 30-day public comment period
- Comments due by **January 4, 2021**
- See DC Register posting for instructions on how to submit comments through USPS mail or email at info.benchmark@dc.gov

Please note- all citations referenced in this presentation in relation to these proposed regulations are subject to change until the regulations are finalized.

BENCHMARKING RULEMAKING UPDATES

- Benchmarking rules have been updated to introduce new requirements and to clarify and streamline old requirements
- Most of the updates come from laws that have passed since the original regulations were published, including:
 - The Sustainable DC Omnibus Amendment Act of 2014
Law L20-0142, Effective from Dec 17, 2014 Published in [DC Register](#) Vol 62 and Page 1243
 - The Clean Energy DC Omnibus Act of 2018
Law L22-0257, Effective from Mar 22, 2019 Published in [DC Register](#) Vol 66 and Page 3973
- Other updates reflect changes in Portfolio Manager and its reporting requirements



BENCHMARKING REGULATIONS SECTIONS

Amended:

- 20 DCMR § 3513 – Performance Benchmarking of Privately-Owned Buildings Applicability

New:

- 20 DCMR § 3514 – Performance Benchmarking Requirements
- 20 DCMR § 3515 – Performance Benchmarking Data Verification
- 20 DCMR § 3516 – Performance Benchmarking Penalties and Enforcement

DEFINITIONS

Amended:

- **District Benchmark Results and Compliance Report** – The Portfolio Manager report that includes benchmark and ENERGY STAR® statements of energy performance, identifies reporting methodology, and contains data verification information

Added:

- **ENERGY STAR® Data Verification Checklist** – a U.S. EPA ENERGY STAR ® form used to complete the third-party verification of District Benchmark Results and Compliance Reports
- **Property use information** – the characteristics, such as the conditioned floor area, weekly operating hours, number of occupied units, and number of computers in use, described by Portfolio Manager for a particular building type

SECTION § 3513: SIZE THRESHOLDS

20 DCMR § 3513.2 New Benchmarking size thresholds:

Building Size	Reporting Requirement Begins
25,000-50,000 ft ²	2022 (with 2021 data)
10,000-25,000 ft ²	2025 (with 2024 data)

20 DCMR § 3513.3(b) Include the gross floor area of any structure that shares building systems or **at least one common energy or water meter**



SECTION § 3514: BENCHMARKING REQUIREMENTS

20 DCMR § 3514.1 (d) Enter complete and accurate information for each building, property, or campus into Portfolio Manager*; including-

- (3) Energy and water utility information (**use of estimated values is not permitted** without written DOEE permission for instances where DOEE determines that a non-estimated value is not feasible)
- (5) Values for all property use information (**use of default or temporary values is not permitted** without written DOEE permission for instances where DOEE determines that it is not feasible to do otherwise)

* Review 20 DCMR § 3514.1 for list of all requirements



SECTION § 3514: BENCHMARKING REQUIREMENTS

Exclusion of spaces:

- **20 DCMR § 3514.1 (e)** When entering complete and accurate information into Portfolio Manager, **the building owner shall exclude the gross floor** area and energy consumption of property spaces so long as they meet Portfolio Manager criteria for excluding a property space

Data Quality Checks:

- **20 DCMR § 3514.1 (f)** Complete all automated **data quality check** functions within Portfolio Manager within seven (7) calendar days prior to submission of a District Benchmark Results and Compliance Report



SECTION § 3514: BENCHMARKING REQUIREMENTS

Whole Building Data (20 DCMR § 3514.3)*

- **Ownership transfer:** (b) If ownership of a building is transferred during a reporting year, the former building owner or owners shall, no later than sixty (60) days after the transfer, provide complete and accurate information necessary to the building owner required to benchmark to complete the benchmark reporting requirements for the full calendar year in which the transfer occurred
- **Incomplete data:** (d) If a building owner has made a reasonable effort to obtain information and does not have complete whole-building information to fulfill the requirements of this section, a building owner shall submit an incomplete building District Benchmark Results and Compliance Report containing as much information as is available and shall notify DOEE which set(s) of utility data are incomplete

*** Review 20 DCMR § 3514.3 for list of all requirements**



SECTION § 3515: DATA VERIFICATION

New Third-Party Verification requirement:*

- **20 DCMR § 3515.1 Every three (3) years**, building owners or their designees shall perform third-party verifications of their District Benchmark Results and Compliance Reports
- **20 DCMR 3515.2 Third-party verification shall begin in 2024** with verification of District Benchmark Results and Compliance Reports submitted for calendar year 2023
- Verification shall be submitted as part of the District Benchmark Results and Compliance Report no later than the **April 1 deadline** of the reporting year

* **Review 20 DCMR § 3515 for all requirements**



SECTION § 3515: DATA VERIFICATION

- **20 DCMR § 3515.3** Building Owner, or the building owner's designee, shall make the **ENERGY STAR® Data Verification Checklist**, and any appropriate supporting documentation, available to an **Approved District Data Verifier**
- The Data Verification Checklist is not required to be submitted with the District Benchmark Results and Compliance Report

* Review 20 DCMR § 3515 for all requirements



SECTION § 3515: DATA VERIFICATION

20 DCMR 3515.4 An individual is an **Approved District Data Verifier** if they possess one (1) of the following licenses, credentials, or certifications, and are **in good standing** with the licensing, credentialing, or certifying entity at the time that the data verification is conducted:

- Professional Engineer (PE)
- Licensed Architect
- Certified Energy Manager (CEM)
- Building Energy Assessment Professional
- Any other additional data verifier license or training program credentials recognized by the Department and posted to its website



SECTION § 3515: DATA VERIFICATION

Third party:

- **20 DCMR § 3515.7** Approved District Data Verifier shall not be an employee of the building owner or of the building owner's designee who prepares or submits benchmarking information in Portfolio Manager.

ENERGY STAR Certification:

- **20 DCMR § 3515.5** The U.S. Environmental Protection Agency is an Approved District Data Verifier for the purpose of this section when it performs data verification as part of an **ENERGY STAR® Certification** that uses data including at least six (6) months of the calendar year for which this section requires data verification.



SECTION § 3515: DATA VERIFICATION

20 DCMR § 3515.7 To meet the requirements of this section, the building owner or building owner's designee may request that the Approved District Data Verifier:

- Review the Portfolio Manager entries and supporting documentation provided by the building owner or building owner's designee to identify any errors or gaps in the data
- Work with the building owner (or designee) to correct errors

20 DCMR § 3515.8 Certify on the final page of the Data Verification Checklist that the Data Verification Checklist is complete and accurate by signing and listing any credential, license, or certification

Note: Approved District Data Verifiers are not required to conduct a site visit or to complete the waste and indoor environmental quality section (20 DCMR § 3515.9)



SECTION § 3515: DATA VERIFICATION

20 DCMR § 3515.10 Building owners (or their designees) shall use the **Property Notes section (or other relevant section)** in Portfolio Manager to report the third-party verification and provide:

- The name, title, telephone number, and email of the Approved District Data Verifier
- The date of the verification; and
- The name of the credential, license, or certification and the license or certification number held by the Approved District Data Verifier



SECTION § 3515: DATA VERIFICATION

20 DCMR § 3515.11 A building owner or building owner's designee may use a current **EPA ENERGY STAR Certification**, which includes third-party data verification, to meet the third-party verification requirements. The building owner or building owner's designee shall include the following information:

- The date that the building received ENERGY STAR ® Certification;
- The date range of the data verified; and
- The name, title, email address, and the name of the credential, license, or certification, and license or certification number of the licensed professional who verified the data for the ENERGY STAR ® Certification



SECTION § 3515: DATA VERIFICATION

20 DCMR § 3515.12 Building owners (or designees) shall retain a signed copy of the Data Verification Checklist and all supporting documentation of the verification for a minimum of three (3) years, and shall provide a copy to DOEE upon request

Building Size	Reporting Requirement Begins	Data Verification Required
50,000+ ft ²	2014 (with 2013 data)	2024 (with 2023 data)
25,000-50,000 ft ²	2022 (with 2021 data)	2024 (with 2023 data)
10,000-25,000 ft ²	2025 (with 2024 data)	2027 (with 2026 data)



SECTION § 3516: PENALTIES AND ENFORCEMENT

20 DCMR § **3516.1** Any of the following shall be a violation:*

- Failure to submit **accurate and complete benchmarking** information in a District Benchmark Results and Compliance Report
- Failure to submit **a District Benchmark Results and Compliance Report** to DOEE by April 1 for the preceding calendar year
- Failure of a **former building owner to submit** complete and accurate benchmarking information to the building owner
- Failure to **update or correct information** for a submitted District Benchmark Results and Compliance Report within thirty (30) days of receiving the new information
- Failure of a **non-residential tenant to submit** complete and accurate benchmarking information to the building owner within thirty (30) days of a written request from the building owner

* Review 20 DCMR § 3516 for all violations



Q&A

BEPS RULEMAKING

- Posted in DC Register on December 4, 2020 -
<https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N100436>
- 60-day public comment period
- Comments due by **February 2, 2021**
- See DC Register posting for instructions on how to submit comments through USPS mail or email at info.beps@dc.gov

Please note- all citations referenced in this presentation in relation to these proposed regulations are subject to change until the regulations are finalized.



BEPS RULEMAKING SECTIONS

- § 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 Standards Alternative Compliance Penalty, Violations, and Enforcement



KEY DEFINITIONS

- **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 section 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.
- **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.
- **Property type** – the primary function of a building as determined through Portfolio Manager.

SECTION § 3517: BUILDING ENERGY PERFORMANCE STANDARDS

- 20 DCMR § 3517.1 Every six (6) years, DOEE shall establish the BEPS. DOEE shall publish notice of the BEPS in the *D.C. Register* before the relevant Compliance Cycle begins.
- 20 DCNR § 3517.2 A building that does not meet the BEPS as of the effective date of the BEPS shall have a Compliance Cycle of five (5) years from that date to meet the performance requirements set forth in § 3518 and the procedural requirements set forth in § 3519.

SECTION § 3517: BEPS APPLICABILITY

BEPS 1

beginning January 1, 2021:

Private buildings $\geq 50,000$ sq. ft.
and DC-owned $\geq 10,000$ sq. ft.

BEPS 2

beginning January 1, 2027:

Private buildings $\geq 25,000$ sq. ft.
and DC-owned $\geq 10,000$ sq. ft.

BEPS 3

beginning January 1, 2033:

Private buildings and
DC-owned $\geq 10,000$ sq. ft.



SECTION § 3517: PROPERTY TYPES AND SIZE

Property Types

- Standards will be set for each ENERGY STAR Portfolio Manager **Primary Property Type**; Refer to your Portfolio Manager **benchmarking** report for which property type applies

Building Size

- Follow 20 DCMR § 3513 to determine size of building (Energy Performance Benchmarking of Privately-Owned Buildings)

SECTION § 3518: BEPS COMPLIANCE PATHWAYS

Performance Pathway

20 DCMR § 3518.1(a)

20% decrease in Site Energy Use Intensity (EUI) averaged over the last two (2) years of the Compliance Cycle, as compared to the Site EUI averaged over the two (2) years preceding the first year of the Compliance Cycle

Standard Target Pathway

20 DCMR § 3518.1(b)

For Property Types for which BEPS is above the national median

Increase ENERGY STAR score to the BEPS

- OR -

Decrease Weather Normalized Source Energy Use Intensity (Normalized Source EUI) to the BEPS

Prescriptive Pathway

20 DCMR § 3518.1(c)

Implement one or more DOEE pre-determined energy efficiency measures designed to achieve energy savings comparable to Performance Pathway

Reporting Milestones for all three pathways described in Section 3519

SECTION § 3518: OTHER COMPLIANCE PATHWAYS

Alternative 20 DCMR § 3518.1(d)

Pathway agreed upon by
DOEE and the building owner

Designed to achieve energy
savings comparable to
Performance Pathway

2021 Pathway Options 20 DCMR § 3518.1(e)

Only for BEPS Period Beginning
January 1, 2021

Buildings may use EUI average
of 2018-2019 baseline
compared to 2026

Applicable to the Performance,
Standard Target, Prescriptive, and
Alternative compliance pathways

SECTION § 3519: REPORTING & VERIFICATION

- **For BEPS Period beginning in 2021**, reporting and verification requirements deadlines set forth in this section shall be extended by one (1) year (COVID-19 adjustment) (See 20 DCMR § 3519.1)
- **All Pathways** - The building owner shall select a compliance pathway for DOEE review and approval no later than February 1, one (1) year from the start of the Compliance Cycle. If an owner does not select a compliance pathway or does not receive DOEE approval for a pathway, DOEE shall assign a pathway (either performance or standard target). (See 20 DCMR § 3519.2)
- **Change a pathway** - A building owner may change a pathway during a Compliance Cycle for good cause shown by submitting a pathway change application and receiving approval from DOEE. (20 DCMR § 3519.4)
- **Completed Actions reporting** - For a building pursuing 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 February 1, five (5) years from the start of the Compliance Cycle. (20 DCMR § 3519.5)

SECTION 3519: PRESCRIPTIVE PATHWAY REPORTING

20 DCMR § 3519.6

And additional
documentation as
identified by DOEE

Phase 1: by Feb. 1
(1 year from start of Cycle)

Preliminary Assessment Plan (Energy Audit)

Phase 2: by Feb. 1
(2 years from start of Cycle)

Action Plan

Phase 3: by Feb. 1
(4 years from start of Cycle)

Implementation and Testing Report

Phase 4: by Feb. 1
(5 years from start of Cycle)

Evaluation, Monitoring, and Verification Report

SECTION § 3519: OTHER REPORTING & VERIFICATION

For an ACP, a building owner shall sign an agreement, and complete and submit all documentation in a timeframe required by the agreement.
(20 DCMR § 3519.7)

A building owner may use a complete and accurate District Benchmark Results and Compliance Report to demonstrate compliance.
(20 DCMR § 3519.8)

A building owner shall provide any additional documentation as requested by DOEE to determine compliance.
(20 DCMR § 3519.9)

A report, a plan, or documentation submitted for compliance must be complete and accurate.
(20 DCMR § 3519.10)

SECTION § 3519: PATHWAY DENIAL, REVOCATION, OR DESIGNATION

20 DCMR § 3519.11 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; or
- b) Fails to implement a requirement of a pathway;
- c) Failed to demonstrate energy savings described by the approved pathway for the previous Compliance Cycle.

SECTION § 3519: CHANGE OF OWNERSHIP DISCLOSURE

In cases where ownership of a building is transferred during the Compliance Cycle, the seller shall notify the buyer of the following information prior to the transfer or sale:

- Any information, plans, or reports submitted to DOEE as required by the building's approved Compliance Pathway.
- The most recent complete and accurate District Benchmark Results and Compliance Report for the building.
- Information describing any progress toward meeting the energy performance requirements.

See 20 DCMR § 3519.12

SECTION § 3520: EXEMPTION OR DELAY OF COMPLIANCE

- A building owner may apply for an exemption from or delay in compliance with the performance and procedural requirements. See 20 DCMR § 3520.1
- A building owner seeking an exemption or delay shall submit a request describing the exemption or delay sought and the reason 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 proper documentation. See 20 DCMR § 3520.2
- DOEE shall grant a delay in compliance for up to three (3) years upon a showing of good cause by the applicant that one or more of the circumstances described in § 3520.6 exist. For qualifying affordable housing buildings, DOEE may grant a delay in compliance of more than three (3) years. See 20 DCMR § 3520.5

SECTION § 3520: EXEMPTION CRITERIA

- **Completely demolished buildings:** DOEE shall grant an exemption from the performance and procedural requirements for a building that is completely demolished immediately prior to the beginning of the applicable Compliance Cycle or during the Compliance Cycle. See 20 DCMR § 3520.4

SECTION § 3520: DELAY OF COMPLIANCE REASONS

20 DCMR § 3520.6 For a property owner to demonstrate good cause for granting a delay of compliance, the property owner must provide substantial evidence that meeting the energy performance requirements is practically infeasible for any of the following reasons:

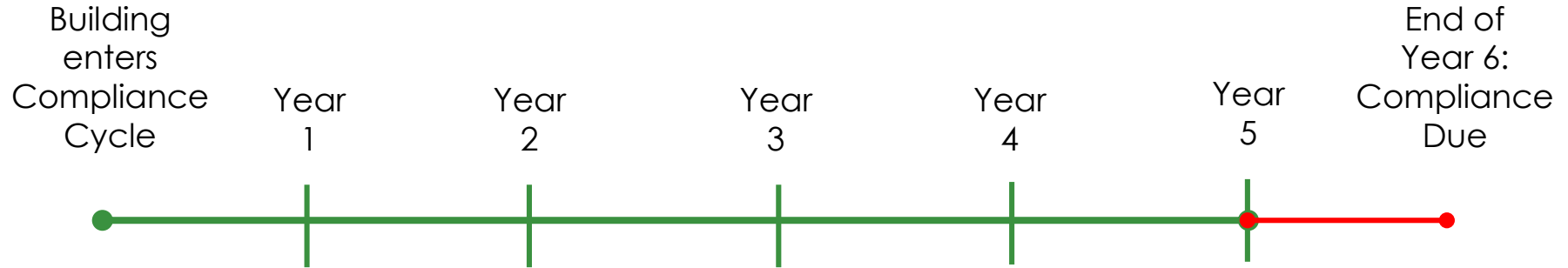
- Financial distress
- Change of ownership during a Compliance Cycle
- Building undergoes major renovation
- Building becomes unoccupied
- Pending demolition:
- Change in primary property type
- For the BEPS period beginning in 2021, the building was operating and consuming energy during the COVID-19 public health emergency declared on March 11, 2020 by Mayor's Order 2020-045

SECTION § 3520: OTHER DELAY OF COMPLIANCE ITEMS

- For the BEPS Period beginning in 2021, an owner of a building subject to compliance may, in keeping with § 3520.6(g), seek a one (1)-year delay of compliance, as set forth in § 3519.1. A one (1)-year delay of compliance granted pursuant to this subsection shall not preclude DOEE from granting additional delays in compliance under § 3520.5; provided, that, for a building other than a qualifying affordable housing building, any additional delays may not, in total, exceed two (2) additional years. 20 DCMR § 3520.7
- 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. 20 DCMR § 3520.8
- An exemption or delay approved during one Compliance Cycle does not extend the requirement for a building to meet the BEPS established for the next Compliance Cycle. 20 DCMR § 3520.9

SECTION § 3520: COVID-19 PHE DELAY

For the BEPS Period beginning in 2021, an owner of a building subject to compliance may seek a one (1)-year delay of compliance (2021 Pathways). A one (1)-year delay of compliance granted pursuant to this subsection shall not preclude DOEE from granting additional delays; provided, that, for a building other than a qualifying affordable housing building, any additional delays may not, in total, exceed two (2) additional years. See 20 DCMR § § 3520.6(g) and 3520.7



SECTION § 3521: ALTERNATIVE COMPLIANCE PENALTY

Penalties shall be determined on:

- if the building met all the reporting requirements of the approved Pathway
- gross floor area of the building
- The maximum penalty shall be reduced proportionally to the building's performance relative to its pathway target

**Maximum Penalty Level x
Distance from Pathway target =
Final Penalty Level**

See 20 DCMR §§ 3521.1 - 3521.3

Gross Floor Area Bins	Max. Penalty Level
500,000 ft ² and larger	\$7,500,000
200,000 – 499,999 ft ²	\$5,000,000
100,000 – 199,999 ft ²	\$2,000,000
50,000 – 99,999 ft ²	\$1,000,000
25,000 – 49,999 ft ²	\$500,000
10,000 – 24,999 ft ²	\$250,000
Hospital and College/University Campuses	
3,000,000 ft ² and larger	\$15,000,000
2,999,999 ft ² and smaller	\$7,500,000

SECTION § 3521: ENFORCEMENT

- A building owner that knowingly submits inaccurate information will be subject to assessment of the maximum alternative compliance penalty regardless of the building's performance relative to its pathway target, in addition to any other applicable fines and penalties. See 20 DCMR § 3521.4
- DOEE may enforce the requirements of this section, including assessment of an alternative compliance penalty, by issuing one or more of the following: (a) Notice of violation; (b) Enforcement notice; or (c) Notice of infraction. See 20 DCMR § 3521.6
- DOEE may issue a notice of violation to notify a building owner of a violation under §§ 3516 through 3520 and any potential fine if the violation is not corrected. A notice of violation does not impose a fine. See 20 DCMR § 3521.7
- DOEE may issue an enforcement notice to assess a fine or penalty for a violation under §§ 3516 through 3521. An enforcement notice may be appealed to DOEE pursuant to the instructions provided in the notice. See 20 DCMR § 3521.8

SECTION § 3521: ENFORCEMENT

- If a fine or penalty is not resolved under §§ 3521.7 or 3521.8, 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). 20 DCMR § 3521.9
- A building owner may appeal to the District of Columbia Court of Appeals only after exhausting all administrative remedies. See 20 DCMR § 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 §§ 3516 through 3521.

Q&A

OVERALL SCHEDULE



Next BEPS Task Force meeting is January 5. Happy Holidays!

Future Agenda Items for Discussion/Feedback

- Discuss long and short-term role of Task Force
- Workforce Development discussion – Feb/Mar
- Results of cost/benefit study
- Non-DOEE policy gaps?

Task Force
co-chairs will
follow-up with
members by email

WEBINAR UPDATE

DOEE hosts a live [monthly webinar](#) to update the public on the progress of BEPS implementation.

<https://beps-monthly-webinar.eventbrite.com>

<https://buildinginnovationhub.org/events/>

Dec 15

Jan 28

Feb 25

Mar 25

DOEE & DCRA: 2020 Green Building Professional Series @ 1:00 pm

- Transportation Electrification – January 13, 2021
- Road to 100% Renewable Electricity – February 10, 2021
- Funding Clean Energy Projects – March 10, 2021
- Getting Ready for BEPS – April 14, 2020

<https://www.eventbrite.com/e/2020-green-building-professional-seminar-series-tickets-121531625363>

RULEMAKINGS

- **Benchmarking**

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- **BEPS**

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