

**DEPARTMENT OF THE ENVIRONMENT
AIR AND RADIATION ADMINISTRATION**

Response to Comments

On the Proposed Regulations under COMAR 26.28, pertaining to Building Energy
Performance Standards (BEPS)
Public Hearing Held Virtually on October 9, 2024

Purpose of Hearing: The purpose of the public hearing was to allow for public comment on the Maryland Department of the Environment's (the Department or MDE) proposal to adopt Regulation .01-.04 under new Subtitle COMAR 26.28 Building Energy Performance Standards and the withdrawal of the proposed 2023 Building Energy Performance Standards..

The proposed action creates the Maryland Building Energy Performance Standards (BEPS) as required by the Env't. § 2-1601, *et seq.*, which is part of the Climate Solutions Now Act (CSNA) of 2022. The goal is to reduce direct greenhouse gas (GHG) emissions from Maryland's building sector for certain buildings that are 35,000 square feet or larger. The proposed regulation requires covered building owners to measure and report data to the Maryland Department of the Environment (MDE). The proposed regulation further requires that covered building owners meet specific net direct GHG emissions standards. This proposed regulation would help to achieve Maryland's goal of net-zero GHG emissions by 2045. The proposed regulation also contains record keeping and reporting requirements for electric and gas companies and district energy providers.

Date and Location: The public hearing was held virtually on October 9, 2024, at 1 p.m. GoToMeeting – Event Access Code: 522-777-173 - the Maryland Department of the Environment.

Attendance: Allison Tjaden of MDE served as the hearing officer. Other MDE attendees were Chris Hoagland, Mark Stewart, Zach Berzolla, Sam Furio, Christopher Mentzer, and Kelsey Sisko. The court recorder was Melissa Dunn. For the public in attendance see list of attendees attached. There were also 12 people that called in over the phone and may not be named.

Statement: The Department's statement was read by Dr. Zachary Berzolla, Head of the Building Decarbonization Section in the Climate Change Program, the Air and Radiation

Administration, Department of the Environment. A transcript of the meeting has been prepared by For the Record, Inc. White Plains MD.

Comments and Responses:

Comments were received from:

Aaron Mintzes - Maryland Resident
Josh Tulkin - Sierra Club
David Tooley - MedStar Health
Jeanne Anderegg - Grosvenor Park III Condominiums
Jeannie Morris - Vicinity Energy
Tom Ballentine - NAIOP
Miriam Hamilton - The Promenade Towers
Kim Coble - Maryland League of Conservation Voters
Brian Anleu - AOBA & MMHA
Scott Waitlevertch -Columbia Gas of Maryland (Columbia) and Chesapeake Utilities Corporation (Chesapeake Utilities)
Lawrence Bernard - Maryland Resident
Jim Lieberman - Maryland Resident
Brittany Baker - Chesapeake Climate Action Network
James Starke - Best Western Plus, BWI, Arundel Mills, Howard CO
Rick Briemann - Atlantic Realty Group
Kevin Walton - Climate Coalition of MoCo
Emily Scarr - Maryland PIRG
Joel Rosenberg - Rewiring America
Chris Parts - AIA Maryland
Maddie Smith - Interfaith Power and Light
Jared Lyles - MD Energy Advisors
Mike O'Halloran - MAPDA
Sheldon Fishman - Maryland Resident
Ben Roush - FSI Engineers
Marianne Mulcahey - Maryland Resident
Allison Ciborowski - LeadingAge Maryland & LifeSpan Network
Eleanor Zwart - Cloudbreak
Aleks Casper - American Lung Association
Rochelle Ginsburg
David Geiman

Thomas Lipka
Stephen E. Budorick - COPT Defense Properties
Michael Gulich - MGM National Harbor
Michael O'Halloran - The Mid-Atlantic Petroleum Distributors Association (MAPDA)
Jeff Fraley - Baltimore Industrial Group (BIG)
Adam Skolnik - Maryland Multi-Housing Association (MMHA)
Carol Armstrong - Maryland Resident
Paul Plymouth - Verizon
Garrett O'Day - Maryland Catholic Conference
Dennis Knight - ASHRAE
Michael Huber - Johns Hopkins University (JHU)
Michael Huber - Johns Hopkins Health System (JHHS)
Susan Jones - Hotel Motel Restaurant Association
Mary Jo Kishter - Prince George's Dept. of Parks and Recreation
Daniel Dalgo - LifeBridge Health
Erin Sherman - RMI
Doug Lane - Maryland Resident
Young Novalis - Maryland Resident
Stuart Kaplow - Stuart Kaplow Attorneys at Law
Elizabeth Egan - Johns Hopkins University Applied Physics Lab
Henry Jordan - Leisure World Community Corporation
Senator Mary Beth Carozza - *(District 38 – Somerset, Wicomico & Worcester Counties)*
Jennifer Driban - National Aquarium
Manny Geraldo - Washington Gas
Geoffrey A Gallo - AstraZeneca
Guy Andes - BGE
Brian Noonan - Bloom Energy
Maryland Coalition for Inclusive Energy Solutions (MCIES)
Bryan Dunning - Center for Progressive Reform
Gracie Tilman - U.S. Green Building Council
Andy Winslow - NEEP
Maryland Chamber of Commerce
Andrew Nicklas - Maryland Hospital Association
Kelly Schulz - The Maryland Tech Council (MTC)
William Gardner - Maryland Resident
Radney Blair - Maryland Resident
Tax Payer
Maryland Retailers Alliance (MRA)
J Block - Prime Partners Engineering
Susan Fischer - Maryland Resident

Jordan Garfinkle - Bloom Energy
Bertram Wilson - Energy Artisans
Michael C. Powell on behalf of Maryland Building Industry Association (MBIA)
Patricia Hampstead
Sarah Peters
Hannah Allen
The American Hotel & Lodging Association (AHLA) and the Maryland Hotel Lodging Association (MHLA)
Anthony Bertino - Worcester County Administration
Rachel DeMunda - MedStar Health
David Craig - Maryland Resident
Juli McCoy - Allegany County Chamber of Commerce
Matthew Young - Electronics Value Recovery
Bob Riley - W.R. Grace and Co
Y. Chang
Paul Frey - Washington County Chamber of Commerce
Gregory Contreras
James Raley

A summary of the comments received and the Department's responses to the comments are below.

In Support

Comment: Many commenters support the adoption of the BEPS regulation.

Response: The Department thanks you for your support.

Comment: Commenters urged the Department to finalize BEPS without delaying or weakening provisions.

Response: The Department agrees that adoption of the BEPS should not be delayed, but acknowledges that the process to propose and adopt Maryland BEPS requires broad stakeholder engagement and outreach, which will need to be sustained throughout the program's reporting period prior to the 2030 standards taking effect. The Department is also required to comply with various state laws and legislative enactments that dictate, in part, the timing of adopting the regulation.

Comment: Commenters stated that delaying the regulation any further will allow building owners to install inefficient and/or direct emissions equipment.

Response: Thank you for your comment.

Cost

Comment: Many commenters stated the upfront cost to comply with the BEPS regulation is too high and will impact their buildings, company, or condominium association, especially considering the unique needs and deferred maintenance on their buildings.

Response: The Department appreciates the public's concern with funding building improvements to meet the BEPS Standards. Maryland's Governor's Office, numerous state and local agencies, the Maryland Commission on Climate Change, and nonprofit and for profit organizations are collaborating to fill the financial need to meet the BEPS standards and other policies that are required to meet Maryland's climate goals. The state is working to secure historic levels of federal funding and develop mechanisms to make these and other funds accessible to the public to ensure that no one is left behind in the transition to a clean energy economy. One of these mechanisms, the Clean Buildings Hub within the Maryland Energy Administration, will specifically house decarbonization incentive opportunities for Maryland's entire building sector. The Clean Buildings Hub is seeking feedback from Maryland's building owners and managers on the types of resources that will help them take action to reduce on-site energy use and greenhouse gas emissions. This data will help the Hub understand market needs, which will in turn help shape scope and strategy. Additionally, the CSNA established a Building Energy Transition Implementation Task Force, which released a final report in January 2024 with recommendations for the Governor and Legislature on policies and programs to help support this financial need. In addition to the funding Maryland is working to secure, there are resources that individuals can take advantage of today. The Inflation Reduction Act (IRA) provides substantial tax credits and rebates to support efficiency and electrification projects for households that will buy down a substantial portion of costs. The IRA includes both tax credits for qualified upgrades and up to \$14,000 in rebates per household, which could potentially apply to individually-owned equipment, for example in condominiums. For commercial buildings, the IRA greatly expanded the 179D tax deduction, including making it available for all non-profits and increasing the maximum deduction to \$5 per square foot. Additionally, the CSNA established the Climate Catalytic Capital Fund within the Maryland Clean Energy Center to help provide low-cost financing for building improvements. The EmPOWER Maryland program also provides substantial incentives for projects that reduce greenhouse gas emissions from buildings.

Building owners can engage private companies to help organize and fund their retrofits through Energy Savings Performance Contracting (ESPC) or similar pay-with-savings programs. With most ESPCs, an energy services company pays for the project upfront, and the building owner pays the company back over time, leveraging energy cost savings that resulted from the project. For more information, see the U.S. DOE's page on ESPCs: <https://www.energy.gov/scep/slsc/energy-savings-performance-contracting>. ESPCs, when combined with existing resources, could help buildings achieve BEPS standards while reducing monthly costs.

New water heaters, space heating and cooling equipment, cooking equipment, and laundry machines are all equipment that is periodically replaced and would almost certainly be replaced at least once between now and 2040. The typical Maryland home that replaces fuel-burning or electric resistance heaters with heat pumps save approximately \$1,000 annually in energy costs.

Comment: Commenters stated that Maryland should institute additional funding resources, including a state grant program, matching 179D tax credit, incentives for buying American-made equipment, etc., to enable buildings to decarbonize and/or additional financial assistance for non-profits and other building types.

Response: Tax credits are outside of the Department's authority and the legislature has not allocated funding to allow MDE to fund state grants. However, the Department appreciates the public's and non-profits' concern with funding building improvements to meet the BEPS Standards. The Maryland's Governor's Office, numerous state and local agencies, the Maryland Commission on Climate Change, and nonprofit and for profit organizations are collaborating to fill the financial need to meet the BEPS standards and other policies that are required to meet Maryland's climate goals. The state is working to secure historic levels of federal funding and develop mechanisms to make these and other funds accessible to the public to ensure that no one is left behind in the transition to a clean energy economy. One of these mechanisms, the Clean Buildings Hub within the Maryland Energy Administration, will specifically house decarbonization incentive opportunities for Maryland's entire building sector. The Clean Buildings Hub is seeking feedback from Maryland's building owners and managers on the types of resources that will help them take action to reduce on-site energy use and greenhouse gas emissions. This data will help the Hub understand market needs, which will in turn help shape scope and strategy. Additionally, the CSNA established a Building Energy Transition Implementation Task Force, which released a final report in January 2024 with recommendations for the Governor and Legislature on policies and programs to help support this financial need. In addition to the funding Maryland is working to secure, there are resources that individuals can take advantage of today. The Inflation

Reduction Act (IRA) provides substantial tax credits and rebates to support efficiency and electrification projects for households that will buy down a substantial portion of costs. The IRA includes both tax credits for qualified upgrades and up to \$14,000 in rebates per household, which could potentially apply to individually-owned equipment, for example in condominiums. For commercial buildings, the IRA greatly expanded the 179D tax deduction, including making it available for all non-profits and increasing the maximum deduction to \$5 per square foot. Additionally, the CSNA established the Climate Catalytic Capital Fund within the Maryland Clean Energy Center to help provide low-cost financing for building improvements. The EmPOWER Maryland program also provides substantial incentives for projects that reduce greenhouse gas emissions from buildings.

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Comment: Commenters stated that reporting requirements for electric and gas companies will increase the cost of utility service for customers.

Response: Electric and gas companies including BGE, PEPCO, and Washington Gas are already working to provide benchmarking data to building owners due to existing policies such as Montgomery County's benchmarking program. Maryland's BEPS is not expected to significantly increase costs for utility companies or rates for utility customers. Additionally, the Public Service Commission reviews all regulated utility spending and has been a critical partner throughout the development and implementation of BEPS.

Comment: Commenters stated that the regulations are not cost effective and/or have long payback periods.

Response: Based on a study by the U.S. Department of Energy's Lawrence Berkeley National Lab, efficient electrification of covered buildings will lead to cost savings for most covered building owners, in addition to achieving the regulation's purpose of reducing pollution. The Department acknowledges the many unique situations across the covered buildings in Maryland and is working with the General Assembly to give the Department the authority to provide additional alternative compliance pathways. These efforts may include an analysis on the return on investment or cost-effectiveness of retrofits. The Department is also working with other state agencies, like the Maryland Energy Administration and its Clean Buildings Hub to help building owners navigate the funding for covered buildings to help defray the cost of upgrades.

Comment: Commenters stated the BEPS regulation will increase energy costs.

Response: Based on a study by the U.S. Department of Energy's Lawrence Berkeley National Lab, efficient electrification of covered buildings will lead to cost savings for most building owners. This analysis included energy costs. Furthermore, an additional study by the U.S. Department of Energy's Lawrence Berkeley National Laboratory found that efficiently meeting Maryland's BEPS standards will reduce peak electricity demand 6% by 2040. By reducing peak electricity demand, the need for ratepayer funded grid improvements are reduced which can help lower overall energy costs.

Comment: A commenter stated the cost per square foot estimates for multifamily are too low, based on analysis for New York City Local Law 97 which had a midpoint of \$33.79/ft² versus \$14/ft² for the Department's estimates.

Response: The Department appreciates this data point. However, it notes that jurisdictions all have different BEPS requirements that affect compliance costs. Furthermore, the cost to retrofit buildings in New York City will be different than those in Maryland due to a multitude of factors including cost of labor, infrastructure access, density, building size and complexity, etc. Additionally, unless specifically designed to be representative, costs of compliance from case studies do not capture the average cost of retrofitting buildings across 80+ property types and the entire State of Maryland.

Comment: A commenter stated federal regulations that just passed will increase energy costs next year.

Response: The Department is unsure which federal regulations are being referred to in this comment. With regards to the energy cost analysis, the Department engaged the U.S. Department of Energy's Lawrence Berkeley National Laboratory (LBNL) and

Pacific Northwest National Laboratory (PNNL) to conduct a state-of-the-art analysis for the regulation at the state-scale. Electric and gas price forecasts were based on the latest data available to the Department when it was carried out.

Comment: Commenters stated that the cost impacts on hospitals, health care facilities, and life science and technology are high and/or there should be a reduced alternative compliance fee or overall exemption for these sectors.

Response: The Department acknowledges the critical role of buildings that serve the healthcare and life science and technology industries and recognizes the unique needs for these buildings. Based on a study by the U.S. Department of Energy's Lawrence Berkeley National Lab, efficient electrification of covered buildings will lead to cost savings for most building owners. The Department is working with the General Assembly to give the Department the authority to provide additional alternative compliance pathways that could be utilized by these buildings. The Department is also working with other state agencies and the Clean Buildings Hub to help building owners navigate the funding for covered buildings to help defray the cost of upgrades.

Comment: Commenters stated that the regulation would increase housing costs and would especially have an impact on vulnerable populations such as low-income households and senior citizens.

Response: The regulation provides an "Exemption for Affordable Housing Providers" (COMAR 26.28.04.02.C) to address the unique needs for such buildings. The Department is working closely with the Maryland Department of Housing and Community Development (DHCD) to address unique challenges for affordable housing providers while still ensuring that economic and environmental benefits of Building Energy Performance Standards are felt by Maryland's low-income households. Per the introduction in TM24-01, the Department is convening a series of stakeholder working groups to further inform and refine a variety of topics, one of which is affordable housing providers. As an outcome of these working group processes, the Department will publish subsequent supplemental resources, white papers, and instructional tools to support BEPS implementation. The Department will consider incorporating any findings of these working groups into future updates to the regulation and its accompanying Technical Support Documentation. To sign up for the working group, please visit the Department's BEPS webpage and sign up for the upcoming sessions via the informational session signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Comment: Commenters stated that their buildings cannot support electrification without costly electric panel upgrades that could affect usability of the building.

Response: The Department recognizes that there are many unique needs among the 9,000+ covered buildings in the State. The Department has established performance standards and given buildings the flexibility to meet those standards any way they choose. This allows a building owner to determine when it is preferable to upgrade and when it is preferable to make the alternative compliance payment and weigh additional factors such as usability. Additionally, the regulation includes opportunities for certain building owners to obtain exemptions for affordable housing, buildings with low occupancy rates, and buildings in financial distress. Env't. § 2-1602 requires the Department to create a BEPS regulation with direct emissions standards and the only authorized alternative compliance pathway was for buildings to make a payment for excess emissions at the social cost of greenhouse gases. However, the Department acknowledges the many unique situations across the covered buildings in Maryland and is working with the General Assembly to give the Department the authority to provide additional alternative compliance pathways.

Comment: Commenters stated additional financial incentives recommended by the Building Energy Transition Task Force should be provided to building owners.

Response: The Climate Solutions Now Act of 2022, of which Env't. § 2-1602 is a part, required that the Department create the Building Energy Transition Implementation Task Force. The Task Force appointed members met throughout 2023 to recommend programs, policies, and incentives aimed at reducing greenhouse gas emissions from the buildings sector and published its final report to Governor Wes Moore and the Maryland General Assembly. The full report is available here: <https://mde.maryland.gov/programs/air/ClimateChange/Pages/BETITF.aspx>. Together across Maryland State government and with the General Assembly, the Department is actively pursuing opportunities to implement the recommendations which reflect the reality that the building energy transition will require significant financial, technical, and practical solutions.

Comment: Commenters stated that the retrofits needed to improve government buildings subject to BEPS will be funded by taxpayers and therefore BEPS is a tax increase.

Response: The Department disagrees with the presumption that an initial increase in the cost of building improvements will cause a tax increase. Even if an initial increase in the cost of building improvements were to occur, compliance costs are not taxes. Per

Maryland's Declaration of Rights, a tax or a fee may only be imposed with the "the consent of the Legislature." Md. Const. Decl. of Rts. art. 14. To the extent that compliance costs are to be interpreted as a tax, the Department was explicitly authorized to implement such tax in the form of building regulations as authorized under the statute." Furthermore, based on a study by the U.S. Department of Energy's Lawrence Berkeley National Lab, efficient electrification of covered buildings to meet the BEPS standards will lead to cost savings for most building owners, including government owned buildings. Taxpayers are currently paying for inefficient, polluting equipment to condition government buildings. By improving the performance of state buildings to meet BEPS, future taxpayer dollars can go towards additional public needs instead of state building utility costs.

Comment: Commenters stated the cost of removing fossil fuel equipment from Maryland's buildings will be much lower than the societal costs of inaction. By improving Maryland's covered building stock, the state can reduce adverse health effects and increase the amount of public funding available to fund additional improvements.

Response: Thank you for your comment.

Comment: A commenter stated that when modeling costs, individual building owners should consider the costs they would already face due to the natural lifecycle of mechanical systems. If a building was not required to improve performance by BEPS, they would still face mechanical system upgrade and replacement costs.

Response: Thank you for your comment.

Additional Resources

Comment: Commenters stated building owners need additional support including guidance and/or technical assistance navigating complex measures.

Response: The Department has and will continue to convene working groups to solicit feedback from stakeholders. These working groups will inform technical support documentation that will accompany the BEPS regulation and provide additional guidance. The Department will convene these working groups throughout the initial reporting period (2025-2029), prior to the 2030 performance standards taking effect. Additionally, the EPA ENERGY STAR Program offers ongoing technical assistance through its free online training, helpdesk, and tools. Available recordings from working group sessions will be uploaded to the Department's BEPS YouTube Playlist for reference. For more specific guidance and technical assistance, the Department refers

building owners to the Maryland Energy Administration's Clean Buildings Hub. The Hub was specifically created by the Climate Solutions Now Act of 2022 to be the technical resource center to help building owners decarbonize and meet the BEPS requirements. The Hub is designed to provide the first-mile of support to building owners across the state.

Comment: A commenter stated the Department should recommend building owners use ASHRAE standards and resources to assist in BEPS compliance

Response: BEPS is a performance-based standard and building owners can choose to meet the standards any way they see fit. That being said, the Maryland Energy Administration's Clean Buildings Hub will be centralizing resources to help building owners comply with the BEPS regulation and this could include ASHRAE resources.

Comment: Commenters stated that the economic analysis used by the Department should not be used to set incentives provided by the State.

Response: The Department appreciates the public's concern with funding building improvements to meet the BEPS Standards. While the economic analysis provides the best representation of the economic impacts of the regulation, this will not be the driving factor in funding levels. Maryland's Governor's Office, numerous state and local agencies, the Maryland Commission on Climate Change, and nonprofit and for profit organizations are collaborating to fill the financial need to meet the BEPS standards and other policies that are required to meet Maryland's climate goals. The state is working to secure historic levels of federal funding and develop mechanisms to make these and other funds accessible to the public to ensure that no one is left behind in the transition to a clean energy economy. One of these mechanisms, the Clean Buildings Hub within the Maryland Energy Administration, will specifically house decarbonization incentive opportunities for Maryland's entire building sector. The Clean Buildings Hub is seeking feedback from Maryland's building owners and managers on the types of resources that will help them take action to reduce on-site energy use and greenhouse gas emissions. This data will help the Hub understand market needs, which will in turn help shape scope and strategy. Additionally, the CSNA established a Building Energy Transition Implementation Task Force, which released a final report in January 2024 with recommendations for the Governor and Legislature on policies and programs to help support this financial need. In addition to the funding Maryland is working to secure, there are resources that individuals can take advantage of today. The Inflation Reduction Act (IRA) provides substantial tax credits and rebates to support efficiency and electrification projects for households that will buy down a substantial portion of costs. The IRA includes both tax credits for qualified upgrades and up to \$14,000 in

rebates per household, which could potentially apply to individually-owned equipment, for example in condominiums. For commercial buildings, the IRA greatly expanded the 179D tax deduction, including making it available for all non-profits and increasing the maximum deduction to \$5 per square foot. Additionally, the CSNA established the Climate Catalytic Capital Fund within the Maryland Clean Energy Center to help provide low-cost financing for building improvements. The EmPOWER Maryland program also provides substantial incentives for projects that reduce greenhouse gas emissions from buildings.

Building owners can engage private companies to help organize and fund their retrofits through Energy Savings Performance Contracting (ESPC) or similar pay-with-savings programs. With most ESPCs, an energy services company pays for the project upfront, and the building owner pays the company back over time, leveraging energy cost savings that resulted from the project. For more information, see the U.S. DOE's page on ESPCs: <https://www.energy.gov/scep/slsc/energy-savings-performance-contracting>. ESPCs, when combined with existing resources, could help buildings achieve BEPS standards while reducing monthly costs.

New water heaters, space heating and cooling equipment, cooking equipment, and laundry machines are all equipment that is periodically replaced and would almost certainly be replaced at least once between now and 2040. The typical Maryland home that replaces fuel-burning or electric resistance heaters with heat pumps save approximately \$1,000 annually in energy costs.

Comment: Commenters stated that the state will need to do more in the coming years to expand incentives, support, and education for building owners. Including publishing approved vendor lists.

Response: The Department and numerous state and local Agencies, the Maryland Commission on Climate Change, nonprofit and for profit organizations are collaborating together to address the financial need to meet the BEPS standards and other policies that are required to meet Maryland's climate goals. The State is applying for historic levels of federal funding to assist in this clean energy transition and are developing mechanisms to make these funds accessible to the public. The Maryland Energy Administration's Clean Buildings Hub will specifically house decarbonization incentives for Maryland's entire building sector. The Clean Buildings Hub is seeking feedback from Maryland's building owners and managers on the types of resources that will help them take action to reduce on-site energy use and GHG emissions. This data will help the Hub understand market needs, which will in turn help shape scope and strategy.

Exemptions

Comment: Commenters stated that an additional property type(s) should be added to the list of property types exempt from BEPS requirements.

Response: The Department disagrees with the proposition that additional property types should be exempted from the BEPS regulation. Env't. § 2-1602 calls for commercial, multifamily, and state-owned buildings in the State 35,000 square feet or larger (excluding any parking garage area) to be included. The legislature debated categories of exemptions and provided exemptions for historic properties, public or nonpublic elementary or secondary school buildings, manufacturing buildings, and agricultural buildings. The Department has considered additional categories recommended through its extensive stakeholder process and added provisions to the BEPS regulation to account for various building type-specific concerns.

Comment: A commenter stated that additional flexibilities should be granted for bona fide faith-based or religious organizations.

Response: Env't. § 2-1601 specifically calls for commercial, multifamily, and state-owned buildings in the State 35,000 square feet or larger (excluding any parking garage area) to be included. The legislature debated categories of exemptions and provided exemptions for historic properties, public or nonpublic elementary or secondary school buildings, manufacturing buildings, and agricultural buildings. The regulation has followed the guidance of the law in exempting these buildings. Furthermore, the legislature explicitly considered if churches and similar facilities should be covered, and the legislature decided to keep these building types covered by the law.

Comment: Commenters stated that exemptions requests are not required by the CSNA and questioned the ability of the Department's staff to process exemption requests if there are not enough staff to process alternative compliance plans.

Response: The Department was granted staff to implement and adopt a BEPS regulation in accordance with the requirements Env't. § 2-1602. While the CSNA noted specific building types that were exempt from the regulations, how these exemptions are implemented is within the Department's jurisdiction. Given the unique nature of large buildings across Maryland, the Department has determined that to properly identify exempt buildings a case-by-case review is necessary. Thus, the Department has specified that exemption requests will need to be submitted to and reviewed by the Department to ensure the candidate property accurately meets the definitions of an exempt property type within BEPS. The staff time required to review exemption

requests is much less than the time and experience required to review detailed alternative compliance plans. The specific property type exemptions were required by the BEPS statute (Env't. § 2-1602).

The Department will consider buildings who have submitted bona fide exemption requests to be in compliance with the reporting deadline while the exemption is under review. If the building is determined not exempt, building owners will be required to provide any prior year benchmarking reports by the next June 1 reporting deadline.

Comment: Commenters stated that the exclusion of electric vehicle charging from benchmarking is not authorized by the statute.

Response: The energy exclusion for electric vehicle charging was developed based on best practices from the U.S. Environmental Protection Agency's (EPA) ENERGY STAR Portfolio Manager, aligning with how the EPA recommends buildings benchmark. The Department used its authority under Env't. § 2-1602(c)(2) to "include special provisions or exceptions to account for ... critical infrastructure" to exclude electric vehicle charging from benchmarking. Electric vehicle charging equipment is generally considered to be critical infrastructure.

The BEPS regulation is adopted under the CSNA. The purpose of the CSNA is to reduce statewide GHG emissions. CSNA, 2022 Maryland Laws Ch. 38 (S.B. 528). This regulation addresses the direct fuel use in the building sector, which was responsible for 16% of Maryland's GHG emissions in 2020. The transportation sector accounted for 35% of Maryland's GHG emissions in 2020 with most emissions (82%) in this sector coming from on-road vehicles powered by gasoline or diesel. MDE has determined it is appropriate to exclude energy usage associated with vehicle charging at building parking spaces from building benchmarking where the building owner has committed to otherwise supporting the reduction of GHG emissions in the transportation sector by installing EV charging stations.

Comment: Commenters stated the Department should exempt all-electric buildings with no direct emissions, and/or ones that are master metered and greater than 40 years old.

Response: Env't. § 2-1602 requires all covered buildings to submit data to the Department regardless of direct emissions levels. The Department's analysis demonstrates that approximately one-third of buildings already meet the direct emissions standards for 2040. To meet the requirements of the BEPS statute (Env't. § 2-1602) and to conduct the analyses and reports required by the FY2025 Budget, these

buildings are still required to submit benchmarking data to the Department. These analyses will include further study of a variety of factors, including building age.

Comment: A commenter stated the Department does not have a process in place to apply for and receive confirmation of exemption from BEPS compliance.

Response: As stated in Appendix A of the Technical Support Document (TM24-01), building owners who believe they fall under an exemption category can submit their request to the Department along with supporting documentation. Once the regulation is finalized, the Department will make these request forms available online. Each exemption request will be thoroughly evaluated and a decision sent to the requestor. Additionally, the Department is convening an Exemption Process Working Group in 2024 that will continue into 2025. To sign up for the working group, please visit the Department's BEPS webpage and sign up for the upcoming sessions via the informational session signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Comment: A commenter asked if buildings owned by utilities are exempt from the BEPS standards.

Response: Exemptions will be made on a case-by-case basis and the Department cannot make determinations without submission of data about the building. These exemption requests will be made available when the regulation is finalized. The Department recommends building owners review the definitions for each property type (including utility) provided by Portfolio Manager:

<https://www.energystar.gov/buildings/benchmark/understand-metrics/property-types#Utility>. Note that in general, an office building over 35,000 ft² owned by a utility would be considered an office building and is therefore not exempt.

Comment: A commenter stated the intent of the Climate Solutions Now Act was to exempt privately owned buildings that are leased to a federal government agency or private contractor supporting a federal government agency.

Response: Env't. § 2-1602 specifically calls for commercial, multifamily, and state-owned buildings in the State 35,000 square feet or larger (excluding any parking garage area) to be included. The legislature debated categories of exemptions and provided exemptions for historic properties, public or nonpublic elementary or secondary school buildings, manufacturing buildings, and agricultural buildings. The regulation has followed the guidance of the law in exempting these buildings.

Comment: Commenters stated that existing equipment, usually fuel-fired, should not be required to be replaced before the end of their lifetime.

Response: The Department has established performance standards and given buildings the flexibility to meet those standards any way they choose. This allows a building owner to keep using existing equipment, as long as they make the alternative compliance payment. The interim performance standards do not go into effect until 2030. If existing equipment does not reach the end of its useful life until after 2030, owners have the option of paying reasonable alternative compliance fees until the equipment comes up for normal replacement if they determine that is best. The Department recommends building owners start forecasting equipment replacements and familiarizing themselves with incentives and financial resources to avoid future alternative compliance payments.

Comment: Commenters stated hospital, healthcare, and assisted living facilities have specific energy needs and electrifying equipment may compromise patient care.

Response: The Department recognizes that there are many unique needs among the 9,000+ covered buildings in the State. The Department has established performance standards and given buildings the flexibility to meet those standards any way they choose. This allows a building owner to keep existing equipment a building owner deems necessary, as long as they make the alternative compliance payment. Additionally, the regulation includes waivers and exemptions for affordable housing, buildings with low occupancy rates, and buildings in financial distress. Env't. § 2-1602 requires the Department to create a BEPS with net direct emissions standards and the only authorized alternative compliance pathway was for buildings to make a payment for excess emissions at the social cost of greenhouse gases. However, the Department acknowledges the many unique situations across the covered buildings in Maryland and is working with the General Assembly to give the Department the authority to provide additional alternative compliance pathways.

Comment: A commenter stated that BEPS should allow for the use of microgrids for hospitals.

Response: Microgrids are not prohibited under the BEPS regulation. BEPS is a flexible performance standard that allows building owners to meet compliance with the BEPS requirements any way they see fit, including by making an alternative compliance payment for any emissions over the standards. Since most microgrids would be used in a campus setting, for specific questions around benchmarking the Department suggests this commenter attend the ongoing campus compliance working group. Per the

introduction in TM24-01, The Department will continue to convene a series of stakeholder working groups to further inform and refine a variety of topics, one of which is campus compliance. The first campus compliance working group met in October and the Department released a draft guidance document with additional details on campus compliance as part of this working group. The Department will consider incorporating any findings of this working group into a final campus compliance guide and include it in future updates to the regulation and its accompanying Technical Support Documentation. To sign up for the working group, please visit the Department's BEPS webpage and sign up for the upcoming sessions via the informational session signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Comment: Commenters stated their buildings do not meet the space requirements to install efficient electric equipment or renewable energy.

Response: The Department recognizes that there are many unique needs among the 9,000+ covered buildings in the State, specifically relating to technical feasibility, space constraints, and building design. The Department encourages building owners to consult the Maryland Energy Administration's Clean Buildings hub for a variety of resources, including technical guidance that might provide alternative efficient electric equipment to meet their buildings needs. The law also allows a building owner to use the alternative compliance pathway instead of replacing emissions-producing equipment. Additionally, renewable generation is not a requirement of or included in BEPS.

Alternative Compliance

Comment: Commenters stated the Alternative Compliance Payment is too high, is a strain on building owners, and should be reduced.

Response: The BEPS statute (Env't. § 2-1602) requires the Department to institute an alternative compliance pathway in the form of a payment for excess emissions over the net direct emissions standard. Env't. § 2-1602 states: "The Department may not set an alternative compliance fee that is less than the social cost of greenhouse gases adopted by the Department or the U.S. Environmental Protection Agency. The Department has satisfied this requirement by using the U.S. Environmental Protection Agency's 2030 social cost of greenhouse gases of \$230/ton, as released in its final rulemaking on November 30th, 2023 (<https://www.epa.gov/environmental-economics/scghg>). The

Department aligned with this 2030 social cost because the ACP will come into effect in 2030.

Comment: Commenters stated in the economic modeling, the Department assumes some buildings do not comply with the regulation and instead make an alternative compliance payment for excess emissions over the standards.

Response: The BEPS statute (Env't. § 2-1602) instituted the alternative compliance payment (ACP) to provide a cap on compliance costs with this regulation. Buildings making an ACP are in full compliance with the regulation per the BEPS statute. The ACP provides flexibility to building owners to meet the performance standards however they see fit. The modeling reflects this, capturing that for some buildings it is more cost-effective to come into nearly-full compliance and choose to make an ACP for a small amount of remaining emissions.

Comment: Commenters stated additional flexibilities such as alternative compliance pathways should be made available for building owners for technical or financial infeasibility, to account for equipment lifetimes, buildings that have already made efficiency improvements, and building age for a wide variety of building types and allow for options like individual compliance schedules.

Response: The BEPS statute mandates that the Department provide one alternative compliance pathway: "Regulations adopted under this section shall ... include an alternative compliance pathway allowing the owner of a covered building to pay a fee for greenhouse gas emissions attributable to the building's failure to meet direct greenhouse gas emissions reduction targets." § 2-1602(c)(2)(iv). The Department has established performance standards and given buildings the flexibility to meet those standards any way they choose. Additionally, the regulation includes waivers and exemptions for affordable housing, buildings with low occupancy rates, and buildings in financial distress. However, the Department acknowledges the many unique situations across the covered buildings in Maryland and is working with the General Assembly to give the Department the authority to provide additional alternative compliance pathways.

Comment: A commenter asked if the Department will notify building owners when their building(s) performance is/are out of compliance and allow for a reasonable timeframe to adjust performance.

Response: The Department's compliance program will notify a building owner when their building(s) are out of compliance with the standards. If a building's emissions are in

excess of its standards, the building owner can make an alternative compliance payment for each metric ton of carbon dioxide equivalent emitted in excess to come into compliance. The building owner can opt to pay this alternative compliance payment until they are able to reduce on-site emissions to the standard. The BEPS statute (Env't. § 2-1602) requires the Department to create a BEPS with net direct emissions standards and the only authorized alternative compliance pathway was for buildings to make this alternative compliance payment. However, the Department acknowledges the many unique situations across covered buildings in Maryland and is working with the General Assembly to give the Department the authority to provide additional alternative compliance pathways that might allow additional time to come into compliance with the standards.

Comment: Commenters urged the Department to delete the inflation adjustments for the net direct emissions standard's alternative compliance pathway.

Response: The U.S. Environmental Protection Agency's social cost of greenhouse gases presents costs in 2020 dollars, so an inflation factor is necessary to convert 2020 dollars into current dollar values when the alternative compliance payment can be used in 2030 and beyond. The Department aligned the annual dollar amount per metric ton of carbon dioxide equivalent outlined in the BEPS regulation to follow the annual increases of the Consumer Price Index (CPI), which is in accordance with other Air and Radiation Administration compliance fees.

Comment: Commenters recommended that proceeds from the alternative compliance payment (ACP) should be designated to support funding to meet the requirements of BEPS and help building owners replace their equipment.

Response: The Department does not have the authority to designate the use of the proceeds from the ACP as the legislature did not provide such authority in Env't. § 2-1602. However, the Department is working with the General Assembly on the direction of the ACP proceeds.

Energy Use Intensity

Comment: Many commenters had suggestions around Energy Use Intensity (EUI) targets in the regulation, including removing or strengthening them.

Response: Per the requirements of the FY2025 State Budget, the current BEPS regulation does not include Energy Use Intensity (EUI) targets. The Department will comply with all requirements in the FY2025 State Budget and review calendar year

2025 energy use data submitted by building owners to the Department as it considers future EUI targets. Part of the required analysis includes recommendations to the General Assembly on an EUI alternative compliance payment that the General Assembly would authorize. The Department believes efficiency standards are important for promoting efficient electrification to enable Maryland's clean energy transition, minimize electricity grid impacts, and achieve Maryland's goal of net-zero GHG emissions by 2045, as demonstrated by electricity demand analysis of the BEPS standards. The eventual re-inclusion of EUI targets is required by the BEPS statute (Env't. § 2-1602).

Comment: A commenter stated the Department should differentiate between inefficient and efficient equipment when providing guidance on alignment with future Energy Use Intensity (EUI) standards.

Response: Thank you for your comment.

Comment: Commenters stated the Department should consider a multitude of other factors in the future analysis for the Energy Use Intensity (EUI) standard, including data centers, the closure of the Brandon Shores Power Plant, and the Clean Heat Standard.

Response: Thank you for your comment.

Comment: Commenters stated that the EUI standards are not authorized by the statute and the current BEPS program goes too far in establishing an EUI program, and/or that future BEPS standards should not include EUI.

Response: Per the requirements of Budget Amendment U00A07.07 to the FY2025 State Budget ("budget amendment"), the Department has not proposed final adoption of energy use intensity (EUI) targets/standards in the current BEPS regulation. The regulation retains EUI reporting to comply with the requirements of the FY2025 budget amendment to provide the Legislature "an assessment of the energy use intensity requirement compliance cost to owners of covered buildings" and a "recommendation for an alternative compliance fee for energy use intensity on buildings owners..." (Budget Amendment U00A07.07(2)(b)). In order for the Department to provide this assessment and recommendation, it must collect EUI data from covered buildings. The eventual re-inclusion of EUI targets is required by the Environment Article § 2-1602(c)(2)(i).

Comment: A commenter stated there is no reason to collect information on electricity use other than as the basis to regulate Energy Use Intensity (EUI). The commenter questioned how the Department can compel building owners and occupants to provide energy use data and still be in compliance with the FY2025 State Budget language.

Response: Per the requirements of Budget Amendment U00A07.07 to the FY2025 State Budget (“budget amendment”), the Department has not proposed final adoption of energy use intensity (EUI) targets/standards in the current BEPS regulation. The regulation retains EUI reporting to comply with the requirements of the FY2025 budget amendment to provide the Legislature "an assessment of the energy use intensity requirement compliance cost to owners of covered buildings" and a "recommendation for an alternative compliance fee for energy use intensity on buildings owners..." (Budget Amendment U00A07.07(2)(b)). In order for the Department to provide this assessment and recommendation, as required by the budget amendment, it must collect EUI data from covered buildings. The eventual re-inclusion of EUI targets is required by the Environment Article 2-1602(c)(2)(i). Furthermore, the Legislature clearly envisioned that electricity use data would be included in the BEPS program when it required electric companies to “provide energy data, including whole-building and aggregate data, to the owners of covered buildings for benchmarking purposes” (Environment Article 2-1602(d)).

Comment: Commenters stated the importance of and recommended the Department adopt Energy Use Intensity (EUI) standards to lead to greater emissions reductions, health benefits, and cost savings.

Response: The economic analysis of BEPS conducted by the U.S. Department of Energy’s Lawrence Berkeley and Pacific Northwest National Labs agrees with the commenters’ assertion that a BEPS program with EUI standards included would lead to greater emissions reductions, health benefits, and cost savings. The law requires the Department to include EUI standards in the regulation following the completion of a report required by the FY2025 State Budget.

Definitions

Comment: Commenters stated that the Department should break up multifamily into subcategories of similar construction and occupancy.

Response: The Department followed the U.S. Environmental Protection Agency’s ENERGY STAR Portfolio Manager’s guidelines for developing standards by property

type to facilitate ease of reporting through the benchmarking tool. For more information, see the property types from Portfolio Manager:

<https://www.energystar.gov/buildings/benchmark/understand-metrics/property-types>

Comment: Commenters requested clarification on the compliance process for mixed use buildings where a portion of the building falls into an exemption category.

Response: Per the requirements of Env't § 2-1602__, the Department will determine BEPS exemptions at the building level. If a building owner believes their building(s) should be exempt because they meet the requirements of COMAR 26.28.04.02, they will need to submit a request to the Department to have the whole building exempted. In the exemption request, building owners will need to explain why their building meets the exemption. The Department will convene an Exemption Process Working Group to review this process, and related exemption forms and supporting information that must be submitted for an exemption request. To sign up for the working group, please visit the Department's BEPS webpage and sign up for the upcoming sessions via the informational session signup form. Recordings of sessions will be made available on the Maryland Department of the Environment's BEPS YouTube Playlist.

Comment: A commenter requested edits to the regulation's language to allow for the emissions from on-site generation to be calculated based on the difference in the unit's generation and the regional grid's marginal generation unit.

Response: The Department will convene a working group to identify how to account for differing sources of onsite emissions in the performance standards before they go into effect in 2030. At this time, the Department is not making a change to the regulation but will assess if a future revision may be needed based on the outcomes of this working group. Sign up for the BEPS mailing list on the Department's BEPS website to be notified of this future working group.

Comment: A commenter requested that "etc." be removed from the District Energy Provider emission factor requirements.

Response: Steam, hot water, and chilled water cover the most common inputs to a building from a district energy system but "etc." was added to the requirements to ensure that any less common inputs are also included in the emissions factors provided by district energy providers to their customers.

Comment: A commenter stated that the "performance baseline" was mentioned in one part of the regulation but it was not defined.

Response: The Department has made a non-substantive change in the Notice of Final Action to correct this to "baseline performance," a term that is already defined in the regulation and has the same meaning.

Comment: A commenter requested for the Department to edit the definitions of gross square footage to include enclosed balconies and underground parking.

Response: The Department uses the definition of gross floor area from ENERGY STAR Portfolio Manager to be consistent with other jurisdictions and the best technical guidance. Building owners can exempt energy use from parking garages per the procedure outlined in the Department's benchmarking guide so the energy use and square footage will not be counted against the building. Building owners with questions about unique benchmarking situations, e.g. how to account for energy used by conditioned enclosed balconies, should reach out to Portfolio Manager's support team for guidance on how to account for this unique need:

<https://energystar.my.site.com/PortfolioManager/s/contactsupport>.

Comment: Commenters requested the Department define "buildings of similar construction."

Response: The Technical Support Document (TM24-01), Appendix A, states that "Buildings of Similar Construction" are buildings of the same property (i.e. use) type and either all-electric construction or mixed-fuel construction.

Comment: Commenters asked if the Department will consider adjusting the square footage threshold for covered buildings for a variety of reasons.

Response: The CSNA requires the Department to implement a BEPS that covers all residential, commercial, and state-owned buildings (with a few named exclusions and exceptions) whose gross floor area is 35,000 square feet or larger, excluding the parking garage area. Per the definitions of a building and gross floor area used in the regulation and by ENERGY STAR Portfolio Manager, this includes all area between "the outside surface of the exterior walls of the building(s) (it is also acceptable to measure from the inside perimeter of the exterior walls if that is more readily available). This includes all areas inside the building(s) including supporting areas." Thus, the particular arrangements of tenant spaces within the building nor the use of the space affects the gross floor area for meeting the legal requirement of covered buildings being over 35,000 square feet. The Department is not authorized to change this square footage threshold.

Comment: Commenters requested the definition of "financial hardship" be expanded.

Response: The Department has and will continue to convene working groups, including one on the exemption process, to solicit feedback from stakeholders. These working groups will inform technical support documentation that will accompany the regulation and provide additional clarification. The Department will convene these working groups throughout the initial reporting period (2025-2029), prior to the 2030 performance standards taking effect. Sign up for the BEPS mailing list on the Department's website to be notified of this future working group.

Comment: Commenters requested the process for identifying "financial hardship" be explained.

Response: The Department has and will continue to convene working groups, including one on the exemption process, to solicit feedback from stakeholders. These working groups will inform technical support documentation that will accompany the regulation and provide additional clarification. The Department will convene these working groups throughout the initial reporting period (2025-2029), prior to the 2030 performance standards taking effect. Sign up for the BEPS mailing list on the Department's BEPS website to be notified of this future working group.

Comment: A commenter stated that an Ambulatory Surgical Center should be treated the same as a Hospital (General and Surgical) in the regulation.

Response: ENERGY STAR Portfolio Manager, the Department's chosen benchmarking tool, provides a definition for each of the building types named in the regulation's Table 1 in the online glossary and by clicking the relevant types here:

<https://www.energystar.gov/buildings/benchmark/understand-metrics/property-types//>.

The distinction between Ambulatory Surgical Center and Hospital (General and Surgical) comes from the definitions used by Portfolio Manager and the Department uses Portfolio Manager's definitions to align with national best practices and benchmarking in other jurisdictions. Using this definition ensures that all buildings of similar use type are compared against each other in the performance standards.

Benchmarking

Comment: Commenters asked for clarification on or noted concerns regarding the benchmarking and reporting process.

Response: Per the regulations technical memorandum (TM24-01), the Department has and will continue to convene a public Benchmarking and Reporting Working Group to assist building owners with all aspects of the benchmarking and reporting process. As part of this working group, the Department released two draft benchmarking guidance documents for input from working group attendees. The Department refers all commenters that inquired about the BEPS benchmarking and reporting process to these documents, which can be found in the video description of the relevant working group session recordings on the Department's BEPS YouTube Playlist. The Department will continue to notify stakeholders of available working groups via its email list and stakeholders can sign up for groups by indicating their interest in the informational sessions signup form on the Department's website.

Comment: Commenters stated that the Department is not authorized to use the ENERGY STAR score in the BEPS regulation.

Response: The ENERGY STAR score is a feature of ENERGY STAR Portfolio Manager that shows up in the default configuration but has no application within the BEPS regulation and will not be considered by the Department.

Comment: A commenter asked the Department to provide definitions to clarify between medical office and urgent care/clinic/other outpatient building types.

Response: ENERGY STAR Portfolio Manager, the Department's chosen benchmarking tool, provides a definition for each of the building types named in the regulation's Table 1 in the online glossary and by clicking the relevant types here:

<https://www.energystar.gov/buildings/benchmark/understand-metrics/property-types/>

The definition for a medical office can be found here:

https://portfoliomanager.energystar.gov/pm/glossary?_gl=1*1ipukbl*_ga*MTI4Nzk1MzY4Mi4xNzA2MjE3Njgx*_ga_S0KJTVVLQ6*MTczMDMwODA0OS41OS4wLjE3MzAzMDgwNDkuMC4wLjA.#MedicalOffice and the definition of an urgent care/clinic/other

outpatient can be found

here:https://portfoliomanager.energystar.gov/pm/glossary?_gl=1*1v8hsqp*_ga*MTI4Nzk1MzY4Mi4xNzA2MjE3Njgx*_ga_S0KJTVVLQ6*MTczMDMwODA0OS41OS4xLjE3MzAz

[zMDgzMDkuMC4wLjA.#UrgentCareClinicOtherOutpatient](#). These are the definitions the Department uses for these two building types.

Comment: A commenter stated that benchmarking and reporting requirements impose a heavy burden on businesses.

Response: The Department understands this concern and is working to streamline the legislatively mandated benchmarking and reporting process with additional training and resources for building owners. This includes the draft benchmarking and reporting guide which shares the relevant information in an easily digestible document. The Department is required to collect data on covered buildings under Maryland law, as dictated by the Env't §2-1601, *et seq.*. The Department is collaborating with the Maryland Energy Administration's Clean Buildings hub to provide additional resources to help building owners comply with these requirements. Additionally, ENERGY STAR Portfolio Manager provides free user trainings and also a list of licensed professionals, some of which offer cost-free services: https://www.energystar.gov/buildings/lp_finder.

Comment: A commenter asked about how direct emissions are measured under BEPS and the margin of error.

Response: As defined in the regulation, "Direct greenhouse gas emissions or direct emissions" means greenhouse gas emissions produced on-site by covered buildings, as calculated by the benchmarking tool [ENERGY STAR Portfolio Manager] unless otherwise specified by the Department." Portfolio Manager is the industry standard benchmarking software and its calculations, provided accurate data is input, are the best available technology to benchmark a wide variety of building types and their emissions. For more information on how Portfolio Manager calculates direct emissions, please see the Technical Reference for Portfolio Manager: <https://portfoliomanager.energystar.gov/pdf/reference/Emissions.pdf>. One of the reasons for Third Party Verification is to ensure that buildings are inputting energy use and property data accurately to reduce the error in submissions.

Comment: A commenter asked what would happen if a building changes use type.

Response: If a building were to change use types after the initial reporting period, the building owner could submit a notification and request to the Department documenting the use type change and the performance standards would be adjusted to reflect this. Per the regulations technical memorandum (TM24-01), the Department has and will continue to convene a public Benchmarking and Reporting Working Group to assist building owners with all aspects of the benchmarking and reporting process, including

questions such as these. As part of this working group, the Department released two draft benchmarking guidance documents for input from working group attendees. The Department refers all commenters that inquired about the BEPS benchmarking and reporting process to these documents, which can be found in the video description of the relevant working group session recordings on the BEPS YouTube Playlist. The Department will continue to notify stakeholders of available working groups via its email list and stakeholders can sign up for groups by indicating their interest in the informational sessions signup form.

Comment: A commenter asked how MD BEPS works with Montgomery County's existing benchmarking rules.

Response: The Department has attempted to align the statewide-BEPS with Montgomery County's BEPS as much as possible within the limitations of the law. The law states, however, that the Department must regulate the emissions from all covered buildings in the State. As part of the benchmarking and reporting working group, the Department has shared draft guidance on how to report data to both jurisdictions. For most covered buildings, it will be as simple as sharing the property already being reported to Montgomery County in Portfolio Manager with MD-BEPS in Portfolio Manager as well. Additional guidance, specifically around excluded energy use, has been released in a draft form through the benchmarking and reporting working group. To sign up for the working group, please visit the Department's BEPS webpage and sign up for the upcoming sessions via the informational session signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Comment: A commenter stated the Department's wording on the first benchmarking deadline is confusing and should be changed from "June 1st of each year, beginning in 2025" to "is due June 1, 2025, and covers calendar year 2024 energy use data."

Response: The regulation's technical memorandum TM24-01 includes the following language already to make this clarification: "Building owners are required to submit their Initial Benchmarking Report by June 1, 2025 with data from January 1, 2024 - December 31, 2024. The Initial Benchmarking Report will establish the building's participation in BEPS and confirm key reporting details about the building such as property type, gross floor area, and more. The Baseline Benchmarking Report will be due to the Department by June 1, 2026 with data from January 1, 2025 - December 31, 2025. The Baseline Benchmarking Report will establish the baseline metrics for covered buildings to inform BEPS standards and compliance into the future.

Comment: A commenter stated the Department's records that identify covered buildings and their square footage appear to contain errors and there is a lack of stakeholder engagement regarding this process.

Response: Per the requirements of the Env't § 2-1601, *et seq.*, all buildings in the State meeting the definition of a covered building must report data to the Department and participate in BEPS, regardless of the Department's identification of them. Furthermore, the Department is unable to officially notify potentially covered buildings of their status until the regulation is finalized. The Department has provided a "preliminary potentially covered buildings list" on the BEPS website and included it in the technical support documents for the regulation. This list was first published in 2023 and has been available since then as a resource for building owners. Regarding data errors, there are more than 9,000 covered buildings in Maryland and the Department is using the best publicly available data to identify which are covered as a courtesy to building owners. The Department acknowledges there are limitations to this data and is continuing to improve upon its list with new data and will release an updated potentially covered buildings list (CBL) when the regulation is finalized. The Department will send out mailings to buildings on the list for buildings with mailing addresses and hopes to improve upon the accuracy of the CBL through this process. For square footage specifically, these records will be updated based on data reported through Portfolio Manager as part of the BEPS requirements. Buildings that are covered but not on the CBL will be able to submit a form so that they are given a Unique ID to report their data and be added to the CBL. Buildings that are listed on the CBL but believe they should be excluded because they meet an exemption criteria or their square footage is below the 35,000 ft² threshold can request to be removed from the list.

Economic Analysis

Comment: Commenters stated the Department should conduct additional case studies on costs of compliance for building owners and specific building types.

Response: As part of the requirements outlined in the FY2025 Budget Amendment, the Department is conducting a series of additional analyses and case studies regarding the cost of compliance and economic feasibility for building owners across a wide variety of considerations, building types, and other factors. As part of these analyses, the Department will continue to work with stakeholders to identify particular buildings as case studies in Maryland and will leverage the extensive technical assistance provided to the Department through the U.S. Environmental Protection Agency and the U.S. Department of Energy and its National Laboratories.

Comment: Commenters stated the cumulative impacts of upcoming regulation should be included in the cost study required by the 2025 Budget Language.

Response: As part of the requirements outlined in the FY2025 Budget, the Department is conducting a series of additional analyses regarding the cost of compliance and economic feasibility for building owners across a wide variety of considerations, building types, and other factors. As part of these analyses, the Department will continue to work with stakeholders to take into consideration the latest available data and intersections with current and expected regulatory action.

Comment: Commenters stated that the Department's economic analysis for BEPS was flawed.

Response: The Department disagrees with this comment. The Department engaged the U.S. Department of Energy's Lawrence Berkeley National Laboratory (LBNL) and Pacific Northwest National Laboratory (PNNL) to conduct a state-of-the-art economic analysis for the regulation at the state-scale. The economic analysis represents the best available analysis for analyzing a flexible performance standard that allows building owners to meet the regulation any way they see fit. The economic analysis is based on the latest data available to the Department when it was carried out. The labs used the best available cost forecasts to conduct their analysis with the intent of providing aggregate cost estimates at the state-level to be representative of what the average building owner will face. While the Department acknowledges that individual case studies might have higher or lower costs than those provided by the PNNL methodology, the methodology used provides representations of the typical costs to meet the regulation. Providing statewide economic impact estimates based on a few non-representative case studies is not a scientifically sound methodology.

Comment: Commenters stated that the electric and gas price forecasts used in the Department's economic analysis for BEPS are unrealistic.

Response: The Department disagrees with this comment. The Department engaged the U.S. Department of Energy's Lawrence Berkeley National Laboratory (LBNL) and Pacific Northwest National Laboratory (PNNL) to conduct a state-of-the-art analysis for the regulation at the state-scale. Electric and gas price forecasts were based on the latest data available to the Department when it was carried out. LBNL and PNNL used the "MWG policy" scenario from E3's "Building Decarbonization Study" electric and gas rate projections, which has much lower long-term rate increase projections and much less uncertainty than the "high electrification" scenario mentioned by some commenters. These forecasts represent high-level market trends over the next twenty five years. The

forecasts are just that, and the Department cannot control for short-term shifts in market dynamics such as a PJM capacity auction that occurred after the Department had concluded its analyses.

Comment: A commenter asked the Department to include economic impacts for 2025-2040.

Response: As part of the Notice of Proposed Action on Title 26 Subtitle 28 "Building Energy Performance Standards" published in the Maryland register on September 5, 2024, there is a section called In the "Estimate of Economic Impact." This estimate includes total cost estimates for the BEPS regulation for both 2025-2040 and 2025-2050. The Department includes costs to 2050 in addition to 2040 because the U.S. Department of Energy's National Laboratories that supported the analysis noted that analyzing impacts only to 2040 discounts the lifetime of much of the equipment installed for BEPS compliance and therefore substantial expected savings.

Comment: A commenter stated that the assumptions on grid emissions over time are overly optimistic.

Response: The Department disagrees with this comment. The State has a goal of achieving 100% clean energy by 2035 and the grid emissions assumptions used in the impact analysis generally reflect this goal. For more information on the State's clean energy goals, please see here:

<https://governor.maryland.gov/news/press/pages/governor-moore-announces-90-million-to-support-mooremiller-administration%E2%80%99s-climate-agenda.aspx>

Comment: A commenter asked why the cost of electrification decreases between the 2023 and 2024 BEPS regulation proposals.

Response: Per the requirements of the FY2025 State budget, the current MD BEPS does not include energy use intensity (EUI) standards. The cost estimates were updated based on a 2024 study of this revised BEPS program conducted by the Lawrence Berkeley National Laboratory, as documented in Appendix C of the 2024 Technical Support Document. This study found that without the efficiency improvements that the EUI standards encourage, more buildings choose to make an alternative compliance payment than fully meet the direct emissions standards. This reduced investment is reflected in the cost of electrification estimates. The Department also notes that the cost of the alternative compliance payments is included in the total cost for buildings to comply with the program.

Target Setting

Comment: Commenters asked for adjustments to the interim standards for their property type.

Response: As mentioned in the introduction to the TM24-01, the Department will analyze all data submitted by covered buildings in 2026 (from calendar year 2025, the baseline performance year). Upon completing this analysis, the Department will consider revising the interim performance standards by property type. The Department will convene a working group to discuss revision of these interim performance standards. Sign up for the BEPS mailing list on the Department's BEPS website to be notified of this future working group.

Comment: A commenter suggested different ways of calculating interim performance standards.

Response: As mentioned in the introduction to the TM24-01, the Department will analyze all data submitted by covered buildings in 2026 (from calendar year 2025, the baseline performance year). Upon completing this analysis, the Department will consider revising the interim performance standards by property type. The Department will convene a working group to discuss revision of these interim performance standards and the method for calculating them. Sign up for the BEPS mailing list on the Department's BEPS website to be notified of this future working group.

Comment: A commenter stated that revising the interim standard during the first interim period will generate confusion.

Response: Env't. § 2-1602 states explicitly that all covered buildings must meet net zero direct emissions by 2040 or make an alternative compliance payment for excess GHG emissions. Building owners aiming for this have a clear target. If they wish to make incremental improvements toward an interim target, the current standards are based on benchmarked data from over 4,000 buildings in the state. The Department will re-evaluate these data based on calendar year 2025 benchmarked data in 2026. If adjustments are made, it will still be several years in advance of the first interim compliance period which runs from 2030- 2034.

Comment: Commenters stated the Climate Solutions Now Act did not authorize the 2nd interim standard from 2035-2039.

Response: Env't § 2-1602(a) requires the Department to adopt regulations that achieve a 20% reduction in net direct GHG emissions on or before January 1, 2030, and net-zero direct emissions on or before January 1, 2040. In the Department's best professional judgement, including a second interim performance standard is the best way to guide buildings toward the 2040 requirement and achieve Maryland's requirements to reduce statewide greenhouse gas emissions. This is in alignment with stepped approaches used in other jurisdictions implementing building performance standards to ensure buildings are making progress towards the final targets.

Comment: Commenters stated that the second interim standards are not feasible.

Response: Per the requirements of Env't. § 2-1602, the net direct emissions standard for all covered buildings in 2040 is zero, unless building owners opt to make an alternative compliance payment. The second interim standards allow for emissions higher than this level and were included to ensure that covered buildings make progress towards the final performance standards. For concerns about technical feasibility in general, please see that specific response.

Comment: Commenters stated the net direct emissions standards are unreasonable and request that the Department explain its methodology for target setting and adjust its targets to the CSNA's intended percent reductions upon receipt of data submitted by building owners.

Response: Env't § 2-1602, which requires the Department to adopt BEPS, includes a requirement for a 20% reduction in net direct greenhouse gas emissions from covered buildings by 2030. The Department has implemented these as the first interim performance standard in the regulation. The Department engaged the U.S. Department of Energy's Lawrence Berkeley National Laboratory (LBNL) to conduct a state-of-the-art analysis to establish the initial performance standards in the regulation. The methodology for how this analysis was carried out is available on the Department's BEPS website and in the Technical Support Document. As described in these documents, LBNL used a dataset provided by the United States Environmental Protection Agency (EPA) that aggregated data from buildings in Maryland that have already reported their energy use and emissions as part of the ENERGY STAR Portfolio Manager (ESPM) database. The dataset includes 4,236 buildings from 73 different property types across the state, about half of the potentially covered buildings under BEPS. These buildings are already reporting in ESPM either because of local ordinances (such as Montgomery County's reporting ordinance), voluntary programs (such as the ENERGY STAR certification), or national programs (such as the U.S. Department of Housing and Urban Development's reporting program). These direct

emissions data were used to develop initial benchmarks and performance standards for the Department's BEPS regulation. The Department notes that looking at a subset of data from buildings in the State might yield different results than those provided in the full Portfolio Manager dataset. However, as noted in the Technical Support Document Appendix A, once the regulation is adopted and benchmarking data is submitted from all covered buildings, the Department intends to review the data and may revise the interim standards in 2026. The Department will host a working group to review the methodology for setting these interim standards after the data is submitted. Sign up for the BEPS mailing list on the Department's website to be notified of this future working group. Covered building owners should note, however, Env't. § 2-1602 requires covered building's net direct emissions to be zero in 2040 or that they make an alternative compliance payment for excess emissions and the regulation faithfully implements this requirement to meet the Department's legal obligation. The Department therefore cannot revise the final performance standard for net direct emissions.

Comment: A commenter stated the Department's methodology for area weighted standards for mixed use buildings does not consider that dissimilar building uses may have significantly dissimilar and non-proportionate energy consumption.

Response: The Department notes that the current BEPS performance standards are solely focused on net direct emissions and must reach the statutorily-required net zero level by 2040. With that lens in mind, the area-weighted interim emissions standards are industry best practice and designed to account for this exact scenario. If a building has two use types, and one use type has substantially higher emissions than the other, the interim standard for that use type will be significantly higher. If, for example, the building is split evenly by floor area between the two use types, when the area-weighted performance standard for that building is calculated, a disproportionate amount of the total tons of emissions allowed under the interim standard for a building of that square footage will come from the higher emissions use type. Thus area-weighting is designed precisely to account for dissimilar mixed uses if the buildings are properly benchmarked.

Beyond that, per the regulation's technical memorandum (TM24-01), the Department will continue to convene a public Benchmarking and Reporting Working Group to assist building owners with all aspects of the benchmarking and reporting process. As part of this working group, the Department released two draft benchmarking guidance documents for input from working group attendees. The Department refers all commenters that inquired about the BEPS benchmarking and reporting process to these documents, which are available on the BEPS website. The Department will continue to notify stakeholders of available working groups via its email list and

stakeholders can sign up for groups by indicating their interest in the informational sessions signup form available on the Department's BEPS website.

Energy Use Data

Comment: Commenters stated that the Department should revise tenant obligations so that tenants must provide their data for free.

Response: The Department does not have authority to assess or regulate fees under the current statute and will not be involved in discussions between landlords and tenants. Per the regulation (COMAR 26.28.02.03) "Reporting Requirements of Tenants," "a tenant of a covered building shall, within 30 days of a request by the building owner, provide all requested benchmarking information that cannot otherwise be acquired by the building owner from other sources." The Department is authorized to bring enforcement action against persons who violate its regulations.

Comment: Commenters stated that the Department should allow building owners to collect meter numbers instead of requiring tenant permission for aggregate utility data requests.

Response: For buildings with fewer than five tenants, electric and gas companies are required to obtain consent from the tenants prior to providing whole building energy consumption. The electric and gas companies must then aggregate all utility meters that measure energy consumption at the building and provide this data to the building owners. The Department prefers this approach to protect tenant privacy. Tenant consent is not required in buildings with five or more tenants.

Comment: Commenters stated they were concerned about who owns the energy use data for a building.

Response: Questions of data ownership are outside of the Department's authority. Regardless of ownership, building owners, tenants, electric and gas companies, and district energy providers are required by the regulation to report direct GHG emissions and energy use data to enable building owners to meet their requirements of submitting benchmarking data annually. In summary, for all buildings with five or more tenants, the electric and gas companies are required to provide whole building energy consumption, aggregating all utility meters that measure energy consumption at the building to the building owners, without the need for explicit authorization for data release by the individual tenants. For buildings with fewer than five tenants, the electric and gas companies are required to obtain consent from the tenants prior to providing whole

building energy consumption, aggregating all utility meters that measure energy consumption at the building this data to the building owners. If the tenant withholds consent from the electric and/or gas company, the tenant is compelled to supply it to the owner solely for the purpose of reporting it to the Department. As documented in the regulation, “A tenant of a covered building shall, within 30 days of a request by the building owner, provide all requested benchmarking information that cannot otherwise be acquired by the building owner from other sources.” BEPS is an MDE Air and Radiation Administration regulation. Failure to comply with this would put the tenant in violation of an MDE regulation, which would be handled by the MDE Air and Radiation Administration Compliance Program. The Air and Radiation Administration Air Quality Compliance Program works to ensure compliance at stationary sources of air pollution. The Compliance staff conducts inspections, responds to complaints, provides compliance assistance and pursues enforcement actions when necessary.

Comment: Commenters stated the data access process to acquire whole building data from utility providers is still unknown, will take a long time, or questioned their effectiveness.

Response: Per the definitions in the regulation, investor-owned electric and gas companies serving 40,000 or more customers must provide energy use data to their customers via the Portfolio Manager API. Smaller companies and municipal utilities/cooperatives can provide energy use data to building owners via a spreadsheet provided by the Department. Electric and gas companies are required by the regulation to provide calendar year energy use data to building owners. The Department convened an Electric and Gas Company Reporting Requirements Working Group in 2024 in collaboration with the Maryland Public Service Commission to ensure electric and gas companies can meet these requirements. Additional details on how to access the data will be provided on the Department's BEPS website when the regulation is finalized. These requirements for whole-building data are common across many jurisdictions with benchmarking and/or performance standards and have been very successful. Electric and gas utility companies including BGE, PEPCO, and Washington Gas are already providing benchmarking data to building owners due to existing policies such as Montgomery County's benchmarking program. In Montgomery County, about 90% of covered buildings submitted their 2022 data.

Comment: Commenters stated their concerns with tenants, including those in national security, providing the needed energy use data to building owners.

Response: Per the regulation (COMAR 26.28.02.03) “Reporting Requirements of Tenants,” “A tenant of a covered building shall, within 30 days of a request by the

building owner, provide all requested benchmarking information that cannot otherwise be acquired by the building owner from other sources.” BEPS is an MDE Air and Radiation Administration regulation. Failure to comply with this would put the tenant in violation of an MDE regulation, which would be handled by the MDE Air and Radiation Administration Compliance Program. The Air and Radiation Administration Air Quality Compliance Program works to ensure compliance at stationary sources of air pollution. The Compliance staff conducts inspections, responds to complaints, provides compliance assistance and pursues enforcement actions when necessary.

Comment: Commenters stated that they are concerned with obtaining and entering the energy usage data.

Response: Building owners, tenants, electric and gas companies, and district energy providers have reporting requirements in the regulation to enable building owners to meet their requirements of submitting benchmarking data annually. In terms of obtaining data from electric and gas companies, Per the definitions in the regulation, investor-owned electric and gas companies serving 40,000 or more customers must provide energy use data to their customers via the Portfolio Manager API. Smaller companies and municipal utilities/cooperatives can provide energy use data to building owners via a spreadsheet provided by the Department. Electric and gas companies are required by BEPS to provide calendar year energy use data to building owners. The Department convened an Electric and Gas Company Reporting Requirements Working Group in 2024 in collaboration with the Maryland Public Service Commission to ensure electric and gas companies can meet these requirements. Additional details on how to access the data will be provided on the Department's BEPS website when the regulation is finalized.

Additionally, for all buildings with five or more tenants, the electric and gas companies are required to provide whole building energy consumption, aggregating all utility meters that measure energy consumption at the building to the building owners, without the need for explicit authorization for data release by the individual tenants. For buildings with fewer than five tenants, the electric and gas companies are required to obtain consent from the tenants prior to providing whole building energy consumption, aggregating all utility meters that measure energy consumption at the building and providing this data to the building owners. If the tenant withholds consent from the electric and/or gas company, the tenant is compelled to supply it to the owner solely for the purpose of reporting it to the Department. As documented in the regulation, “A tenant of a covered building shall, within 30 days of a request by the building owner, provide all requested benchmarking information that cannot otherwise be acquired by the building owner from other sources.” BEPS is an MDE Air and Radiation

Administration regulation. Failure to comply with this would put the tenant in violation of an MDE regulation, which would be handled by the MDE Air and Radiation Administration Compliance Program. The Air and Radiation Administration Air Quality Compliance Program works to ensure compliance at stationary sources of air pollution. The Compliance staff conducts inspections, responds to complaints, provides compliance assistance and pursues enforcement actions when necessary.

For questions on how to enter energy use data as part of the benchmarking and reporting process, the Department refers building owners to the Benchmarking and Reporting Working Group. The Department is convening this working group to assist building owners with all aspects of the benchmarking and reporting process. As part of this working group, the Department released two draft benchmarking guidance documents for input from working group attendees. The Department will continue to notify stakeholders of available working groups via its email list and stakeholders can sign up for groups by indicating their interest in the informational sessions signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Comment: Commenters suggested edits to the reporting requirement definitions for electric and gas companies.

Response: Per the regulation's technical memorandum (TM24-01), the Department has convened an Electric and Gas Company Reporting Requirements Working Group and individual sessions with Maryland's utility providers to provide clarity and solicit feedback on reporting requirements within the regulation. The Department will convene additional working group sessions to discuss these comments. To sign up for the working group, please visit the Department's BEPS webpage and sign up for the upcoming sessions via the informational session signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Comment: A commenter stated that the Department should coordinate with the Maryland Public Service Commission to require utility companies to meet gross metering requirements without meter passthrough costs going to owners or tenants.

Response: The Department is coordinating with the Maryland Public Service Commission (PSC) on utility compliance and the requirement for delivering gross metered data to owners is in the regulation. How the costs of this requirement and the costs to provide this data from the utility are handled is outside the scope of the

Department's authority and may be determined by the PSC in electric and gas companies' rate cases.

Comment: A commenter stated that the Department should streamline aggregate meter data intake and coordination across utilities to minimize burden on owners.

Response: The Department has convened an Electric and Gas Company Reporting Requirements Working Group in 2024 to coordinate and streamline the data provision process between electric and gas companies, building owners, and the Department. The Department will provide on its website information about how to request data from utilities across different service territories in the State. The onus will fall on building owners to submit the data request to their appropriate utility provider and also ensure the utility is capturing all on-site metering within the aggregate data provision.

Comment: A commenter stated if a data correction is identified, benchmarking, reporting, and enforcement requirements for a building should be delayed until 30 days after fully correct data is provided.

Response: The Department notes that the reporting deadline is June 1st of every year and building owners must meet this deadline. Notification of a data correction does not excuse building owners from this requirement. Additionally, because the reporting deadline is five months after the calendar year ends, building owners will generally have more than 30 days from when their electric or gas company sends a data correction to the reporting deadline. However, if a building owner has a documented data correction that occurs after the reporting deadline, the building owner will be able to submit a benchmarking correction request to the Department. Each benchmarking correction request will be reviewed by the Department and the appropriate actions, which will include recalculating performance metrics and could potentially include delayed enforcement, will be identified on a case-by-case basis by the Air and Radiation Administration Compliance Program.

Direct Emissions

Comment: Commenters stated that it isn't equitable for building owners to bear the brunt of emissions inefficiencies in generating facilities.

Response: Per the requirements of the Climate Solutions Now Act of 2022, the net direct emissions standard is concerned with direct emissions from covered buildings.

Emissions from power generating facilities are not included within the definition of net direct emissions. The only off-site emissions that are included in a building's emissions profile would be emissions associated with a District Energy System to which a covered building is connected. The majority of Maryland's covered building stock is not connected to a District Energy System.

Comment: A commenter asked if retrofits within individual units in a building would be reflected in the direct emissions for the entire building.

Response: Improvements within individual units can improve the net direct emissions of the entire building if these retrofits reduce the net direct emissions of the unit and additional sources of emissions are not added elsewhere in the building.

Comment: A commenter stated there should be more than one method of measuring direct emissions from covered buildings.

Response: ENERGY STAR Portfolio Manager is the industry standard benchmarking tool, developed by the federal government and widely used across the country. Given its strong track record and its use in nearly every jurisdiction with a benchmarking ordinance, it is the Department's chosen benchmarking tool.

Comment: Commenters requested the Department remove the requirement that building owners must report off-site direct emissions when connected to a District Energy System.

Response: District Energy Systems supply thermal products to covered buildings that would otherwise be produced from combustion on-site at the covered building. To ensure Maryland's covered building stock is reducing direct emissions at a rate sufficient to meet the State's greenhouse gas reduction goals, District Energy Systems must be included in the definition of net direct emissions within BEPS.

Comment: Commenters stated that BEPS is an electrification mandate.

Response: The Department disagrees. BEPS is a flexible performance standard that allows building owners to meet compliance with the BEPS requirements any way they see fit, including by making an alternative compliance payment for any emissions over the standards. In fact, modeling from the U.S. Department of Energy's National Labs in the BEPS technical support document shows that there is fossil fuel use even after 2040, showing that some buildings choose to maintain their fuel-fired equipment and make an alternative compliance payment while still being in full compliance with BEPS.

Renewables, Offsets, and Carbon Capture

Comment: Commenters requested that biofuels be included as a compliance option within the regulation.

Response: The U.S. Environmental Protection Agency's ENERGY STAR Portfolio Manager, the Department's chosen benchmarking tool since it is the industry standard, does not include a method to account for biofuels. The Department will convene a working group to identify how to account for differing sources of onsite emissions like biofuels in the performance standards before they go into effect in 2030. Sign up for the BEPS mailing list on the Department's website to be notified of this future working group.

Comment: A commenter stated that the regulations do not include a provision for carbon capture.

Response: The U.S. Environmental Protection Agency's ENERGY STAR Portfolio Manager, the Department's chosen benchmarking tool since it is the industry standard, does not include a method to account for carbon capture. The Department acknowledges that carbon capture can play a role in reducing direct emissions from buildings. The Department will convene a working group to identify how to account for differing sources and sinks of onsite emissions like carbon capture in the performance standards before they go into effect in 2030. Sign up for the BEPS mailing list on the Department's website to be notified of this future working group.

Comment: Commenters requested the inclusion of Renewable Natural Gas (RNG) and hydrogen as an option for achieving the BEPS standards.

Response: The U.S. Environmental Protection Agency's ENERGY STAR Portfolio Manager, the industry standard benchmarking tool, does not include emissions factors for biofuels (including RNG and hydrogen) other than wood. The Department will convene a working group to identify how to account for differing sources of onsite emissions in the performance standards before they go into effect in 2030. Sign up for the BEPS mailing list on the Department's BEPS website to be notified of this future working group.

Comment: Commenters stated the Department is required by State Law to include carbon offsets as a compliance option in BEPS.

Response: The Department disagrees with this comment. The requirement that the Department adopt Building Energy Performance Standards can be found in Maryland Code Annotated, Environment § 2-1602. This statute does not require that carbon offsets be included as a compliance option in the BEPS regulation. The BEPS regulation is focused on net direct greenhouse gas emissions from covered buildings, as required by Env't. § 2-1602 and the FY2025 Budget. The statute also provides guidance on what to include in net direct emissions, such as considering the use of district energy systems and biofuels by covered buildings.

Comment: Commenters requested the inclusion of on-site renewable energy as an option for achieving the BEPS standards.

Response: The BEPS regulation is focused on net direct greenhouse gas emissions from covered buildings, as required by Env't. § 2-1602 and the FY2025 Budget. Because on-site renewable energy does not affect the direct greenhouse gas emissions from buildings, it is not included. The state has other policies to support the development and use of renewable energy.

Comment: Commenters requested the inclusion of Renewable Energy Credits and/or Carbon Offsets as an option for achieving the BEPS standards.

Response: The BEPS regulation is focused on net direct greenhouse gas emissions from covered buildings, as required by Env't. § 2-1602 and the FY2025 Budget. The statute also provides guidance on what to include in net direct emissions, such as considering the use of district energy systems and biofuels by covered buildings. Offsets and renewable energy credits are not included in the statute. The state has other policies to support the development and use of renewable energy and carbon sequestration on natural and working lands.

Regulatory Requirements

Comment: A commenter stated that the uncertainty caused by the FY2025 State Budget Amendment, and the subsequent two-part BEPS regulation, makes compliance planning difficult for building owners.

Response: The Department appreciates that the removal of Energy Use Intensity (EUI) standards from the BEPS regulation might lead to uncertainty for building owners. The Department has made this change to follow the requirements of the FY2025 State budget. However, the CSNA calls for a BEPS regulation to include EUI and thus, the Department intends to adopt the EUI standard in 2027 after analysis of covered

buildings' calendar year 2025 data, per the requirements of the budget. The Department recommends not installing any inefficient electric equipment in anticipation of this energy efficiency standard being adopted. Building owners can reference the previously proposed standards -- available on the Department's website -- for directional guidance when planning for BEPS compliance.

Comment: Commenters stated the Department was required by the budget language to demonstrate the affordability and feasibility of its BEPS and the required tasks remain unfinished and outstanding.

Response: The FY2025 State Budget requires the Department to conduct a series of further analyses and provide the General Assembly a Confirmatory Letter that required actions have been taken prior to final development of energy use intensity targets and standards. The budget requires these analyses to be performed based on 2025 benchmarking data, which will be available when covered buildings report it in 2026. The Department intends to conduct the required analyses and calculate updated standards based on data reported by covered buildings in 2026 (from calendar year 2025, the baseline performance year) and submit this Confirmatory Letter in 2027. In this analysis, the Department will take all the factors required in the budget letter into account.

Comment: Commenters stated that the Department does not have the authority to implement BEPS.

Response: State law, Env't. § 2-1602, which is part of the Climate Solutions Now Act (CSNA) of 2022, requires the Department to implement the BEPS regulation and provides the Department the authority to do so. The Department also has the authority to enforce compliance with all aspects of its regulations.

Comment: Commenters stated that there are certain lease types where building tenants have control over the mechanical systems and/or energy consumption and the regulation does not account for this.

Response: The Climate Solution Now Act (CSNA) of 2022 requires BEPS to include most commercial and multifamily buildings in Maryland over 35,000 square feet and puts the onus on the building owner to comply with the standards. Owners have several options for managing tenants' energy use to comply with the regulation, including adjusting lease terms and/or improving the energy efficiency of the shell of the building itself to greatly reduce emissions. The first interim performance standards do not take effect until 2030 so many leases will be renegotiated before then.

Comment: A commenter asked why single-family homes and townhomes are not covered by the BEPS.

Response: Env't. § 2-1602 requires the Department to adopt BEPS that apply only to commercial or multifamily residential buildings that are 35,000 square feet or larger (with some mandatory exclusions and discretionary exemptions). Per the Governor's recent executive order, the Department has begun to develop other policies like Clean Heat Standards and Zero-Emission Heating Equipment Standards to help meet the State's legally-mandated climate goals in other parts of the buildings sector.

Comment: Commenters stated the Department did not consider the directive of the Legislature to consider special provisions or exemptions for a certain building type or age.

Response: The Climate Solutions Now Act of 2022 requires the Department to "as necessary, promulgate" these special provisions and exceptions for building age, regional differences of particular buildings, or occupancy. The Department considered each of these items and accounted for them in the regulation. As required in the FY2025 Budget Amendment, the Department will further consider special provisions and exceptions as part of the analysis of calendar year 2025 benchmarked data in 2026 and will produce the required Confirmatory Letter in 2027.

Comment: Commenters stated that if the State's overarching goal is to achieve greenhouse gas reductions, then the Department should regulate source emissions and energy use intensity (EUI) to capture emissions from out-of-state generating facilities that supply energy to Maryland.

Comment: Env't §2-1602 requires the Department to adopt regulations that include energy use intensity targets and achieve reductions in net direct greenhouse gas emissions. The BEPS statute defines direct greenhouse gas emissions as "greenhouse gas emissions produced on-site by covered buildings." Net direct greenhouse gas emissions is not defined in the law but the Department interprets the law to mean that net direct greenhouse gas emissions is closely related to direct greenhouse gas emissions, which is a defined term in the law. As such, the Department determined that it was not appropriate to base the emissions targets on emissions that occur from electricity generation off-site. The Department did, however, analyze the impact of BEPS on reducing emissions from the electricity sector and found that BEPS will reduce emissions on-site and off-site, leading to even greater health and climate benefits.

Comment: Commenters stated the BEPS requirements, including specific interim targets, exceeds what is in CSNA, are not justified, feasible, or economically realistic.

Response: The Climate Solutions Now Act (CSNA) of 2022, of which Env't § 2-1601, *et seq.* is a part, requires the Department to implement BEPS, included a requirement that covered buildings achieve a 20% reduction in net direct greenhouse gas emissions by 2030. The Department has implemented these as the first interim performance standard in the regulation. The Department engaged the U.S. Department of Energy's Lawrence Berkeley National Laboratory (LBNL) to conduct a state-of-the-art analysis to do the initial performance standard setting for the regulation. The methodology for how this analysis was carried out is available on the Department's BEPS website and in the Technical Support Document. As described in these documents, LBNL used a dataset provided by the United States Environmental Protection Agency (EPA) that aggregated data from buildings in Maryland that have already reported their energy use and emissions as part of the ENERGY STAR Portfolio Manager (ESPM) database. The dataset includes 4,236 buildings from 73 different property types across the state, about half of the potentially covered buildings under BEPS. These buildings are already reporting in ESPM either because of local ordinances (such as Montgomery County's reporting ordinance), voluntary programs (such as the ENERGY STAR certification), or national programs (such as the U.S. Department of Housing and Urban Development's reporting program). These direct emissions data were used to develop initial benchmarks and performance standards for the Department's BEPS regulation. The Department notes that looking at a subset of data from buildings in the State might yield different results than those provided in the full Portfolio Manager dataset. However, as noted in the Technical Support Document Appendix A, once the regulation is adopted and benchmarking data is submitted from all covered buildings, the Department intends to review the data and may revise the interim standards in 2026. The Department will host a working group to review the methodology for setting these interim standards after the data is submitted. Covered building owners should note, however, that the CSNA requires covered building's net direct emissions to be zero in 2040 and the regulation faithfully implements this requirement to meet the Department's legal obligation. The Department will not be revising the final performance standard for net direct emissions. Sign up for the BEPS mailing list on the Department's website to be notified of this future working group.

ENERGY STAR Portfolio Manager

Comment: A commenter asked about the history and reliability of using ENERGY STAR Portfolio Manager to collect and analyze direct emissions, especially in industrial and maritime operations.

Response: Launched in 1999, ENERGY STAR Portfolio Manager is the U.S. Environmental Protection Agency's (EPA) premier web-based solution for managing and tracking the energy consumption and environmental footprint of buildings. Hundreds of industrial companies use ENERGY STAR resources to improve efficiency, reduce costs, while protecting the environment. EPA works with individual manufacturing sectors through ENERGY STAR to improve energy efficiency. Unique building types, such as maritime operations, are encouraged to reach out to the Department's Building Decarbonization team or the EPA ENERGY STAR program for technical support.

Comment: A commenter stated that the Department should align energy exclusions with ENERGY STAR Portfolio Manager's listed exclusions.

Response: The Department has aligned with ENERGY STAR Portfolio Manager's listed exclusions, as detailed in the TM24-01 Section A.2.1.4. For more specific questions on exclusions, the Department refers building owners to the Benchmarking and Reporting Working Group. As part of this working group, the Department released two draft benchmarking guidance documents for input from working group attendees. The Department refers all commenters that inquired about the BEPS benchmarking and reporting process to these documents, which are available on the BEPS website. The Department will continue to notify stakeholders of available working groups via its email list and stakeholders can sign up for groups by indicating their interest in the informational sessions signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Comment: A commenter noted that ENERGY STAR Portfolio Manager (ESPM) does not allow owners to enter the square footage of pools.

Response: Per the regulation's technical memorandum (TM24-01), the Department will continue to convene a public Benchmarking and Reporting Working Group to assist building owners with all aspects of the benchmarking and reporting process. As part of this working group, the Department released two draft benchmarking guidance documents for input from working group attendees. The Department refers all commenters that inquired about the BEPS benchmarking and reporting process to these documents, which are available on the BEPS website. The Department will continue to notify stakeholders of available working groups via its email list and stakeholders can sign up for groups by indicating their interest in the informational sessions signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Comment: A commenter noted that ENERGY STAR Portfolio Manager (ESPM) does not provide two digits of precision for metrics and the Department should provide this.

Response: The Department will be calculating performance metrics based on the data submitted by building owners through Portfolio Manager but adjusting them outside of Portfolio Manager as necessary to reflect unique circumstances under MD BEPS. Thus the Department will be sharing official building performance with covered building owners after the reporting deadline based on the information submitted in Portfolio Manager and will ensure two digits of precision are provided. Additionally, while the performance standards are noted in area-normalized (per square foot) fashion in the regulation, emissions levels and the alternative compliance payments are based on tons of direct emissions, which should help address precision concerns for area-normalized metrics.

Comment: Commenters stated that ENERGY STAR Portfolio Manager should solely be used as a reporting tool, and not an enforcement tool.

Response: Compliance enforcement and reporting requirements have been separately established in BEPS. ENERGY STAR Portfolio Manager is the reporting tool to provide data to the Department. This data will be used by the Department to make compliance determinations and, if necessary, carry out any enforcement actions. Enforcement is a key requirement of BEPS and would be a part of the regulation no matter the reporting tool the Department uses.

Third Party Verification

Comment: Commenters requested the Department clarify that the same consultant or qualified in-house staff that compiles and calculates energy and Direct Emissions data can also verify its accuracy to the Department.

Response: BEPS requires two different verifications: an annual verification performed by the person reporting data using ENERGY STAR Portfolio Manager, and third-party verification every five years. As noted in Section A.3.2 of the TM24-01, “prior to the June 1 benchmarking deadline each year, the building owner must check the accuracy of the data using the data quality checker built into ENERGY STAR Portfolio Manager. These checks will identify errors in the data such as missing information. If data is missing or inaccurate, then the building owner is required to fix it prior to the reporting deadline.” For more information, please see TM24-01. This verification can be carried

out by the same consultant or in-house staff submitting the report. However, as stated in Section A.3.2.2. Of the TM24-01, “to ensure quality of data, building owners must also have their data verified by a third party every five years. Third party verification will begin in 2026 with the benchmarking submission which covers calendar year 2025.” This third party verification cannot be carried out by in-house staff. However, based on stakeholder feedback, the Department can confirm that a third-party consultant that fulfills the benchmarking requests to the Department can also act as the third party verifier as long as the third party meets the credentials for a verifier established in the regulation's technical memorandum, TM24-01.

Comment: Commenters stated the Department should set forth discernable audit standards for third party verifications and requested the deadlines for verification of Benchmarking and Reporting Data to be staggered.

Response: Guidance for third party verification can be found in the regulation's Technical Support Document TM24-01 section "A. 3.2.2 Third Party Verification." Additionally, per the introduction of TM24-01, the Department will be convening a series of stakeholder working groups to further inform and refine a variety of topics, one of which will be third-party verification. As an outcome of these working group processes, the Department will publish subsequent supplemental resources, white papers, and instructional tools to support BEPS implementation. The Department will consider incorporating any findings of these working groups into future updates to the regulation and its accompanying Technical Support Documentation.

Comment: Commenters said the Department does not have the authority to require Third Party Verification.

Response: The Department disagrees with this comment. The Department is obligated to require the owners of covered buildings to measure and report direct emissions data to the Department annually beginning in 2025 and is granted broad authority to develop regulations to implement the requirements of Env't. § 2-1602. That authority does not contain an explicit prohibition on requiring third-party verification of direct emissions data. Env't § 2-1602(b). Additionally, third-party verification is a common feature used in state and federal regulation promulgated under similar, broadly worded legislative directives. See, e.g., COMAR 26.10.03.10 (requiring that owners of motor fuel, bulk oil storage, used oil, and hazardous substance underground storage tank systems (“USTs”) have a certified inspection completed by a UST system inspector certified by the Department); COMAR 26.10.13.11 (requiring bi-weekly third-party testing of oil-contaminated soil); and 40 C.F.R. § 84.33 (requiring that regulated parties arrange for annual third-party auditing of reports submitted to EPA).

Comment: Commenters requested the Department expand the credentials for an eligible third party verifier.

Response: Current qualifications of third-party verifiers can be found in section A.3.2.2 of the regulation's Technical Support Document (TM24-01). Per the introduction in TM24-01, the Department is convening a series of stakeholder working groups throughout 2024 and 2025 to further inform and refine a variety of topics, including third party data verification, to address these comments and many others. As part of the Benchmarking and Reporting Working Group, the Department recently asked stakeholders to provide additional credentials they believe would qualify someone for a third-party verification and provide supporting documentation as to why someone with those credentials has the technical background and rigorous ethical requirements to conduct third party verification. Stakeholders were invited to email BEPS.MDE@maryland.gov with this information. As an outcome of this working group process, the Department will publish subsequent supplemental resources, white papers, and instructional tools to support BEPS implementation. To sign up for the working group, please visit the Department's BEPS webpage and sign up for the upcoming sessions via the informational session signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Condominiums and Cooperatives

Comment: Commenters stated that the Department should provide specific flexibilities, exemptions, and/or financial resources to condominiums/cooperatives.

Response: The Department continues to work extensively to hear and understand the unique concerns of condominiums/cooperatives with BEPS compliance. The Department is collaborating with the Maryland Energy Administration, State and Local Green Banks, and technical assistance providers to offer technical and financial support to building owners, including condominiums. The Department is working with the General Assembly to give the Department the authority to provide additional alternative compliance pathways for all building owners, and if successful, condominium owners could leverage to aid in complying with BEPS.

Comment: Commenters stated that governing boards of condominiums do not have control over mechanical systems of individual units.

Response: The Department acknowledges that there are unique challenges for building owners that do not control certain mechanical systems located in part or all of the covered building. The Department will continue to work with building owners to better understand these challenges and continue to update implementation guidance to respond to the concerns. Most condominiums have shared systems which account for the majority of their direct emissions.

Timeline

Comment: Commenters stated that delaying the BEPS regulation would deprive building owners of the opportunity to take advantage of historic levels of federal funding.

Response: Thank you for your comment.

Comment: Commenters stated that the compliance timeline for BEPS is too aggressive, and their specific building(s) should be granted a longer runway for compliance.

Response: The Department does not have authority to alter legislative mandates. Env't § 2-1602 explicitly set the timelines in the regulation, requiring that buildings begin reporting data to the Department in 2025, reduce direct emissions 20% by 2030, and have net zero direct emissions by 2040.

Comment: Commenters stated that the Department should delay the regulation's implementation.

Response:

The Department does not have authority to alter legislative mandates. Env't § 2-1602 explicitly set the timelines in the regulation, requiring that buildings begin reporting data to the Department in 2025, reduce direct emissions 20% by 2030, and have net zero direct emissions by 2040.

Affordable Housing

Comment: A commenter stated that the Department should account for economic infeasibility for affordable housing.

Response: The Department has established performance standards and given buildings the flexibility to meet those standards any way they choose. Additionally, the regulation includes a path for building owners of affordable housing buildings, buildings

with low occupancy rates, and buildings in financial distress who meet certain criteria to obtain an exemption. Env't § 2-1602 requires the Department to create a BEPS with net direct emissions standards and the only authorized alternative compliance pathway was for buildings to make a payment at the social cost of greenhouse gases. However, the Department acknowledges the many unique situations across covered buildings in Maryland and is working with the General Assembly to give the Department the authority to provide additional alternative compliance pathways.

Comment: Commenters stated that the Department should clarify and/or expand the affordable housing definition.

Response: The Department has established performance standards and given buildings the flexibility to meet those standards any way they choose. Additionally, the regulation includes a path for building owners of affordable housing buildings, buildings with low occupancy rates, and buildings in financial distress who meet certain criteria to obtain an exemption. Env't. § 2-1602 requires the Department to create a BEPS with net direct emissions standards and the only authorized alternative compliance pathway was for buildings to make a payment at the social cost of greenhouse gases. The Department has implemented this as the alternative compliance payment. However, the Department acknowledges the many unique situations across covered buildings in Maryland and is working with the General Assembly to give the Department the authority to provide additional alternative compliance pathways.

Disadvantaged Communities

Comment: Commenters mentioned BEPS will have an unfair impact on senior citizens with limited resources.

Response: The Department appreciates senior citizens' concern with funding building improvements to meet the BEPS Standards. Maryland's Governor's Office, numerous state and local agencies, the Maryland Commission on Climate Change, and nonprofit and for profit organizations are collaborating to fill the financial need to meet the BEPS standards and other policies that are required to meet Maryland's climate goals. The state is working to secure historic levels of federal funding and develop mechanisms to make these and other funds accessible to the public to ensure that no one is left behind in the transition to a clean energy economy. One of these mechanisms, the Clean Buildings Hub within the Maryland Energy Administration, will specifically house decarbonization incentive opportunities for Maryland's entire building sector. The Clean Buildings Hub is seeking feedback from Maryland's building owners and managers on the types of resources that will help them take action to reduce on-site energy use and

greenhouse gas emissions. This data will help the Hub understand market needs, which will in turn help shape scope and strategy. Additionally, the CSNA established a Building Energy Transition Implementation Task Force, which released a final report in January 2024 with recommendations for the Governor and Legislature on policies and programs to help support this financial need. In addition to the funding Maryland is working to secure, there are resources that individuals can take advantage of today. The Inflation Reduction Act (IRA) provides substantial tax credits and rebates to support efficiency and electrification projects for households that will buy down a substantial portion of costs. The IRA includes both tax credits for qualified upgrades and up to \$14,000 in rebates per household, which could potentially apply to individually-owned equipment, for example in condominiums. For commercial buildings, the IRA greatly expanded the 179D tax deduction, including making it available for all non-profits and increasing the maximum deduction to \$5 per square foot. Additionally, the CSNA established the Climate Catalytic Capital Fund within the Maryland Clean Energy Center to help provide low-cost financing for building improvements. The EmPOWER Maryland program also provides substantial incentives for projects that reduce greenhouse gas emissions from buildings.

Building owners can engage private companies to help organize and fund their retrofits through Energy Savings Performance Contracting (ESPC) or similar pay-with-savings programs. With most ESPCs, an energy services company pays for the project upfront, and the building owner pays the company back over time, leveraging energy cost savings that resulted from the project. For more information, see the U.S. DOE's page on ESPCs: <https://www.energy.gov/scep/slsc/energy-savings-performance-contracting>. ESPCs, when combined with existing resources, could help buildings achieve BEPS standards while reducing monthly costs.

New water heaters, space heating and cooling equipment, cooking equipment, and laundry machines are all equipment that is periodically replaced and would almost certainly be replaced at least once between now and 2040. The typical Maryland home that replaces fuel-burning or electric resistance heaters with heat pumps save approximately \$1,000 annually in energy costs.

Comment: Commenters encouraged the Department to continue to evaluate impacts on equity, senior communities, and disadvantaged and disproportionately affected communities in BEPS implementation and provide additional funding and support for buildings in these communities.

Response: The Department takes its task of leaving no one behind in the energy transition seriously. This is why the Department allows for an affordable housing

alternative compliance payment waiver. However, based on our stakeholder discussions, the Department is strongly committed to ensuring all covered buildings have the resources they need to decarbonize to ensure low-income and disadvantaged communities reap the economic and health benefits of decarbonized buildings. The Department is also working with other state agencies and the Clean Buildings Hub to help building owners navigate the funding for covered buildings to help defray the cost of upgrades.

EPCA

Comment: Commenters stated Maryland's BEPS is preempted by the Energy Policy and Conservation Act (EPCA) and cited the results of the California Restaurant Association v. City of Berkeley litigation.

Response: The Department disagrees with this comment. The regulation does not prohibit the use of, require reductions in energy use from, or otherwise concern the energy efficiency or energy use of any EPCA covered product. Covered building owners can employ multiple measures, including the use of the alternative compliance pathway, to meet the standards.

Comment: A commenter asked whether EPCA preemption has been considered by counsel and if that opinion is available.

Response: The Department has considered this comment and declines to further respond as it seeks privileged attorney client information.

Seller Disclosures

Comment: Commenters stated that the disclosure of BEPS coverage to a new building owner upon sale of a covered building is out of the scope of the Department's authority.

Response: The Department disagrees with this comment. The Department is required by law to collect data from buildings each year. Chapter 02.05, the disclosure of data when a building is sold, facilitates reporting this information even when a building is sold to another owner. This is important because if a new owner buys a covered building in, for example, March of 2026, that owner would have to report data to the Department from calendar year 2025 by June 1 of 2026. In the Department's judgment, the required disclosure will aid new building owners in meeting their regulatory requirements.

Comment: A commenter stated that the Department is violating the first amendment by requiring the public disclosure of energy performance information and as such, this conflicts with the Dormant Commerce Clause.

Response: The Department disagrees with this comment. The BEPS regulation does not infringe on protected speech, religious freedoms, freedom of the press, the right of the people peaceably to assemble, or a person's right to petition the government. Nor does it expressly or implicitly regulate interstate commerce or in any way discriminate against out-of-state entities in favor of in-state interests. Env't. § 2-1602 requires that covered buildings report data to the Department. The Department has a long history of publicly disclosing data from covered entities and BEPS is no different. Additionally, jurisdictions around the country with benchmarking and/or performance standards feature public disclosure as an integral part of their requirements.

Electric Grid

Comment: Commenters stated that BEPS will negatively impact electric grid resilience and capacity and that the grid cannot support the needed electrical capacity.

Response: A study by the U.S. Department of Energy's Lawrence Berkeley National Laboratory found that efficiently meeting Maryland's BEPS standards will reduce peak electricity demand 6% by 2040. By reducing peak electricity demand, BEPS prevents the need for additional electricity generation capacity and can help lower overall energy costs.

Comment: A commenter requested the Department synchronize the install of electrified equipment with changes in grid infrastructure.

Response: The Department does not have authority over changes to the electric grid or knowledge of the timeline for any changes in grid infrastructure but works closely with the Maryland Public Service Commission (PSC) to ensure that buildings can meet our statutorily-mandated emissions targets. A 2023 decarbonization study by the PSC found that the State can electrify without additional buildout of grid infrastructure beyond historical averages. Additionally, a study by the U.S. Department of Energy's Lawrence Berkeley National Laboratory found that efficiently meeting Maryland's BEPS standards will reduce peak electricity demand 6% by 2040. By reducing peak electricity demand, BEPS prevents the need for additional electricity generation capacity and can help lower overall energy costs.

Manufacturing

Comment: Commenters inquired about the Department's definition of a "manufacturing" building, the exemption of these buildings, and/or requested the definition be expanded or clarified. For example, commenters requested the definition be expanded to include research and development facilities associated with manufacturers.

Response: The Department has considered these comments and declines to expand the BEPS regulation definition of a manufacturing building. Env't. § 2-1601, *et seq.*, requires MDE to exclude manufacturing buildings from BEPS. The Department's definition of a manufacturing building in the regulation meets legal requirement.

Comment: A commenter stated the Department has not referenced the recent amendments to the CSNA at Md. Env't Art. 2-1205(g) or acknowledged that the legislature established 2023 as the threshold date for baseline emissions for the Manufacturing sector. MDE should ensure that its performance standards for 2030 and thereafter will properly reflect the restrictions for reductions by manufacturers set forth at Md. Env't Art. 2-1205(g).

Response: The BEPS regulation is intended to meet the requirements of Env't. § 2-1602 and the Budget amendment implementing that law. While the BEPS are certainly a piece of the plans established pursuant to Env't. § 2-1205, the changes made to Md. Env't. § 2-1205(g) during the 2024 legislative session do not necessarily influence BEPS. Furthermore, manufacturing buildings are expressly exempt from BEPS under Env't. § 2-1602.

Campus Compliance

Comment: Commenters requested clarifications and additional considerations for campus compliance.

Response: Per the introduction in TM24-01, the Department has and will continue to convene a series of stakeholder working groups to further inform and refine a variety of topics, one of which is campus compliance. The first campus compliance working group met in October and the Department released a draft guidance document with additional details on campus compliance as part of this working group. The Department will consider incorporating any findings of this working group into a final campus compliance guide and include it in future updates to the regulation and its accompanying Technical Support Documentation. To sign up for the working group, please visit the Department's

BEPS webpage and sign up for the upcoming sessions via the informational session signup form. Recordings of previous sessions can be found on the Maryland Department of the Environment's BEPS YouTube Playlist.

Other

Comment: Commenters stated general opposition to BEPS and requested it or portions of its requirements not be put into effect.

Response: The Department is required by the Env't. § 2-1602 to implement the Building Energy Performance Standards regulation, including the interim performance standard and the net zero direct emissions standard in 2040.

Comment: Commenters stated that the Department should hold a specific working group for their specific building sector.

Response: Thank you for the inquiry into upcoming stakeholder engagement. The Department will continue to identify priority working group topics and facilitate group development. Per the regulation's technical memorandum (TM24-01), future working group topics may include benchmarking and report submission, third party verification, electric and gas company reporting requirements, district energy systems, campus compliance, affordable housing providers, and unique building types. The Department will notify stakeholders of available working groups via its email list and stakeholders can sign up for groups by indicating their interest in the informational sessions signup form on the Department's BEPS website. Additionally, The Maryland Energy Administration's Clean Buildings Hub will specifically house decarbonization incentives and resources for Maryland's entire building sector. The Clean Buildings Hub is seeking feedback from Maryland's building owners and managers on the types of resources that will help them take action to reduce on-site energy use and GHG emissions. This data will help the Hub understand market needs, which will in turn help shape scope and strategy, and could include working groups by MDE or the Hub to support a specific sector.

Comment: Commenters stated that backup generators should all be exempted from the emissions standards in the regulation, while other stakeholders commented that no generators should be exempted because alternatives are available. Other stakeholders commented that the Department should specify which backup combustion generators are required.

Response: The BEPS regulation (COMAR 26.28.02.02.B.5(i)) states that "emissions from generators shall be excluded from the net direct emissions requirements if a federal or state regulation requires a covered building including a health care facility, laboratory, assisted living and nursing facility, military building, critical infrastructure, and a building used in life sciences to use a backup generator or other equipment that shall run on combustible fuels." Specifics about metering for exempt combustion equipment can be found in Technical Support Document (TM24-01), section A. 2.1.4.3 "Emissions from Required Combustion Equipment." In short, if the exempted combustion equipment is submetered, that data can be subtracted, and if it is separately metered or runs on separately delivered fuels then it is not subject to the regulation's reporting requirements. If the combustion equipment is included in the main meter and not submetered, the Department will work with individual building owners as needed to properly account for these emissions. If the backup generators or other combustion equipment is not required by federal or state regulations, then the fuel use must be reported as part of the benchmarking report and the emissions will be included in the building's net direct emissions.

Comment: Commenters stated that natural gas and/or other fuel-fired equipment is the best fuel option for buildings and should not be excluded.

Response: The BEPS regulation does not ban gas or any other fuel-fired equipment. BEPS is a performance standard and building owners can choose the best way to meet the standards in any way they see fit. This can include continuing to use gas-fired equipment. However, if the emissions from the building is above the net direct emissions standards, the legislature has required that covered buildings must make an alternative compliance payment for these excess emissions.

Comment: A commenter stated that Maryland jurisdictions should be transparent about federal funding or technical support received to support BEPS implementation and asked if the Department received federal funds from its involvement in the National Building Performance Standards (BPS) Coalition.

Response: The Department received non-monetary technical assistance support from the U.S. Department of Energy and U.S. Environmental Protection Agency as part of its involvement in the National Building Performance Standards Coalition. The Department did not receive federal funding as a result of participating in the National Building Performance Standards Coalition.

Comment: Commenters stated the regulations should include an appeals process for any determinations made.

Response: The Department has an existing appeals process for determinations made for any of its regulations, including the BEPS regulation. Regulations themselves and enforcement decisions thereunder are appealable under current law.

Comment: A commenter stated that lack of information outreach from the State will blindsides building owners with compliance requirements and associated costs.

Response: The Department is actively working to provide notice of compliance and technical information to building owners through a variety of outreach mechanisms. From January to October of 2024, the Department presented on BEPS at 43 events which included almost 2,100 stakeholders, convened 10 informational and working group sessions which will continue to be convened throughout BEPS implementation, notified its communications list of 1,057 stakeholders about regulatory updates and new informational sessions, posted public events and press releases to the Department's webpage and social media, held two public hearings and three comment periods, conducted site visits, assisted in the development of an active BEPS Cohort for Maryland Local Government, coordinated with media outlets, and addressed stakeholder questions via the Department's public facing BEPS email and phone number. Additionally, the Department will send out mailing notices to buildings on the Department's "potentially covered building list" in advance of the initial benchmarking and reporting deadline of June 1, 2025. Between 2025 and 2029, building owners only need to submit energy use data for their covered building(s) to the Department via ENERGY STAR Portfolio manager, a free online tool.

Comment: Commenters asked for the Department to change federal policy including federal laws, tax law, taxes, etc.

Response: The Department is unable to change federal policy which includes policies and programs put forward by the U.S. Treasury Department, the Inflation Reduction Act, the Internal Revenue Service (IRS), federal taxes, etc.

Comment: A commenter asked about the consequences of failing to meet "measurable progress" after 2030.

Response: The Department is unsure what this commenter is referring to and notes that any failure to meet a requirement of the BEPS regulation may be considered by the Department's compliance team and may be referred for administrative or civil enforcement in the same manner as any violation of a Department regulation would be. Such actions may seek abatement of violations and/or monetary penalties.

Comment: A commenter stated that local jurisdictions do not have the staff to implement BEPS enforcement.

Response: BEPS enforcement will be carried out by the Department, not local jurisdictions.

Comment: A commenter asked if the Department coordinated with a third party organization to develop BEPS and if that third party received funding or support from the federal government. Additionally, the commenter asked if the Department considered similar Building Performance Standards (BPS) from other jurisdictions and to identify these jurisdictions.

Response: The Department received technical assistance from the U.S. Department of Energy, U.S. Environmental Protection Agency, U.S. Department of Energy's Lawrence Berkeley National Lab, and U.S. Department of Energy's Pacific Northwest National Lab, which are all supported with federal funds. The Department also received technical assistance from the Institute for Market Transformation and the Northeast Energy Efficiency Partnership. The Department is not familiar with funding sources for these organizations. The Department examined other jurisdictions' BPS policies but does not have a complete list of all of the policies that were examined during rulemaking. The Department also received input from the affordable housing providers, tenants, building owners, utility companies, district energy companies, condo owners, environmental organizations, and other stakeholders through an extensive stakeholder process. The Department's stakeholder process included 12 different open stakeholder meetings in 2022-2023 followed by 48 events, working groups, and webinars in 2024 that alone reached over 2,200 people.

Comment: A commenter asked if the Department has considered the global market availability of electric heat pumps and the international location of their development.

Response: The BEPS phased compliance requirements span 15 years from data reporting in 2025 to the final performance standards in 2040, allowing for a gradual phase in of new equipment. Based on current market trends, there are a growing number of efficient electrification and weatherization options to help building owners meet their performance standards. Additionally, the federal government is supporting substantial work to manufacture heat pumps in the U.S. to meet the growing demand.

Comment: A commenter asked whether BEPS undermines corollary policies to support commercial-to-housing property conversions?

Response: The Department is legally required to implement BEPS, as provided under the Env't. § 12-1602. In carrying out this legislative mandate, the Department has endeavored to harmonize the BEPS regulation with related state policies.

Comment: A commenter stated that efficient electric systems are less efficient than combustion equipment at speed of delivery of services like hot water.

Response: There are efficient electric systems that can provide heating and hot water more efficiently than combustion equipment. Given the advances in heat pump equipment in the last decade and a half, these technologies are only growing more widespread. Additionally, speed of delivery of services (for example hot water) usually has to do with how an individual building is set up (i.e. plumbed or ducted) rather than the equipment itself.

Comment: A commenter asked if the Department allows compliance for buildings that meet the "National Definition of a Zero Emissions Building" or are "US-EPA ENERGY STAR NextGen certified."

Response: BEPS is a flexible performance standard that allows building owners to meet the BEPS requirements any way they see fit. Env't. § 2-1602 specifically authorized MDE to implement a BEPS regulation focused on performance metrics rather than certifications and the only authorized alternative compliance pathway is the alternative compliance payment. Thus, the Department cannot accept certifications or either of the named programs in lieu of compliance with the current net direct emissions standards. That being said, the named certifications have directional alignment with the BEPS performance standards.

Comment: A commenter asked if Maryland has the workforce, software, data, and agency capacity it needs to enforce a BEPS?

Response: The Department was granted additional staff to begin implementing a BEPS regulation in accordance with the requirements of Env't. § 2-1602. The data the Department needs for BEPS will be provided by the required reporting from covered buildings via free software from the federal government.

Comment: A commenter asked if Maryland has other policies that drive homeowners, renters, and business tenants to use less energy and lower emissions caused by their behaviors and operation.

Response: The Department has considered this question and notes that it is responding to comments that pertain to the Building Energy Performance Standards (BEPS).

Comment: A commenter asked if Maryland has the right policies and incentives in place to support building owners' installation of renewable energy battery storage, and other technologies necessary for "grid-interactive" buildings.

Response: The Department has considered this question and notes that it is responding to comments that pertain to the Building Energy Performance Standards (BEPS).

Comment: A commenter asked about state policies and measurement methodologies for the decarbonization of other sectors in Maryland.

Response: The Department has considered this question and notes that it is responding to comments that pertain to the Building Energy Performance Standards (BEPS).

Public Hearing October 9, 2024 Attendance List

Chris Hoagland – MDE	Adam Fabie
Mark Stewart - MDE	Adam Scheckman
Allison Tjaden - MDE	Adam Skolnik
Zach Berzolla - MDE	Akshay Subramanya Holla
Christopher Mentzer - MDE	Alexandra G
Sam Furio – MDE	Alisia Madariaga
Kelsey Sisko, MDE	Allison Ciborowski
	Amanda Kesler
Aaron	Amber Harding
Aaron Greenfield	Amy Prentice
Aaron Mintzes	Amy Rohrer

Amy York

andrew

Ashita Gona

BCS

Barry

Ben Roush

Bernie Marczyk

Bill B

Brian Anleu

Brian J

Brian Jenkins

Brittany Baker

Bryan Dunning

Caitlyn Miller

Caller

Caller A

Carly Hinton

Casey Ross

Cassandra Viscarra

Catherine Burge

Charles McClure

Chris Carr

Chris Hutchinson

Chris Lavarone

Chris Parts

Chris Pendley

Christian Riordan

Christopher A Lindsey

Christopher Stix

Cliff Majersik

Cora

Melissa Dunn - Court Reporter

Court Reporter Backup

Daniel Dalgo

Daniel Valleau

Dave Arndt

Dave Tooley

David Borchardt

David Hollens

Doris Lange

Doug

Ed Eugeni

Emiliy Scarr

Emily Curley

Emily Porcari

Engine Tech Forum

Erica Shingara

Erin Sherman

Ethan Harden

Fiona Shirk

Frances

Fred Edeson

Garrett O'Day

George A.

Gracie Tilman

Grant M.

Hannah Allen

Hannah Plazarin

Hayley Davis

Henry Jordan

Hugh Morley

Iffat Ridwana

J

Jack Herman

JackHerman

Jacob Parrott

James Mcdonnell

James Phillips

James Roberge

Jane Briggs

Jared Lyles

Jason Dubow

Jason Mathias

Jeanne Anderegg

Jeannie Morris

Jeanne McCann

Jeff Jerome

Jeff Mauk

Jennifer L Briemann

Jesse Drewer

Jim Gotsch

Jim Johnson

Jim Lieberman

Jim Starke

Joel Rosenberg

Johann Lopez

John Fiastro

John Letos

Josh Test

Josh Tulkin

Joyce Chiang

Justin Barry

Kara Dorr

Kayla Coursey

Kevin Keane

Kevin Walton

Kim Coble

Kirstin

Kristin Bryce

Kyle

Kyle Bergeron

Larry Bernard

Lesley Paredes

Lewis Godwin

Lindsay Berkstresser

Lindsey Shaw

Lisa

Lisa Post

Liz Feighner

Maddie Smith

Maggie Ostdahl

Margaret Oloriz

Mariah Shriner

Marilyn Fincher

Mark

Mark Konapelsky

Markm

Martha Shrader

Mary Giles

Maryland Department of the
Environment (Go to meeting account)

Matt Pipkin

Melissa Wilfong

Melvin Tull

Mica Condominium

Michelle Foster

Michelle Zelaya

Mike O'Halloran

Miranda Darden-Willems

Miriam Hamilton

Mustafa Ahmad

Nabeel Waseem

Natalie Geisler

Noelani Brockett

Olivia Sivulich

Rachel DeMunda

Randy Miedzinski

Raquel Ketterman

Rebecca Postowski

Rebecca Price

Tom Ballentine

Richard Hornig

Tom Crampton

Rick Briemann

Tony Breeze

Robert Ketterman

Victoria Howard

Rupal Choksi

Scott Waitlevertch

Ruth White

Ryan Hannabass

Sabrina Bachman

Sally DeLeon

Samuel Moses

Sandy Abram

Sarah Peters

Sarah Price

Sheldon Fishman

Steven Chen

Swaroop_T

Tasneem Osman|

Taylor Smith

Terry Schroeder

Tim von Stetten

Timothy Carrico

Tina T

Todd Nedwick