

Building Energy Performance Standards Law + Regulations Preview

Webinar, May 11, 2022

Building Coverage and Benchmarking

Q: Must you request a waiver from DEP (for the Benchmarking Law)?

A: Yes, you must request an exemption/waiver by May 1st for the applicable reporting year here: <https://fs24.formsite.com/YLmyr1/jv2om50oyc/index.html>

Q: Are churches exempt from benchmarking and or other parts of BEPS?

A: If the congregation is 25,000 GSF or greater, they are covered. If there are structures that are for public assembly that doesn't have walls, like an outdoor pavilion with electricity for lighting, that would not be covered.

Q: Is DEP contacting churches which have to begin benchmarking now? Is there a way to teach them about ENERGY STAR Portfolio Manager?

A: Yes, we will be contacting all newly covered building owners to inform them about the new benchmarking requirements, similar to our outreach and engagement when the Benchmarking Law first applied to Group 1 and 2 buildings. We will also be hosting office hours, webinars, and one-on-one helpdesk sessions open to all building owners.

We also have a wealth of resources available for building owners to access now on the DEP Benchmarking webpage here:

<https://www.montgomerycountymd.gov/green/energy/benchmarking.html>

Q: Will affordable housing buildings/owners need to report for CY 2023?

A: Yes. Extensions/adjustments for under-resourced buildings will apply to the BEPS requirements, but all multifamily buildings will need to begin reporting by June 1, 2023 (250k+ gsf) or June 1, 2024 (25k – 250k gsf).

Building Group	First Benchmarking Deadline	Baseline Years	Interim	Final BEPS
County	-	2018-2022	12/31/28	12/31/33
Group 1: Non Residential >250k Sqft	-	2018-2022	12/31/28	12/31/33
Group 2: Non Residential 50-250k Sqft	-	2018-2022	12/31/28	12/31/33
Group 3 & 4: Non Residential 25 - 50k, Residential >250k Sqft	<u>June 1, 2023</u>	2022-2024	12/31/30	12/31/35
Group 5: Residential 25-250k Sqft	<u>June 1, 2024</u>	2023-2025	12/31/31	12/31/36

Q: Are healthcare facilities like hospitals, MOBs, and urgent cares required to report for BEPS?

A: Yes, if they are at least 25,000 gross square feet, they are covered by the benchmarking and BEPS requirements.

Q: If a new building in Group 3 & 4 is completed between now and June 1, 2023, is benchmarking required by June 1, 2023?

A: A building needs to have 12 full months of data post-occupancy to benchmark. If a building doesn't have a full year of CY 2022 data to report, then you'd be eligible for a one-year waiver, and the first year of reporting would be CY 2023 due June 1, 2024.

Q: Any insight on if Pepco will still provide us aggregate data if we're not subject to benchmarking any more?

A: Yes, Pepco will provide aggregate data for any of its C&I customers, independent of the County's Benchmarking requirements. More information on Pepco's benchmarking offering [here](#).

Updated Building Definition and Exemption/Waiver Criteria

Q: Approximately how many buildings are impacted by updated exemption and waiver

A: Buildings with at least 10% warehousing, self-storage, and manufacturing/industrial uses were previously exempted. The exemption criteria were updated to exempt covered buildings for which more than 50% of the total gross floor area is used for industrial uses where the majority of energy is consumed for manufacturing, the generation of electric power or district thermal energy to be consumed offsite, or for other process loads. Approximately 120 buildings that were previously exempted will be covered, unless they can submit a new exemption application documenting compliance with the new exemption criteria.

Buildings with average physical occupancy of less than 50% throughout the calendar year were previously waived. The new waiver criteria require on average, less than one full-time-equivalent employee occupied the building during the calendar year being reported for a waiver. An exact number is hard to enumerate, but most buildings requesting waivers in the past were at least somewhat occupied, meaning they would need to continue reporting in the future.

Q: How does the new building definition apply to retail centers? Technically there is no shared interior common area, and each tenant likely has their own meter. Would that still be all benchmarked together? Or would each tenant need to benchmark?

A: The new definition of a "building" limits coverage to:

- a) Single buildings that can be individually metered and share no interior common area;
- b) A group of buildings that share an energy meter, have a common heating or cooling system, share interior common areas, or otherwise cannot attribute energy use to a single building.

Tenant spaces less than 25,000 gross square feet that are individually metered and share no interior area will not have to benchmark. Anchor tenants or larger stores 25,000+ gsf will need to report. If newly reporting as a single building (rather than a retail property), these stores will be added to Group 3 for compliance.

Not Covered

Individual tenants within strip malls with separate energy systems, no shared interior space, and <25k gsf



Covered

Individual tenants within strip malls with separate energy systems, no shared interior space, and >25k gsf

Q: Given the wide range of retail energy usages - why was there a decision to not include some retailers?

A: Whether a building is covered is based predominately on building size and metering situation, not the type of retailer. Building-level reporting helps to omit smaller structures like banks, fast food, individually operated stores, smaller rectories, etc that happen to share a parcel with other larger buildings. Building-level reporting can also make the BEPS standard easier to calculate – isolating a benchmarking report to one property type – and is makes it clearer to an owner about where savings need to come from.

Gross Floor Area

Q: Does gross square footage include only conditioned space?

A: No. Per the law language, Gross floor area means: *the total building square footage measured between the principal exterior surfaces of the enclosing fixed walls of a building. Gross floor area consists of all areas inside the building, including lobbies, tenant areas, common areas, meeting rooms, break rooms, the base level of atriums, restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, and storage rooms. Gross floor area does not include exterior spaces, balconies, patios, exterior loading docks, driveways, covered walkways, outdoor play courts (e.g., tennis, basketball), parking, the interstitial space between floors (which house pipes and ventilation), and crawl spaces. Gross floor area is not the same as rentable space, but rather includes all areas inside the building(s).*

Q: How do condos get their gross square footage? This is not a metric they usually track or have knowledge of.

A: DEP is utilizing State Department of Assessments and Taxation (SDAT) records, Costar, and GIS to calculate gross floor area of individual buildings and to develop the covered buildings list. DEP's covered buildings list will contain the gross floor area for each covered building, but each building owner will need to confirm their own building square [footage to determine coverage under the law](#). Building owners wishing to challenge or update gross square footage can submit an exemption request with documentation that the building is less than 25,000 gross square feet.

Q: What if we don't know our "Gross Square Feet," does County Tax records have this?

A: SDAT, the state tax assessor, has square footage figures for buildings in the County. We also cross-reference those figures against the square footage in the CoStar real estate database. DEP's covered building inventory will assist building owners to raise awareness of buildings covered by the Law, but each building owner will need to confirm their own building square footage to determine [coverage under the law](#).

Building Energy Performance Standards

Q: Building owners who need to perform retrofits or make infrastructure improvements to meet these thresholds, will the county be offering financing options or incentives?

A: A number of financing and incentive options currently exist:

- Financing via [Montgomery County Green Bank](#) that offers multiple clean energy and energy efficiency programs to commercial, multifamily (and residential) property owners. Starting in FY23, the Green Bank will be receiving a portion of the Energy Tax to support building owners while they work towards their BEPS target.
- Incentives via [EmPOWER MD](#) and the [Maryland Energy Administration](#)
- Property tax credits via Montgomery County's [Energy Efficient Buildings Property Tax Credit](#) (available to both new and existing buildings)

Q: Wouldn't the baselines be skewed by covid (low occupancy) years?

A: The BEPS baselines average the 2 years with the highest site EUI out of the baseline period. This will omit data years with abnormally low occupancy / energy consumption.

Q: Why not use Source EUI (perhaps using IgCC multipliers)?

A: The stakeholder workgroup provided lots of input on this. Ultimately, Site EUI was chosen as the metric because the goal was to address things in the building owners' control (i.e., the efficiency of the building), not the carbon content of the electricity grid, which a building owner can't control. We are still evaluating how a renewable energy allowance would apply, which is another area that a building owner can control.

Q: How will the BEPS law apply to property types that need to earn ENERGY STAR certification at a campus level if they have multiple individual buildings? Properties like K-12, multifamily, hospitals, etc? It sounds like the new rules say single buildings will be regulated if >25k ft². These property types won't necessarily share energy systems.

A: Building owners could still opt to report properties like this as a campus. The [BEPS Technical Report](#) suggested area-weighted BEPS targets to create targets that take into account several different property types within a building or campus. However, it may be more advantageous to benchmark separately so that each building can receive its own baseline and pursue its own BEPS targets, or where one or more buildings on the campus may already meet the BEPS target. The best option may therefore vary on a site-by-site basis.

Q: Every building type (office, multifamily, etc) will need to get to the same standard for its building type by the end of the 2nd cycle? At the end the thought is that every building in that type has the same Site EUI essentially?

A: Essentially, yes, with some caveats. Some buildings may end up below the BEPS target for their property type. Other buildings might utilize a renewable energy allowance to reduce their normalized net site EUI. Other buildings might pursue a Building Performance Improvement Plan and implement all cost-effective measures in their building but end above the BEPS site EUI target for their group.

Q: What is the origin of having multiple "groupings" for building?

A: In reference to compliance Groups 1 through 5, the groupings are to allow more time for smaller buildings to begin benchmarking, provide more time for outreach and education, and to spread out compliance as not to overwhelm owners of large portfolios or County staff.

Q: How are you defining "Building Types." Is it based on use and configuration of building or is it based on the building construction materials - wood, concrete, glass?

A: Covered buildings within each building type must have shared uses and operating characteristics that facilitate the implementation and enforcement of BEPS. The Department may define one or more building types to be identical to [ENERGY STAR property type categories](#).

Q: As you know, restaurants consume a significant amount of energy, well over what the EPA identifies as a benchmark EUI and many will be less than the SF threshold. If those restaurants are within the contiguous building it inflates the EUI of the total building. So maybe the question is regarding whether a retail space will be evaluated separately in a non-strip mall setting.

A: This is something to detail in the regulations. The [BEPS Technical Report](#) suggested area-weighted BEPS targets to adjust for substantial secondary uses in a building that may increase overall energy use and limit the building's site EUI reduction potential.

Q: How will you address the whole building data issues that Pepco is currently experiencing in DC with supplying that data for DC BEPS?

A: DEP has been in touch with Pepco to get an understanding of the buildings in Montgomery County that may be impacted and Pepco's timeline for addressing any inaccuracies.

Q: Is there any incentive for buildings to exceed their final target?

A: Not at this time, but this concept could potentially be outlined in regulations and/or future budget processes.

Q: Are those final site EUI target numbers established now?

A: No, the final standards will be established through a regulatory process. This involves publishing of draft regulations and approval by the County Council through a public process. This needs to be done by no later than December 2023.

Q: Are you taking into account that of all the RECs offered to Maryland customers, only 2 of the utilities' RECs are Green Energy certified, which is the only auditor that has met the U.S. EPA's REC regulation guidance? Without the certification there is no way to verify if the RECs offered truly meet the EPA REC requirements.

A: We are still working through the renewable energy allowance (more info [here](#)), including how RECs will factor into an allowance. There is no "correct" answer to what an allowance should include, it depends on the objectives one is trying to meet. The analysis underway will explore how different options meet different objectives.

Other

Q: How does BEPS standards relate to the county's latest (and IECC draft) building code regs for HVAC systems? i.e. When will BEPS standards reach the energy standards required for new buildings?

A: The County (DPS and DEP) is undertaking work with New Buildings Institute to ensure that our building code efforts and BEPS targets are in sync. We don't have a specific answer to this question at this time but should in the near future.

Q: The state must develop BPS regulation per the Climate Solution Now legislation. How does the county plan to reconcile difference that may occur between the State and local standards or regulations?

A: We plan to work closely with the State to understand the relationship between State and County laws and as the regulation process begins.

Q: Does the county plan on providing any disincentives to developers continuing to put up very tall glass buildings that are virtually assured to not being able to be in cost effective compliance with BEPS?

A: Requirements for new building construction will be addressed through the building code process, not via BEPS, which applies to existing building performance.

Q: What is your vision for phasing in the rest of the residences in MoCo, especially large single-family homes or multiple homes with one owner?

A: We are continuing to evaluate approaches to reducing energy use in SF homes. The proposed FY23 budget includes a position to focus on this and some operating funds to conduct pilot programs.

Q: Have you evaluated energy use by SF homes? e.g., VERY large homes larger than 25,000 square feet? (yes, there are some)

A: BEPS is limited to multifamily residential and commercial properties. We are still exploring options for reducing energy use in single-family homes. The recommended FY23 budget includes a new position and some operating funds to explore this issue further.

Q: How will you address GHG emission specifically? EPA is now recommending a GHG metric for localities with BEPS.

A: EPA's recommendation is site EUI as the primary metric, for energy efficiency, and a secondary metric or approach targeting direct emissions connected to onsite fossil fuel combustion. A site EUI target that encourages or necessitates electrification to reach the target will aid in reducing on-site fossil-fuel combustion and associated GHGs. Reductions in both electricity and fossil-fuel end uses directly avoid GHG emissions at the source.