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District of Columbia Proposes Penalties for Failure to Comply with New Building Energy Performance Standards

*By Amy O'Brien and Amy L. Edwards**

In this article, the authors discuss a proposal by the District of Columbia Department of Energy & Environment to establish a schedule of civil infractions for violations of the District of Columbia's building energy performance standards.

The District of Columbia Department of Energy & Environment (“DOEE”) has published a Notice of Proposed Rulemaking (“Proposed Rule”) to adopt Building Energy Performance Standards (“BEPS”) Program Infractions as amendments to Chapter 40 of Title 16 of the District of Columbia Municipal Regulations (“DCMR”). The Proposed Rule would establish a schedule of civil infractions for violations of the District of Columbia’s BEPS Program.

The BEPS Program was created under Title III of the Clean Energy DC Omnibus Amendment Act of 2018 (“CEDC Act”) to increase energy performance in existing buildings in furtherance of the District’s goal of reducing greenhouse gas emissions and energy consumption by 50 percent by 2032. To accomplish this goal, the CEDC Act directed DOEE to establish property types and corresponding BEPS for each property type to set a minimum threshold for energy performance.

Beginning January 2021, the BEPS apply to all privately owned buildings with at least 50,000 gross square feet, as well as all District of Columbia-owned or District of Columbia instrumentality-owned buildings with at least 10,000 square feet of gross floor area.

By January 2027, all privately owned buildings of at least 25,000 square feet will be subject to the BEPS Program. Buildings that meet these size thresholds are required to benchmark their energy use and demonstrate energy performance above a DOEE-established baseline. Properties that do not demonstrate compliance with the BEPS have five years to complete the requirements of compliance pathway established by DOEE. However, buildings subject to the January 2021 compliance cycle are eligible for an additional one-year compliance delay due to the COVID-19 pandemic.

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PROPOSED PENALTIES

The Proposed Infractions Rule sets forth the following schedule of civil infractions for violations of the BEPS Program:

Class of Infraction	BEPS Violation	Fines
Class 1 Infraction	» implementation of a compliance measure that poses a threat to the health and safety of a building occupant or user	For Class 1 infractions, the fines range from \$2,000 for the first offense to \$16,000 for the fourth and subsequent offenses.
Class 2 Infraction	» failure to submit selection of a compliance pathway to DOEE	For Class 2 infractions, the fines ranges from \$1,000 for the first offense to \$8,000 for the fourth and subsequent offenses.
	<ul style="list-style-type: none"> » failure to submit a report on completed actions for a performance or standard target pathway to DOEE » failure to submit an energy audit for a prescriptive pathway to DOEE » failure to submit an action plan for a prescriptive pathway to DOEE » failure to submit an implementation report for a prescriptive pathway to DOEE » failure to submit an evaluation, monitoring and verification report for a prescriptive pathway to DOEE » failure to submit additional documentation for an approved prescriptive pathway to DOEE 	

Class 3 Infraction	<ul style="list-style-type: none"> » failure to submit documentation for an alternative compliance pathway to DOEE » failure to submit supporting documentation to DOEE » failure to submit a complete and accurate plan or report or complete and accurate documentation » failure to provide a buyer of a building with information prior to a transfer or sale 	For Class 3 infractions, the fines range from \$500 for the first offense to \$4,000 for the fourth and subsequent offenses.
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CONSIDERATIONS AND NEXT STEPS

On a related front, DOEE also has published its final BEPS Compliance and Enforcement Guidebook for BEPS Compliance Cycle 1 (“Guidebook”).¹ The Guidebook contains policies, procedures, examples and technical information to assist property owners in understanding the requirements, compliance pathways and enforcement methods of the BEPS Program.

Owners whose properties are subject to the BEPS Program should review the Guidebook carefully to ensure compliance. Owners can also track the compliance status of their buildings through DOEE’s Building Owner Portal.² These resources can assist property owners in understanding their obligations under the BEPS Program and determining what tasks remain to be completed within the compliance cycle.

Finally, District of Columbia landlords and tenants should review their commercial and residential property leases to determine whether their lease agreements contain provisions relating to which party is responsible for ensuring the property’s compliance with the BEPS Program.

These provisions should also contain explicit language regarding which party will be responsible for payment of any fines assessed by DOEE for violation(s) of the BEPS. Shared responsibility for any BEPS fines or fees may be preferable since tenant activities typically account for significant energy usage.

CONCLUSION

In summary,

¹ https://dc.beam-portal.org/helpdesk/kb/BEPS_Guidebook/.

² https://dc.beam-portal.org/helpdesk/kb/building_owner_portal/.

- The DOEE has published a Proposed Rule to establish a schedule of civil infractions for violations of the District's BEPS Program.
- Beginning January 2021, the BEPS apply to all privately owned buildings with at least 50,000 gross square feet, as well as all District-owned or District instrumentality-owned buildings with at least 10,000 square feet of gross floor area.
- By January 2027, all privately owned buildings of at least 25,000 square feet will be subject to the BEPS Program. Properties that do not demonstrate compliance with the BEPS have five years to complete the requirements of compliance pathway established by DOEE.
- Owners whose properties are subject to the BEPS Program should review the Guidebook carefully to ensure compliance.
- Commercial and residential property leases should be reviewed to determine whether they explain which party is responsible for ensuring the property's compliance with the BEPS Program.