



Apartment and Office Building Association
of Metropolitan Washington

Action Alert

TO: Owners/Managers-DC, Professionals, and Associates

FROM: Nicola Y. Whiteman, Esq., Vice-President of Government Affairs, DC

SUBJECT: DC Energy Star Benchmarking Requirements:
Submission of Benchmarking Data for Buildings over 200,000 Square Feet

CHANGE TO DEADLINE FOR SUBMITTING BENCHMARKING DATA

Current District law requires all buildings over 200,000 square feet of gross floor area to begin submitting energy star benchmarking data on July 1, 2011. However, the District Department of the Environment (DDOE), the agency charged with administering the District's energy star benchmarking law, recently advised AOBA that the agency will **NOT** publish regulations prior to July 1.

The regulations, once published, will provide building owners with the necessary guidance for complying with the law, including the format for submitting the required benchmarking data to DDOE. However, DDOE does not anticipate issuing draft regulations for public comment until July with a possible October publication date for the final regulations.

WHAT DOES THIS MEAN FOR YOU AS A BUILDING OWNER?

The change will have an immediate impact on those owners with buildings over 200,000 square feet. Building owners with properties of this size are the first group scheduled for submitting benchmarking data to DDOE. Current law, as noted above, requires the submission of that data by July 1, 2011.

- Per DDOE, owners with buildings over 200,000 square feet will NOT be

required to submit data until the issuance of final regulations.

- While owners in this category are not required to submit building data on July 1, DDOE expects these owners to continue compiling the energy, water, and space use data that must now be provided to the agency at a later date.
 - DDOE encourages owners to familiarize themselves with the Portfolio Manager benchmarking process. Members can click on the following link to view information on benchmarking and additional links to training resources: [DDOE Website - Energy Benchmarking](#).
- Enforcement for noncompliance with July 1 submission date:
 - District law provides that a building owner or tenant that fails to *timely*, accurately, and completely submit the required benchmarking information to DDOE or the building owner will be assessed a penalty by DDOE of not more than \$100 for each day during which the required submission has not been made.
 - **AOBA's position:** The District cannot and should not any impose any penalties on building owners who are unable to meet the July 1 deadline. Any noncompliance with the July 1 deadline would be directly attributable to DDOE's failure to provide the necessary regulatory framework for submitting the required data to DDOE. AOBA has requested that the agency issue a statement specifically addressing this concern.
- **RESIDENTIAL PROPERTIES:** AOBA believes that DDOE lacks the necessary authority to impose energy star benchmarking requirements on residential/multifamily buildings. Application of these provisions was not contemplated by the law, and no one in the private or public sector (including DDOE) understood the benchmarking requirements to extend to multifamily buildings.

AOBA will continue to update the membership about the status of ongoing discussions with the District regarding any application of the law to multifamily properties. If you have any questions regarding the District's energy star benchmarking law and the recent change to the compliance date, please contact Nicola Whiteman at (202) 296-3390 or via e-mail at NWhiteman@aoba-metro.org.

**CURRENT VERSION OF THE DISTRICT'S ENERGY STAR BENCHMARKING LAW
DC OFFICIAL CODE § 6-1451.03. PRIVATELY-OWNED BUILDINGS.**

(a) A new construction or substantial improvement of a nonresidential privately-owned project with 50,000 square feet of gross floor area or more shall:

- (1) On or before January 1, 2009, submit to the Department, as part of any building construction permit application, a green building checklist documenting the green building elements to be pursued in the building construction permit.
- (2) Within 2 years of the receipt of a certificate of occupancy, be verified in subsection (b) of this section as having fulfilled or exceeded the green building requirements.

(a-1)(1) All privately-owned buildings shall be benchmarked annually using the Energy Star® Portfolio Manager benchmarking tool as designated by the schedule in paragraph (2) of this subsection; provided, that the buildings are of a building type for which Energy Star® tools are available. Benchmark and Energy Star® statements of energy performance for each building shall, by April 1 of the following year, be made available to DDOE. **In 2011 only, the scores and statements shall be made available to DDOE no later than July 1.** DDOE shall, upon the receipt of the 2nd annual benchmarking data for each building, make the data accessible to the public via an online database.

(2) The schedule shall be as follows:

- (A) All buildings over 200,000 square feet of gross floor area beginning in 2010 and thereafter;
- (B) All buildings over 150,000 square feet of gross floor area beginning in 2011 and thereafter;
- (C) All buildings over 100,000 square feet of gross floor area beginning in 2012 and thereafter;
- (D) All buildings over 50,000 square feet of gross floor area beginning in 2013 and thereafter.

(3) Benchmarking data required in paragraph (1) of this subsection shall include water consumption data as incorporated in the Portfolio Manager Benchmarking Tool.

(b)(1) A project that has submitted an application for the first building construction permit after January 1, 2010, for new construction or substantial improvements for real property acquired by a real property disposition by sale to a private entity undertaken by the District or an instrumentality of the District shall be verified as having fulfilled or exceeded the LEED-NC 2.2 or LEED-CS 2.0 standard at the certification level.

(2) A project that has submitted the first construction building construction permit after January 1, 2012, for new construction or substantial improvements shall fulfill the following requirements as applicable:

- (A) A nonresidential project and a post-secondary educational facility projects shall

be verified as having fulfilled or exceeded the LEED-NC 2.2 or LEED-CS 2.0 standard at the certification level.

(B) An educational facility project, except a post-secondary educational facility project, shall be verified as having fulfilled or exceeded the LEED for Schools standard at the certification level or a substantially equivalent rating system that requires full-building commissioning. Schools shall aspire to meet LEED for Schools certification at the Gold level or higher.

(b-1) A project that has submitted the 1st construction building construction permit after January 1, 2012, for new construction or substantial improvement shall, prior to construction, estimate its energy performance using the Energy Star® Target Finder Tool and be benchmarked annually using the Energy Star® Portfolio Manager benchmarking tool; provided, that the building has 50,000 square feet of gross floor area or more and is of a building type for which Energy Star® tools are available. Benchmark and Target Finder scores and Energy Star® statements of energy performance for each building shall, within 60 days of being generated, be made available to DDOE, which shall make the data accessible to the public via an online database.

(c) A building owner or tenant who fails to timely, accurately, and completely submit the benchmarking information required by this section to DDOE or the building owner, respectively, shall be assessed a penalty by DDOE of not more than \$100 for each day during which the required submission has not been made. Civil infraction fines, penalties, and fee may be imposed as alternative sanctions for such failure, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801 *et seq.* (“Civil Infractions Act”). Adjudication of an infraction shall be pursuant to the Civil Infractions Act.