

**Office of Climate
Action,
Sustainability, and
Resiliency**

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**Rules and Regulations
Governing
Energy Efficiency in Commercial and
Multifamily Buildings**



Approvals

Grace Rink

Executive Director, Office of Climate Action, Sustainability & Resiliency

Hunter M. Brunson

Attorney for the City & County of Denver

Date of Final Signature / Effective Date: June 8, 2021

SECTION 1.0 – INTRODUCTION

1.1 Authority

This rule is adopted by the City and County of Denver Office of Climate Action, Sustainability, and Resiliency in accordance with the authority in Section 4-54 of the Denver Revised Municipal Code (“D.R.M.C.”).

1.2 Scope and Purpose

The purpose of this rule is to establish an Energy Efficiency Program that requires Covered Building Owners to benchmark building energy performance, and makes such energy performance information publicly available in order to raise awareness and encourage reductions in energy consumption.

SECTION 2.0 – DEFINITIONS

Except as noted below, words and phrases shall have the meaning assigned by the Charter of the City and County of Denver and the D.R.M.C. As used in this rule, the terms listed below shall have the following meanings:

- 2.1** *“Benchmarking”* means measuring a Covered Building’s energy performance using the ENERGY STAR Portfolio Manager tool.
- 2.2** *“Benchmarking Submission”* means the data submitted each year via the ENERGY STAR Portfolio Manager tool using a template and submission link to be distributed and publicized by CASR. All information expressly denoted as mandatory by either ENERGY STAR Portfolio Manager or CASR shall be included in the submission.
- 2.3** *“CASR”* means the Office of Climate Action, Sustainability, and Resiliency.
- 2.4** *“Covered Building”* means any building in the City and County of Denver with a Gross Floor Area that is twenty-five thousand (25,000) square feet or larger except the following:
 - A.** A building that was not occupied and did not have a certificate of occupancy or temporary certificate of occupancy for all twelve (12) months of the calendar year for which Benchmarking is required;
 - B.** A building that was not occupied, due to renovation, for all twelve (12) months of the calendar year for which Benchmarking is required;
 - C.** A building for which a demolition permit for the entire building has been issued and for which demolition work has commenced on or before the date the Benchmarking report is due;
 - D.** A building that is presently experiencing qualifying financial distress, as defined by any of the following: (1) the building is the subject of a qualified tax lien sale or public auction due to property tax arrearages; (2) the building is controlled by a court appointed receiver; or (3) the building has been acquired by a deed in lieu of foreclosure;
 - E.** A building that had an average physical occupancy of less than sixty (60) percent throughout the calendar year for which Benchmarking is required;

- F. A building that is used primarily (50% or greater of energy consumption) for industrial or agricultural processes; and
 - G. A building for which the Owner can demonstrate that its energy performance is a confidential business practice that includes trade secrets, privileged, or confidential commercial information. In order to qualify for this exemption, the building Owner shall specifically identify the information it believes to be confidential and provide a written statement describing the manner in which public disclosure would cause substantial harm to the Owner's competitive position. Inefficient energy usage alone will not be considered confidential commercial information.
- 2.5 **“Covered Municipal Building”** means a Covered Building that is owned or operated by the City and County of Denver.
- 2.6 **“Energy Efficiency Program”** means the administrative program implemented by CASR requiring the Benchmarking and reporting of energy consumption in commercial and multifamily buildings with a Gross Floor Area that is twenty-five thousand (25,000) square feet or larger within the City and County of Denver.
- 2.7 **“ENERGY STAR Portfolio Manager”** means the online tool created by the US Environmental Protection Agency used to measure and track a building’s energy use, water consumption, and greenhouse gas emissions.
- 2.8 **“Energy Use Intensity” or “EUI”** means a building’s energy use expressed as energy per square foot per year as a function of its size and other characteristics. A building’s EUI is calculated by dividing the total energy consumed by the building in one year (measured in kBtu or GJ) by the total gross floor area of the building
- 2.9 **“Gross Floor Area”** means the total property square footage, measured between the principal exterior surfaces of the enclosing fixed walls of a building, as defined in the ENERGY STAR Portfolio Manager definitions.
- 2.10 **“Executive Director”** means the executive director of the Office of Climate Action, Sustainability, and Resiliency of the City.
- 2.11 **“Owner”** means the person or entity having a legal or equitable interest in real property and its fixtures and appurtenances.

SECTION 3.0 – REQUIREMENTS

3.1 Initial Compliance Dates

Owners of Covered Buildings shall begin annual Benchmarking of building energy usage on the following dates, as set forth in D.R.M.C. § 4-53:

- A. Owners of Covered Municipal Buildings shall begin reporting by June 1, 2017 for the 2016 calendar year.
- B. Owners of Covered Buildings, other than Covered Municipal Buildings, with a Gross Floor Area greater than 50,000 square feet shall begin reporting by June 1, 2017 for the 2016 calendar year.

- C. Owners of Covered Buildings, other than Covered Municipal Buildings, with a Gross Floor Area between 25,000 and 50,000 square feet shall begin reporting by June 1, 2018 for the 2017 calendar year.

3.2 Compliance Process

Owners of Covered Buildings must report each such building's energy use annually for the previous calendar year using the ENERGY STAR Portfolio Manager in accordance with the ENERGY STAR Portfolio Manager's instructions (located at the following web address: <https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>), unless otherwise specified. No later than June 1st of each year, Owners of Covered Buildings must complete the following steps in the ENERGY STAR Portfolio Manager for each such building:

- A. Create or update a building profile with all building details, including any building identification number that may be supplied by CASR.
- B. Enter all space types, with applicable Gross Floor Area, calculated in accordance with the ENERGY STAR Portfolio Manager's definition of Gross Floor Area, and any further guidance that CASR may provide.
- C. Enter energy use data for the whole building for the previous calendar year such that it encompasses January 1st to December 31st of that year.
 - i. If whole-building data are unavailable from a utility for a given energy type, or if an Owner wishes to verify utility-supplied data, then for any tenant-occupied space that is separately metered for such energy type, Owners of Covered Buildings shall request such data from such tenants for the previous calendar year.
 - ii. If an Owner required to request tenant data under this section receives notice that a tenant intends to vacate a building before the end of the calendar year, the Owner must request from said tenant any necessary energy use or space use data from January 1st of that year to the date the tenant vacates the space.
- D. For multiple buildings on a single tax parcel and buildings on multiple tax parcels that share meters, Owners shall report energy use as follows:
 - i. Owners must report individually in the ENERGY STAR Portfolio Manager any buildings that are separately metered or sub-metered for all energy types.
 - ii. Owners must report individually in the ENERGY STAR Portfolio Manager any buildings for which one or more types of energy are not separately metered or sub-metered, with any energy use that is not separately metered or sub-metered apportioned by Gross Floor Area, whenever such energy use can be reasonably apportioned by this method. The apportioned data shall be marked as an estimation.
 - iii. For any building that does not fit within either of the above circumstances, or any building within a campus type that is eligible for an ENERGY STAR Portfolio Manager score as a campus, the Owner may report as a campus in the ENERGY STAR Portfolio Manager.
- E. Submit a completed Benchmarking Submission to CASR by June 1st of each year. The submission shall be through the ENERGY STAR Portfolio Manager using a template and

submission link to be distributed and publicized by CASR. Owners must report all information expressly denoted as mandatory by either the ENERGY STAR Portfolio Manager or CASR, which may include:

- i. Basic descriptive information to track compliance with this rule, including the building address, Gross Floor Area, primary use type, and the name of the individual or entity making the submission;
 - ii. Annual energy usage information, including, ENERGY STAR Portfolio Manager score, where available, site EUI, source EUI, weather normalized site EUI, weather normalized source EUI, and total annual greenhouse gas emissions; and
 - iii. The fields needed for each building type to verify the accuracy of an ENERGY STAR Portfolio Manager score.
- F. Before making a Benchmarking Submission, the Owner shall run all automated data quality checker functions available within the ENERGY STAR Portfolio Manager tool, and shall correct all identified missing or incorrect information.
- G. Any Owner requesting an exemption from Benchmarking shall provide CASR any and all documentation requested to substantiate the request or otherwise assist CASR in determining whether an exemption applies. Any exemption approved by CASR shall be limited to the Benchmarking Submission for which the request was made and shall not extend to past or future submissions.
- H. When a building changes ownership, the previous Owner shall transfer any existing ENERGY STAR Portfolio Manager property profile to the new Owner along with any energy and space use data that has been collected and is necessary for completing the next required Benchmarking Submission. Each new Owner shall request that the property profile be transferred to their ENERGY STAR Portfolio Manager account.

3.3 Data Verification

Owners of Covered Buildings shall maintain the following records for a period of at least five (5) years, and shall make such records available for inspection during business hours upon reasonable notice from CASR:

- A. ENERGY STAR Portfolio Manager account data;
- B. Proof of tenant data requests for energy or space use attribute data from any separately-metered tenants; and
- C. Any back-up information substantiating the energy data and space use attribute information entered into the ENERGY STAR Portfolio Manager.

3.4 Enforcement and Penalties

CASR will notify an Owner of errors in data the Owner has submitted to CASR, including but not limited to, energy use data, use attributes, building information, calculations, or results. The Owner shall have thirty (30) calendar days upon receipt of such notification to correct such errors, submit the updated report CASR, and notify CASR of the updated submission. Failure to correct the errors or failure to submit a report shall be a violation of this rule subject to the penalties set forth in D.R.M.C. § 4-9.