**department of energy AND Environment**

**Notice of FINAL RULEMAKING**

**Establishment of the 2021 Building Energy Performance Standards**

The Director of the Department of Energy and Environment (DOEE or Department), pursuant to the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq*.) (2013 Repl. & 2019 Supp.)); Sections 301 and 304 of the CleanEnergy DC Omnibus Amendment Act of 2018 (CEDC Act), effective March 22, 2019 (D.C. Law 22-257; D.C. Official Code §§ 8-1772.21 and 8-1772.23), as amended by Section 2 of the CleanEnergy DC Omnibus Technical Amendment Temporary Amendment Act of 2020, effective March 16, 2021 (D.C. Act 23-500; 67 DCR 14383 (December 11, 2020)); and Mayor’s Order 2020-087, dated August 21, 2020, hereby gives notice of the adoption of amendments to Chapter 35 (Green Building Requirements) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking will implement provision 301(b) of the CEDC Act, which requires that, by January 1, 2021, DOEE establish property types and Building Energy Performance Standards (BEPS) by property type for privately-owned buildings with at least 50,000 square feet of gross floor area and all District-owned or District instrumentality-owned buildings with at least 10,000 square feet of gross floor area. For more information on how DOEE determined these Standards please see the [Guide to the 2021 BEPS](https://doee.dc.gov/publication/2021-standards-beps-period-1) document, available at https://doee.dc.gov/publication/2021-standards-beps-period-1.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on January 1, 2021, at 68 DCR 00164 (First Emergency and Proposed Rulemaking). The First Emergency and Proposed Rulemaking was adopted on December 23, 2020, became effective on January 1, 2021, and remained in effect until April 22, 2021. A Second Emergency Rulemaking was adopted on April 22, 2021, became effective on that date, and remained in effect until the publication of this final rulemaking. These rules were adopted as final on April 26, 2021, and will be effective upon publication of this notice in the *D.C. Register*.

The thirty (30) day comment period for the First Emergency and Proposed Rulemaking ended on January 31, 2021, during which DOEE received one (1) set of formal comments. The comments reflected a concern that the use of Source EUI as a metric may encourage the use of natural gas over electric systems. DOEE has determined that no changes to the rulemaking are necessary pursuant to the comment because the current regulations reflect the requirements of the Clean Energy DC Omnibus Amendment Act that the Building Energy Performance Standards (BEPS) be based on ENERGY STAR® Score or an Equivalent metric. DOEE, with significant input from the BEPS Task Force, determined that the most appropriate equivalent metric is Source Energy Use Intensity (Source EUI; Weather-Normalized when possible).

This rulemaking contains several small changes from the First Emergency and Proposed Rulemaking, each designed to clarify the intended meaning of that rulemaking. DOEE updated § 3530.5 to clarify that DOEE must have a complete and accurate 2019 District Benchmark Results and Compliance Report for DOEE to consider a property as meeting the BEPS. Additionally, DOEE clarified § 3530.6 to confirm which properties can request to use their calendar year 2018 District Benchmark Results and Compliance Report and updated § 3530.7 for consistency with § 3530.6. DOEE also amended § 3530.7(a) to clarify the mixed-use properties eligible to request a variance. Finally, DOEE added a definition for Hospital Campus to the Definitions section.

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

**A new Section 3530, 2021 Building energy performance standards (BEPS), is added to read as follows:**

**3530 2021 Building energy performance standards (BEPS)**

3530.1 The BEPS in this section apply to all privately-owned buildings with at least 50,000 square feet of gross floor area, and all District-owned or District instrumentality-owned buildings with at least 10,000 square feet of gross floor area, that are not subject to BEPS in Subsection 3530.2 or 3530.3. The “ENERGY STAR Score” column lists the BEPS for property types that can receive an ENERGY STAR® Score. The “Source EUI” column lists the BEPS for buildings that cannot receive an ENERGY STAR Score. All Energy Use Intensity (EUI) values are kBtu/ft2 unless otherwise noted.

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| **Property Type** | | **2021 Building Energy Performance Standard** | | | |
| **ENERGY STAR Score** | | **Source EUI** | |
| Adult Education |  | | 110.4 | |
| Ambulatory Surgical Center |  | | 426.9 | |
| Aquarium |  | | 240.2 | |
| Automobile Dealership- |  | | 124.1 | |
| Bank Branch | 71 | | 153.7 | |
| Bar/Nightclub |  | | 297 | |
| Barracks | 56 | | 141.4 | |
| Bowling Alley |  | | 206.6 | |
| Casino |  | | 240.2 | |
| College/University |  | | 180.6 | |
| Convenience Store with Gas Station |  | | 592.6 | |
| Convenience Store without Gas Station |  | | 592.6 | |
| Convention Center |  | | 192 | |
| Courthouse | 71 | | 153.7 | |
| Data Center | 50 | | 1.8 Total Energy kBtu/IT Energy kBtu | |
| Distribution Center | 19 | | 103.7 | |
| Drinking Water Treatment & Distribution |  | | 5.9 kBtu/gallons per day | |
| Enclosed Mall |  | | 170.7 | |
| Energy/Power Station |  | | 229.4 | |
| Fast Food Restaurant |  | | 886.4 | |
| Financial Office | 71 | | 153.7 | |
| Fire Station |  | | 185.5 | |
| Fitness Center/Health Club/Gym |  | | 206.6 | |
| Food Sales |  | | 592.6 | |
| Food Service |  | | 527.7 | |
| Hospital (General Medical & Surgical) | 50 | | 426.9 | |
| Hotel | 54 | | 183.9 | |
| Ice/Curling Rink |  | | 206.6 | |
| Indoor Arena |  | | 240.2 | |
| K-12 School | 36 | | 139 | |
| Laboratory |  | | 318.2 | |
| Library |  | | 206.4 | |
| Lifestyle Center |  | | 228.8 | |
| Mailing Center/Post Office |  | | 242.6 | |
| Medical Office | 62 | | 172 | |
| Mixed Use Property |  | | 229.4 | |
| Movie Theater |  | | 240.2 | |
| Multifamily Housing | 66 | | 110.7 | |
| Museum |  | | 240.2 | |
| Non-Refrigerated Warehouse | 19 | | 103.7 | |
| Office | 71 | | 153.7 | |
| Other |  | | 229.4 | |
| Other – Education |  | | 110.4 | |
| Other - Entertainment/Public Assembly |  | | 240.2 | |
| Other - Lodging/Residential |  | | 143.6 | |
| Other – Mall |  | | 225.3 | |
| Other - Public Services |  | | 229.4 | |
| Other – Recreation |  | | 206.6 | |
| Other - Restaurant/Bar |  | | 573.7 | |
| Other – Services |  | | 242.6 | |
| Other - Specialty Hospital |  | | 426.9 | |
| Other – Stadium |  | | 240.2 | |
| Other - Technology/Science |  | | 229.4 | |
| Other – Utility |  | | 229.4 | |
| Outpatient Rehabilitation/Physical Therapy |  | | 426.9 | |
| Performing Arts |  | | 240.2 | |
| Personal Services (Health/Beauty, Dry Cleaning, etc.) |  | | 242.6 | |
| Police Station |  | | 185.5 | |
| Pre-school/Daycare |  | | 131.5 | |
| Prison/Incarceration |  | | 156.4 | |
| Race Track |  | | 240.2 | |
| Refrigerated Warehouse | 19 | | 235.6 | |
| Repair Services (Vehicle, Shoe, Locksmith, etc.) |  | | 242.6 | |
| Residence Hall/Dormitory | 56 | | 141.4 | |
| Residential Care Facility |  | | 213.2 | |
| Restaurant |  | | 573.7 | |
| Retail Store | 64 | | 401.2 | |
| Roller Rink |  | | 206.6 | |
| Self-Storage Facility |  | | 21.2 | |
| Senior Care Community | 50 | | 213.2 | |
| Social/Meeting Hall |  | | 192 | |
| Stadium (Closed) |  | | 240.2 | |
| Stadium (Open) |  | | 240.2 | |
| Strip Mall2 |  | | 228.8 | |
| Supermarket/Grocery Store | 64 | | 401.2 | |
| Swimming Pool |  | | 206.6 | |
| Transportation Terminal/Station |  | | 240.2 | |
| Urgent Care/Clinic/Other Outpatient |  | | 426.9 | |
| Veterinary Office |  | | 145.8 | |
| Vocational School |  | | 110.4 | |
| Wastewater Treatment Plant | 50 | | 7.5 kBtu/gallons per day | |
| Wholesale Club/Supercenter | 64 | | 401.2 | |
| Worship Facility | 17 | | 140.3 | |
| Zoo |  | | 240.2 | |

3530.2 The BEPS in this section apply to Hospital Campuses. The “ENERGY STAR Score” column lists the BEPS for property types that can receive an ENERGY STAR Score. The “Source EUI” column lists the BEPS for buildings that cannot receive an ENERGY STAR Score. All Energy Use Intensity (EUI) values are kBtu/ft2.

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| **Property Type** | **2021 Building Energy Performance Standard** | |
| **ENERGY STAR Score** | **Source EUI** |
| Ambulatory Surgical Center |  | 138.3 |
| Hospital (General Medical & Surgical) | 50 | 433.9 |
| Other - Specialty Hospital |  | 433.9 |
| Outpatient Rehabilitation/Physical Therapy |  | 138.3 |
| Urgent Care/Clinic/Other Outpatient |  | 145.8 |

3530.3 The BEPS in this section apply to College/University Campuses. Because College/University Campuses cannot receive an ENERGY STAR Score like other property types, DOEE is using a Blended Custom Source Energy Use Intensity Metric instead. The “Source EUI” column lists the BEPS for each campus. All metrics for campuses are Blended Custom Source Energy Use Intensity (EUI) measured in kBtu/ft2.

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| **Campus** | **Source EUI** |
| American University Main Campus | 207.1 |
| American University Law Campus | 180.6 |
| Catholic University Main Campus | 248.6 |
| Gallaudet University Main Campus | 199.3 |
| Georgetown University Main Campus | 262.0 |
| Georgetown University Law Campus | 190.4 |
| George Washington University Main Campus | 241.4 |
| George Washington University Mt. Vernon Campus | 209.9 |
| Howard University Main Campus | 235.8 |
| Howard University West Campus | 202.0 |
| Trinity University Main Campus | 202.6 |
| University of District of Columbia | 180.6 |

3530.4 The 2021 BEPS shall remain in effect until DOEE establishes new BEPS.

3530.5 A building does not meet the BEPS if, based on the 2019 District Benchmark Results and Compliance Report for that building:

(a) That building can receive an ENERGY STAR score, and the ENERGY STAR Score for their building is less than the ENERGY STAR Score Standard for their Property Type established in this section;

(b) That building cannot receive an ENERGY STAR score but can receive a Normalized Source EUI, and the Normalized Source EUI for their building is greater than the Source EUI Standard for their Property Type established in this section;

(c) That building cannot receive an ENERGY STAR score nor a Normalized Source EUI, and the Source EUI for their building is greater than the Source EUI Standard for their Property Type established in this section; or

(d) That building has not submitted a 2019 District Benchmark Results and Compliance Report approved by DOEE pursuant to this chapter.

3530.6 An owner of a building that does not meet the BEPS and whose building experienced atypical business activity, such that the 2019 District Benchmark Results and Compliance Report does not represent normal operations of the building, may request the use of their Calendar Year 2018 District Benchmark Results and Compliance Report by submitting a 2021 BEPS variance request form to DOEE for review and approval through the Online BEPS Portal no later than January 1, 2022.

3530.7 An owner of a building that does not meet the BEPS may request that DOEE establish a variance for their building by submitting a 2021 BEPS variance request form to DOEE for review and approval through the Online BEPS Portal no later than August 1, 2021. The request must include evidence that the building meets one of the following special circumstances:

(a) No single property use type makes up more than fifty-percent (50%) of the overall building gross floor area, so the owner should therefore receive a variance that accounts for the percentage of each property type within the building; or

(b) For a building belonging to a property type where fewer than ten (10) buildings are used to determine the BEPS for that property type, there is an alternative industry-recognized peer group data set with an equivalent metric for the building’s property type.

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

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

**Blended Custom Source Energy Use Intensity or Blended Custom Source EUI –** TheDOEE developed customized metric for the College/University Campus property type using the local median Source EUI adjusted for the square footage percentage of high-intensity space present on each building of a campus, accounting for the diverse property type uses that might be present on a university campus (e.g. laboratories, residence halls/dormitories, dining halls, offices, restaurants).

**College/University Campus –** asecondary educational institution with multiple buildings in a single location that are owned by a single entity.

**Hospital Campus –** ahospital with multiple buildings in a single location that are owned by a single entity.

**National Median –** the ENERGY STAR score or Source EUI benchmark, available on the U.S. Environmental Protection Agency (EPA) ENERGY STAR Portfolio Manager® website, that fifty percent (50%) of properties perform above and fifty percent (50%) perform below.

**Property type** –the primary function of a building as determined through EPA’s ENERGY STAR Portfolio Manager.

**Source Energy Use Intensity or Source EUI** – the total amount of raw fuel that is required to operate a building, divided by the building’s gross floor area, as determined through EPA’s ENERGY STAR Portfolio Manager.

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