AIR QUALITY CONTROL ADVISORY COUNCIL
AGENDA
September 11, 2023

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9:00 a.m.	Welcome and Introductions	John Quinn, Advisory Council Chair Chris Hoagland, Air and Radiation Director
9:15 a.m.	Approval of Meeting Minutes	John Quinn
9:25 a.m.	Farewell Mr. Quinn	MDE Staff

Action Items:

9:40 a.m.	Non-trading Large NOx Units COMAR 26.11.40	Randy Mosier
9:55 a.m.	Building Energy Performance Standards	Mark Stewart / Allison Tjaden
11:30 a.m.	Adjourn	

Next Meeting Dates:
December 11, 2023

Maryland
Department of
the Environment

Facts About...

Chapter COMAR 26.11.40 - NO_x Ozone Season Emission Caps for Non-trading Large NO_x Units Amendments

June 26, 2023

Purpose

The purpose of this action is to propose **amendments to Regulations .02 - .03** under **Chapter COMAR 26.11.40 - NO_x Ozone Season Emission Caps for Non-trading Large NO_x Units** to update certain facilities ozone season emission caps and update a reference to the EPA's Cross State Air Pollution Rule trading program.

Submission to EPA as Revision to Maryland's State Implementation Plan (SIP)

This action will be submitted to the U.S. Environmental Protection Agency (EPA) for approval as part of Maryland's SIP.

Background

The Maryland Department of the Environment (MDE or the Department) will re-allocate the NO_x ozone season emission caps under COMAR 26.11.40.03 due to one large industrial source shutting down. The origination of the NO_x ozone season emissions budget is described below.

In 1998, EPA promulgated the NO_x Budget Trading Program (NBP) as a central component of the broader NO_x SIP Call. The NO_x SIP Call was designed to mitigate significant transport of NO_x in the eastern United States during the warm summer months, referred to as the ozone season, when ground-level ozone concentrations are highest.

In 2000, Maryland had two regulations that satisfied EPA's NO_x SIP Call requirements. At that time, COMAR 26.11.29 - NO_x Reduction and Trading Program and COMAR 26.11.30 - Policies and Procedures Relating to Maryland's NO_x Reduction and Trading Program were part of Maryland's SIP (MDE Revision #00-05). Under this SIP, all large sources of NO_x were to report ozone season NO_x emission tonnage to EPA. EPA allocated each State a specific NO_x ozone season emission budget cap to satisfy 40 CFR §51.121. Under the NO_x SIP Call, EPA named the large sources of NO_x either electric generating units (EGU) or Non-EGU. However, these terms and definitions have since been revised or replaced. The large sources of NO_x were boilers and combustion turbines that either met an applicability threshold of being over 25 MW or over 250 MMBtu/hr.

Since 2000, Maryland and the EPA have revised and developed additional regulations that deal with NO_x reductions from these same NO_x SIP Call sources. The EPA NO_x Budget Trading Program evolved into the Trading Programs for large NO_x sources. The EPA requirements are under 40 CFR Part 96 "NO_x Budget Trading Program and Clean Air Interstate Rule (CAIR) NO_x and SO_2 Trading Programs for SIPs" and Part 97 "Federal NO_x Budget Trading Program, CAIR NO_x and SO_2 Trading Programs, and Cross-State Air Pollution Rule (CSAPR) NO_x and SO_2 Trading Programs". The EPA's CAIR and CSAPR programs were developed to limit emissions from fossil fuel-fired sources that are part of the electricity grid and are > 25 MW (EGUs). Each affected State was tasked with preparing a plan to address the Non-trading units – or boilers, combustion turbines or combined cycle units with a maximum design heat input greater than 250mmBtu/hr – that do not meet the applicability criteria under the CAIR or CSAPR trading programs. The NO_x budget that Maryland must meet for the Non-trading large NO_x units was established in Maryland's SIP revision to comply with the NO_x SIP Call and matches the budget for those units listed

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Chapter COMAR 26.11.40 - NO_x Ozone Season Emission Caps for Non-trading Large NO_x Units Amendments

under 40 CFR Appendix C to Subpart E of Part 97 "Final Section 126 Rule: Trading Budget" Table. The Non-EGU (column 2) is the NO_x tonnage cap that the State must meet for all applicable Non-trading large NO_x units. This table shows a NO_x budget of 1,013 tons for Non-trading units in Maryland.

In 2010, under COMAR 26.11.14.07, the Department allocated all of the Non-trading large NO_x units budget tonnage to the only identified source subject to these requirements. This source was the Luke Paper Mill, a kraft pulp papermill in operation since 1959. Also in 2010, Maryland removed the NO_x SIP call regulations COMAR 26.11.29 and COMAR 26.11.30. (Of note, in 2010 & 2015 COMAR Chapter 29 & Chapter 30 were re-codified and now cover requirements for Natural Gas Compression Stations and Cement Plants, respectively.)

In 2018, the Department reviewed State sources that could be subject to the Non-trading large unit requirements of the NO_x SIP Call and created a new COMAR chapter 26.11.40 to address additional facilities that fall under the Non-trading large NO_x unit requirements of the NO_x SIP Call. Four affected sources, including the Luke Paper Mill, were allocated an NO_x ozone season emissions cap and the remainder of the budget was applied to a new unit set aside for future sources.

In addition to establishing an ozone season NO_x budget tonnage cap, the regulations also require "Part 75" monitoring for Non-trading large NO_x units. Per 40 CFR §51.121(i)(4), applicable sources are required to comply with the monitoring provisions of 40 CFR Part 75 Continuous Emissions Monitor (CEM), Subpart H (§§ 75.70 – 75.75). Subpart H is titled "NO_x Mass Emissions Provisions" and details the CEM recording and record keeping requirements that Non-trading large NO_x units must employ. Under COMAR 26.11.01.11E(2), the Department specifies additional CEM Data Reporting Requirements.

In 2020, the affected source Luke Paper Mill, VERSO Corporation, located in Luke, Maryland: Units No. 24, 25 and 26 shut down. Therefore, the Department proposes to re-allocate NO_x ozone season tonnage caps by removing the Luke Paper Mill, as well as correct the references for the trading program.

Sources Affected and Location

This regulation is applicable throughout the entire State.

The following "Affected Sources and Units" have been identified in Maryland.

- American Sugar Refining (Domino Sugar), located in Baltimore, Maryland: Unit No. C6;
- Cove Point LNG Terminal, Dominion Energy, located in Lusby, Maryland: Units No. Frame 5-1 (Turbine S009), Frame 5-2 (Turbine S010), Frame 7-A, Frame 7-B, Aux A and Aux B;
- National Institutes of Health, Located in Bethesda, Maryland: Unit 1156; and
- A person who owns or operates a new unit subject to this Chapter.

Requirements

In 2018, COMAR 26.11.40 established NO_x ozone season tonnage caps and NO_x monitoring requirements for large NOx sources in the state of Maryland that are not covered under the CSAPR trading program. Now, the Department is proposing amendments to update certain facilities ozone season emission caps and update a reference to the EPA's CSAPR trading program.

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COMAR 26.11.40.02 currently identifies the CSAPR trading program that was in effect in 2018. In 2019, the EPA updated the CSAPR program and created a new trading group; the CSAPR NOx Ozone Season Group 3 Trading Program, with revisions in 2021.. Since the CSAPR program is ever evolving, the Department proposes to change the CSAPR trading program reference to a more generic reference that will incorporate future changes. The CSAPR trading program reference helps distinguish sources that are regulated under the CSAPR EGU program versus the Non-trading program.

COMAR 26.11.40.03 identifies the existing sources and gives each source a NO_x emission tonnage cap so that the non-trading large NOx unit emissions for the entire State does not exceed 1,013 tons as required under Maryland's SIP revision addressing the NO_x SIP Call. Each affected source is required to limit their ozone season NO_x emissions to meet or be under the NO_x ozone season tonnage cap in the table under COMAR 26.11.40.03.B. The proposed amendments remove one source that has permanently shut down and revises the new unit set aside allocations. The remaining affected facilities will not see a change in their emission cap.

The Department will revise the existing table to remove the Luke Paper Mill and their 656 tons and add the 656 tons to the New Unit Set Aside for the NO_x ozone season tonnage cap.

Affected Sources	Revised NO_x Ozone Season Emission Caps
American Sugar	24 tons
Cove Point LNG	214 tons
National Institutes of Health	23 tons
New Unit Set Aside	752 tons
Total	**1013 tons**

Should a new source with a Non-trading large unit wish to open in Maryland, there will be 752 tons of NOx available from the new unit set aside. Additionally, existing affected sources may use the new unit set aside for an expansion with approval.

The NO_x ozone season tonnage cap for each facility was calculated using permit conditions, regulatory emission rates and capacity factors. The Department worked with the facilities to determine an appropriate unit tonnage. Each facility has been allocated a cap based on the calculations. The new unit set aside is the remaining tons available to any new source identified to meet the applicability of COMAR 26.11.40.02. Ozone season NO_x emissions from new sources applicable to this chapter may not exceed the new unit set aside allocations as identified in the table under proposed COMAR 26.11.40.03.B.

Projected Emission Reductions

The NO_x SIP Call requirements have been in place within Maryland for several decades and the NO_x emission benefits have already been realized. This proposed action satisfies the NO_x SIP Call requirements and maintains a NO_x cap for affected sources. No additional NO_x emission reductions are projected.

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Chapter COMAR 26.11.40 - NO_x Ozone Season Emission Caps for Non-trading Large NO_x Units Amendments

Economic Impact on Affected Sources, the Department, other State Agencies, Local Government, other Industries or Trade Groups, the Public

This action will not have an economic impact on affected sources, State agencies or local governments.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Is there an Equivalent Federal Standard to this Proposed Regulatory Action?

Yes – 40 CFR §51.121 "Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen". This CFR requirement has been termed by EPA and the States as "the NO_x SIP Call". The state's NO_x budget for these units was established under the state's SIP revision addressing the NO_x SIP Call and matches the state's budget for these sources shown at 40 CFR Part 97, Subpart E, Appendix C.

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 11 AIR QUALITY

Chapter 40 NO_x Ozone Season Emission Caps for Non-trading Large NO_x Units

Authority: Environment Article, §§1-404, 2-103, and 2-301—2-303, Annotated Code of Maryland

.01 (text unchanged)

.02 Applicability.

A. The owner or operator of a non-trading large NO_x unit, that is not a unit subject to **[**the federal Cross State Air Pollution Rule NO_x Ozone Season Group 2 Trading Program established under 40 CFR Part 97, Subpart EEEEE**]** *a federal trading program for ozone season emissions of NOx established under 40 CFR Part 97 to address interstate transport of ozone and NOx in accordance with 40 CFR 52.38(b), or a state trading program for ozone season emissions of NOx approved by the EPA Administrator as meeting the requirements of 40 CFR 52.38(b),* shall comply with the ozone season NO_x emission limitation, monitoring, record keeping, and reporting requirements for ozone season emissions of NO_x set forth in this chapter.

B (text unchanged)

C. Affected Sources and Units.

(1) American Sugar Unit No. C6;

(2) Cove Point LNG Units No. Frame 5-1 (Turbine S009), Frame 5-2 (Turbine S010), Frame 7-A, Frame 7-B, Aux A and Aux B;

[(3) Luke Paper Mill Units No. 24, 25 and 26;**]**

[(4)**]** *(3)* National Institutes of Health Unit 5-1156; and

[(5)**]** *(4)* A person who owns or operates a new unit subject to this chapter.

.03 NO_x Ozone Season Emission Caps.

A. (text unchanged)

B. NO_x Ozone Season Emission Caps.

(1) (text unchanged)

(2) Table — NO_x Ozone Season Emission Caps.

Affected Sources	NO_x Ozone Season Emission Caps **[**Beginning May 1, 2018**]**
American Sugar	24 tons
Cove Point LNG	214 tons
[Luke Paper Mill**]**	**[**656 tons**]**
National Institutes of Health	23 tons
New Unit Set Aside	**[**96**]** *752* tons
Total	1013 tons

C. (text unchanged)

.04 (text unchanged)

Maryland
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the Environment

COMAR 26.28
Building Energy Performance Standards

What You Need to Know

Purpose

The purpose of this action is to create the Maryland Building Energy Performance Standards (BEPS) as required by the Climate Solutions Now Act (CSNA) of 2022. The goal is to reduce direct greenhouse gas (GHG) emissions and improve overall energy efficiency from Maryland's building sector for buildings that are 35,000 square feet or larger. The regulation requires covered building owners to measure and report data to the Maryland Department of the Environment (MDE). The regulation further requires that covered building owners meet specific net direct GHG emissions and energy use intensity (EUI) standards. The regulation also contains record keeping and reporting requirements for electric and gas companies and district energy providers.

Submission to EPA as Revision to Maryland's State Implementation Plan (SIP)

This action will not be submitted to the U.S. Environmental Protection Agency (EPA) as part of Maryland's SIP.

Background

In 2022, the Maryland General Assembly passed the CSNA that modified Maryland's GHG emissions reduction goals in response to the latest science indicating that more stringent goals are necessary to combat climate change. CSNA set new goals to reduce statewide GHG emissions by 60% below 2006 levels by 2031 and achieve net-zero emissions by 2045. Among the requirements outlined in the new law is that Maryland implement BEPS. CSNA requires MDE to develop BEPS for covered buildings that: achieve a 20% reduction in net direct GHG emissions on or before January 1, 2030, as compared with 2025 levels for average buildings of similar construction; attain net-zero direct GHG emissions on or before January 1, 2040; and include EUI targets by building type.

Covered buildings will be required to benchmark energy use utilizing the United States Environmental Protection Agency's (EPA) ENERGY STAR Portfolio Manager tool, which is a free and an interactive resource management tool that enables the benchmarking of energy use of any type of building. Covered buildings are subject to interim performance standards prior to 2040 and to a final performance standard that must be achieved on an annual basis in 2040 and beyond.

Maryland Department of the Environment

COMAR 26.28

Building Energy Performance Standards

What You Need to Know

In July 2023, Maryland joined the White House National Building Performance Standards Coalition,[1] which is a nationwide group of state and local governments that have committed to inclusively design and implement building performance policies and programs in their jurisdictions. Maryland's development of BEPS has been supported by federal agencies, labor, and non-governmental organizations that provided resources for workforce engagement, technical analysis, equity strategies, policy design, and stakeholder engagement.

Sources Affected and Location

The proposed regulation applies to buildings in Maryland that are 35,000 square feet or larger (excluding the parking garage area). Historic properties, public and nonpublic elementary and secondary schools, manufacturing buildings, agricultural buildings, and federal buildings are exempt. There are approximately 9,000 covered buildings in Maryland located across all counties. Electric and gas companies and, in limited cases, tenants in covered buildings are required to maintain and provide energy consumption data for covered buildings.

Requirements

This regulation requires covered building owners to report data to MDE through the EPA ENERGY STAR Portfolio Manager tool. Benchmarking will begin in 2025 and compliance with direct GHG emissions and site EUI standards will begin in 2030. Covered building owners may need to make improvements to their buildings to meet the net direct GHG emissions and site EUI standards. Covered buildings must meet or exceed interim standards in 2030 through 2039 and final standards in 2040 and beyond or pay an alternative compliance fee or penalty. Interim and final standards are set in the regulation. MDE will conduct an updated analysis after the 2025 benchmarking data are submitted in 2026 to determine if the interim and/or final standards need to be modified based on actual 2025 benchmarked building energy performance.

Electric companies and gas companies are required to maintain and provide energy consumption data for all covered buildings and provide to the building owner accurate and timely information on the actual amount of electricity, gas, or fuel delivered to a covered building. District energy companies are required to provide information on the emissions intensity of their district energy system to their customers.

[1] National BPS Coalition (July 2023), https://nationalbpscoalition.org/.

A tenant of a covered building is required to provide requested benchmarking information to a covered building owner that cannot otherwise be acquired from other sources.

Projected Emissions Reductions

According to Maryland's GHG Emissions Inventory,[2] direct fuel use in buildings produced nearly 14 million metric tons of carbon dioxide equivalent (MMTCO2e) in 2020. Electricity consumption, almost all of which was consumed in buildings, generated approximately 18 MMTCO2e in 2020. Through their direct fuel use and electricity consumption combined, Maryland's buildings accounted for roughly a third of all statewide GHG emissions. Buildings covered by BEPS accounted for approximately 5 MMTCO2e in 2020. In combination with state and federal policies to achieve 100% clean power generation, BEPS is modeled to reduce emissions by approximately 18 MMTCO2e between 2025 and 2050 in a study by the U.S. Department of Energy's Lawrence Berkeley and Pacific Northwest National Laboratories (August 2023).

Economic Impact on Affected Sources, the Department, other State Agencies, Local Government, other Industries or Trade Groups, the Public

Between 2025 and 2040, building owners whose buildings do not already meet the BEPS standards will be required to implement energy efficiency measures and/or electrification measures or pay alternative compliance fees in order to comply with BEPS. As building owners implement these measures, they will begin to save money from reduced energy costs. Savings from reduced energy costs will accumulate and increase over time and beyond the initial implementation period for BEPS.

Results from a 2023 study by the U.S. Department of Energy's Lawrence Berkeley and Pacific Northwest National Laboratories demonstrate that during BEPS implementation (2025-2040), all covered buildings combined will spend more on efficiency measures ($8.8B) and electrification measures ($6.4B) than the energy cost savings accrued in this period ($8.96B). However, on a longer time horizon (2025-2050), energy cost savings increase to $22.3B, indicating a net savings for Maryland's covered buildings. On average, over the 2025-2050 time horizon, covered buildings save $4.47 per square foot.

The Building Energy Transition Task Force, created by the CSNA, is an advisory body that will prepare a report to the Governor and the General Assembly by December 1, 2023. The report will include recommendations relating to funding the retrofit of covered buildings to comply with BEPS. Additionally,

[2] Maryland Greenhouse Gas Emissions Inventory (September 26, 2022), https://mde.maryland.gov/programs/air/climatechange/pages/greenhousegasinventory.aspx.

through the efforts of various state agencies, significant funding from the federal Bipartisan Infrastructure Law and Inflation Reduction Act are expected to reduce costs of compliance with BEPS for Maryland's affected sources and speed their return on investments. For example, the federal Energy Efficient Commercial Building Deduction provides up to $5 per square foot for projects that reduce energy use intensity, including electrification projects.

Economic Impact on Small Business

As described above, on average, over the 2025-2050 time horizon, covered buildings save $4.47 per square foot. The savings and costs identified in the 2023 study from the U.S. Department of Energy's Lawrence Berkeley and Pacific Northwest National Laboratories will impact small businesses that are covered building owners and may also impact small businesses that are tenants in buildings covered by BEPS.

The Building Energy Transition Task Force, created by the CSNA, will prepare a report to the Governor and the General Assembly which will include recommendations relating to a plan for funding the retrofit of covered buildings to comply with BEPS. Additionally, significant funding from the federal Bipartisan Infrastructure Law and Inflation Reduction Act are expected to reduce costs of compliance with BEPS for Maryland's affected sources and small businesses.

Is there an Equivalent Federal Standard to this Proposed Regulatory Action?

In December 2022, the U.S. Council on Environmental Quality (CEQ) issued a Federal Building Performance Standard (BPS).[3] The Federal BPS was issued according to the requirements set by Executive Order (E.O.) 14057, *Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability*.[4] The Federal Government is considered the single largest energy consumer in the country, and the Federal BPS includes facilities owned by the Federal Government or covered facilities according to section 432 of EISA (42 U.S.C. § 8253(f)(2)(B)). The Federal BPS will deliver a net-zero emissions building portfolio by 2045, including a 50 percent GHG emissions reduction by 2032, prioritizing energy efficiency and electrification. To achieve these goals, section 205(b) of E.O. 14057 provides that agencies should use the Federal BPS to prioritize reductions in scope 1 GHG emissions.

[3] The Federal Building Performance Standard, Council on Environmental Quality (December 2022), https://www.sustainability.gov/pdfs/federal-building-performance-standard.pdf.
[4] 86 FR 70935 (December 13, 2021), https://www.whitehouse.gov/briefing-room/presidentialactions/2021/12/08/executive-order-on-catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability/.

Scope 1 emissions cover standard building operational needs, including direct emissions from space heating and cooling, water heating, cooking, backup generators, and laundry.

Documents to be Incorporated by Reference

International Building Code (IBC), Sixth Version: Nov 2021, Chapter 2 “Definitions”, Section 202 “Definitions”, [A] Building.

International Energy Conservation Code (IECC), Second Version: Sep 2021, Chapter 4 “[CE] Commercial Energy Efficiency”.

Maryland Department of the Environment Technical Memorandum 23-01, "Technical Guidance and Calculation Methodologies to Comply with Building Energy Performance Standards", August, 2023.

Title 26 DEPARTMENT OF THE ENVIRONMENT
Subtitle 28 BUILDING ENERGY PERFORMANCE STANDARDS

Chapter 01 Definitions and Documents Incorporated by Reference

Authority: Environment Article, §§1-404, 2-301, 2-302, 2-1205, 2-1602, Annotated Code of Maryland

.01 Purpose

The purpose of this chapter is to define the terms used in this subtitle and identify the documents that are incorporated by reference.

.02 Definitions

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1)"Affordable Housing Providers" means the owner of a covered building that primarily provides housing to limited income households, where a minimum of 51% of households living within the building are at or below 80% of the area median income as defined in the Housing and Community Development Article, §4–1801, Annotated Code of Maryland, or a covered building that is restricted under the Low-Income Housing Tax Credit (LIHTC) program.

(2) "Agricultural building" means a structure that is used primarily to cultivate, manufacture, process, or produce agricultural crops, raw materials, products, or commodities. Agricultural building includes a greenhouse.

(3) "Alternative compliance fee" means a fee paid by the building owner to come into compliance with applicable net direct emissions standards, as specified in Regulation.01A of COMAR 26.28.04.

(4) "Area-weighted standard" means an interim or final performance standard that is calculated based on the floor area proportion of the property types within a covered building.

(5) Authorized occupant.

(a) "Authorized occupant" means a person that is approved by a building owner to be within a covered building.

(b) "Authorized occupant" does not include:

(i) Security guards;

(ii Janitors;

(iii) Construction workers;

(iv) Landscapers; and

(v) Other maintenance personnel.

(6) “Baseline performance” means the weather-normalized numeric values of net direct greenhouse gas emissions and site EUI of a covered building for the covered building’s baseline year.

(7) “Baseline year” means either calendar year 2025 for a covered building that was constructed and occupied prior to calendar year 2025 or the first full calendar year in which a newly constructed covered building was occupied.

(8) “Benchmark” means to track and input a building’s energy consumption data and other relevant building information on a monthly basis for at least 12 consecutive months, as required by the benchmarking tool, to quantify the building’s energy use and greenhouse gas emissions.

(9) Benchmarking information.

(a) “Benchmarking information” means descriptive information about a building, its operating characteristics, and information generated by the benchmarking tool regarding the building’s energy consumption, efficiency, and performance.

(b) “Benchmarking information” includes but is not limited to the building identification number, address, gross floor area, and separate energy consumption totals for each fuel type.

(10) “Benchmarking tool” means the website-based software, commonly known as ENERGY STAR Portfolio Manager, or any successor system, approved by the United States Environmental Protection Agency.

(11) “Building” has the meaning and interpretation set forth in the International Building Code.

(12) “Building owner” means:

(a) An individual or legal entity possessing title to a building including but not limited to a board of the owners’ association, master association, board of directors, community association, cooperative housing corporation, or condominium.

(13) “Campus” means a collection of two or more buildings, of any building type or size, that act as a single cohesive property with a single shared primary function and are owned and operated by the same party, such as, but not limited to, higher education or hospital campuses, as determined by the Department.

(14) “Commercial building” means a building that is subject to the commercial provisions of the International Energy Conservation Code regardless of the nature of the entity or government that owns the building.

(15) “Covered building” means a building that:

(a) Is a commercial or multifamily residential building in the State of Maryland or is owned by the State of Maryland; and

(b) Has a gross floor area of 35,000 square feet or more, excluding the parking garage area; and is:

(i) A single building;

(ii) One or more buildings held in the condominium form of ownership with a combined gross floor areas of 35,000 square feet or more (excluding the parking garage area) and governed by a single board of managers; or

(iii) Two or more buildings with a combined gross floor area of 35,000 square feet or more (excluding the parking garage area) that are served in whole or in part by the same electric or gas meter or are served by the same heating or cooling system(s), which is not a district energy system.

(c) A building that meets the criteria for a covered building as described in this section and is located in a historic district but where the building is not individually designated as a historic property under federal, state, or local law is a covered building.

(d) "Covered building" does not include:

(i) A building, or space within a building, individually designated as a historic property under federal, state, or local law, separate and apart from a building's inclusion in a historic district;

(ii) A public or nonpublic elementary or secondary school building;

(iii) A manufacturing building;

(iv) An agricultural building; or

(v) A building owned by the Federal government;

(16) "Department" means the Maryland Department of the Environment.

(17) "Direct greenhouse gas emissions or direct emissions" means greenhouse gas emissions produced on-site by covered buildings, as calculated by the benchmarking tool unless otherwise specified by the Department.

(18) "District energy system" means a system in which thermal energy generated at one or more central facilities provides heating or cooling through a network of insulated underground pipes to provide hot water, steam, space heating, air conditioning, or chilled water to nearby buildings.

(19) "District energy provider" means an entity that provides thermal energy to customers through a district energy system.

(20) "Electric company" has the meaning stated in Public Utilities Article, §1-101, Annotated Code of Maryland.

(21) "Final performance standard or final standard" means the numeric values of net direct greenhouse gas emissions and site EUI that each covered building must ultimately achieve on an annual basis in 2040 and beyond.

(22) "Financial distress" means:

(a) A property that is the subject of a tax lien sale or public auction due to property tax arrearages;

(b) A property that is controlled by a court appointed receiver; or

(c) A property that was acquired by a deed in lieu of foreclosure in the last calendar year.

(23) "Food service facility" has the meaning stated in COMAR 10.15.03.02B.

(24) Full-time-equivalent employee.

(a) "Full-time-equivalent employee" means a person that occupies a covered building for no less than 40 person- hours per week throughout a calendar year.

(b) "Full-time-equivalent employee" excludes:

(i) Security guards;

(ii) Janitors;

(iii) Construction workers;

(iv) Landscapers; and

(v) Other maintenance personnel.

(25) "Gas company" has the meaning stated in Public Utilities Article, §1-101, Annotated Code of Maryland.

(26) "Greenhouse gas emissions or emissions" means gasses released into the atmosphere that contribute to climate change, including but not limited to carbon dioxide (CO_2), as calculated by the benchmarking tool unless otherwise specified by the Department.

(27) Gross floor area.

(a) "Gross floor area" means the total building square footage measured between the principal exterior surfaces of the enclosing fixed walls of a building.

(b) "Gross floor area" consists of all areas inside the building, including but not limited to 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.

(c) "Gross floor area" does not include exterior spaces, balconies, bays, 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.

(d) "Gross floor area" is not the same as rentable space, but rather includes all areas inside the building(s).

(28) “Interim performance standard or interim standard” means the numeric values of net direct greenhouse gas emissions and site EUI which covered buildings must achieve by a specified calendar year that is prior to 2040.

(29) “Manufacturing building” means a building classified as a manufacturing building in North American Industry Classification System (NAICS) or otherwise designated as a manufacturing building by the Department.

(30) “Mixed-use building” means a building that contains two or more property types.

(31) Net direct greenhouse gas emissions or net direct emissions.

(a) “Net direct greenhouse gas emissions or net direct emissions” means:

(i) The sum of all direct greenhouse gas emissions from a covered building; or

(ii) For a covered building connected to a district energy system, direct greenhouse gas emissions plus the greenhouse gas emissions attributable to thermal energy inputs from the district energy system used by the covered building, as calculated using the methodology provided in this regulation.

(b) “Net direct greenhouse gas emissions or net direct emissions” does not include direct greenhouse gas emissions from a food service facility located within a covered building.

(32) “Newly constructed covered building” means a covered building that was constructed after 2024 and occupied by at least one full-time-equivalent employee or authorized occupant.

(33) “Occupied” means a covered building with at least one full-time equivalent employee or authorized occupant.

(34) “Property type” means the primary use of a building space as specified in ENERGY STAR Portfolio Manager.

(35) Site energy use.

(a) “Site energy use” means all energy used on-site by a covered building to meet the energy loads of the building.

(b) “Site energy use” includes electricity delivered to the building through the electric grid and/or generated on-site with renewable sources; thermal energy delivered to the building through a district energy system; and natural gas, diesel, propane, fuel oil, wood, coal, and other fuels used on-site.

(c) “Site energy use” excludes electricity used for charging vehicles, a food service facility located within a covered building, and other electricity uses excluded from site energy use by the benchmarking tool.

(36) “Site energy use intensity or site EUI” is calculated by the benchmarking tool by dividing the total energy consumed in one calendar year by the gross floor area of the building and reported as a value of a thousand British thermal units (kBTU) per square foot per year.

(37) “Tenant” means a person or entity occupying or holding possession of a building, part of a building, or premises pursuant to a rental or lease agreement.

(38) “Weather normalized” means a method for modifying the measured building energy use in a specific calendar year to estimate energy use under normal weather conditions as calculated by the benchmarking tool.

(39) Web services application programming interface (API) or web services API.

(a) “Web services API” means the free application for use by organizations to exchange building energy and other data between their own systems and the benchmarking tool.

(b) “Web services API” may include the entry of data into the tool and/or the calculation and extraction of metrics and other information from the tool.

(40) “Whole building energy consumption data” means energy data that has been summed for an entire building, which may include a single occupant or a group of separately metered tenants, representing the cumulative total of energy used in the covered building.

.03 Incorporation by Reference.

A. In this subtitle, the following documents are incorporated by reference.

B. Documents Incorporated.

(1) International Building Code (IBC), Sixth Version: Nov 2021, Chapter 2 “Definitions”, Section 202 “Definitions”, [A] Building.

(2) International Energy Conservation Code (IECC), Second Version: Sep 2021, Chapter 4 “[CE] Commercial Energy Efficiency”.

(3) Maryland Department of the Environment Technical Memorandum 23-01, "Technical Guidance and Calculation Methodologies to Comply with Building Energy Performance Standards", August, 2023.

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 28 BUILDING ENERGY PERFORMANCE STANDARDS

Chapter 02 Benchmarking and Reporting

Authority: Environment Article, §§1-404, 2-301, 2-302, 2-1205, 2-1602, Annotated Code of Maryland

.01 Purpose.

The purpose of this chapter is to establish reporting requirements for building owners, tenants, electric and gas companies, and district energy providers.

.02 Reporting Requirements of Building Owners.

A. Data Collection.

(1) Each calendar year beginning in 2025 or in the first calendar year after which a newly constructed covered building is occupied, the building owner shall collect and enter all required benchmarking information for the previous calendar year into the benchmarking tool.

(2) Nothing in this regulation shall be construed to permit a building owner to use tenant energy usage data for purposes other than evaluation of the performance of the building.

B. Benchmarking Report.

(1) A building owner shall submit a benchmarking report to the Department by June 1st of each calendar year, beginning in 2025, using the benchmarking tool.

(2) Following the first full calendar year that energy data can be collected and the building was occupied, the owner of any newly constructed covered building must benchmark the building and report to the Department no later than June 1 of the following year, and every June 1 thereafter.

(3) The annual benchmarking report shall include, at a minimum, the benchmarking information spanning January 1st to December 31st of the previous calendar year.

(4) The building owner shall enter data into the benchmarking tool such that the benchmarking report shall be based on an assessment of the energy consumed by the building for the entire calendar year being reported.

(5) The building owner shall exclude from the benchmarking report submetered and separately metered energy consumption data for:

(a) Food service facilities that engage in commercial cooking and water heating;

(b) Electric vehicle charging;

(c) Other electricity uses excluded from site energy use by the benchmarking tool; and

(d) Emissions from required combustion equipment under the following conditions:

(i) 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 must run on combustible fuels.

(ii) A covered building is required to include emissions from a combustion generator/equipment if the relevant federal or state regulation is updated to allow battery storage and/or other types of systems that do not produce direct emissions.

(6) Energy consumption for food service facilities can be excluded using a standard deduction formula in accordance with the Department's TM 23-01, "Technical Guidance and Calculation Methodologies to Comply with Building Energy Performance Standards," when such energy consumption cannot be excluded using submetered or separately metered data.

(7) Before submitting a benchmarking report, the building owner shall run all automated data quality checker functions available within the benchmarking tool and shall confirm that all data has been accurately entered into the tool. The building owner shall correct all missing or incorrect information as identified by the data quality checker prior to submitting the benchmarking report to the Department.

(8) If a building owner is notified of an inaccuracy by the Department or other third party, then the building owner shall amend the information reported within the benchmarking tool, and shall provide the Department with an updated benchmarking submission within 30 days of learning of the inaccuracy.

(9) The building owner of a mixed-use covered building shall use the benchmarking tool to report the gross floor area for all property types in the building.

(10) The building owners of a covered building that is connected to district energy systems shall submit additional information to supplement the annual benchmarking report in accordance with the Department's TM 23-01, "Technical Guidance and Calculation Methodologies to Comply with Building Energy Performance Standards".

C. Third Party Verification of Benchmarking Reports.

(1) The building owner shall have a third party verify the accuracy of benchmarking reports for calendar years:

(a) 2025 (benchmarking report due in 2026);

(b) 2030 (benchmarking report due in 2031);

(c) 2035 (benchmarking report due in 2036);

(d) 2040 (benchmarking report due in 2041); and

(e) every five years thereafter.

(2) The building owner of a newly constructed covered building shall have a third party verify the first required benchmarking report and then comply with the schedule in this chapter for verification of subsequent reports.

(3) The building owner shall provide to the third party verifier all utility bills, delivered fuel receipts, and other documentation needed by the verifier for the calendar year covered by the benchmarking report.

(3) The building owner shall submit a copy of a third party verification to the Department when submitting the associated benchmarking report in accordance with the Department's TM 23-01, "Technical Guidance and Calculation Methodologies to Comply with Building Energy Performance Standards."

D. Maintenance of Historical Data.

(1) The building owner shall maintain adequate records demonstrating compliance with this Chapter, including but not limited to, energy bills, reports, forms, and records received from tenants or utilities and records.

(2) Such records shall be preserved for a period no less than five years.

(3) At the request of the Department, such records shall be made available for inspection and audit by the Department.

.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.

.04 Reporting Requirements of Electric and Gas Companies and District Energy Providers.

A. Electric and Gas Companies.

(1) Electric and gas companies delivering energy to a covered building shall maintain whole-building energy consumption data for all buildings, for at least the most recent five years in an electronic format capable of being uploaded to the benchmarking tool.

(2) On and after January 1, 2025, upon the request and authorization of a building owner an electric or gas company shall provide the building owner with at least the most recent 12 consecutive months of whole building energy consumption data by fuel type for the specified building for all the fuel type(s) provided by the company.

(a) The electric or gas company shall provide data to the requestor as follows:

(i) Data must include whole building energy consumption, aggregating all utility meters that measure energy consumption at the building;
(ii) Data shall be provided to the requestor within 90 days of receiving a data request in 2025;
(iii) Data shall be provided to the requestor within 30 days of receiving a data request in 2026 or later; and
(iv) Whole building energy consumption data shall be provided to the requestor in monthly intervals.

(b) An electric or gas company may be exempt from §A(2)(a) in accordance with §A(7).

(3) Investor-owned electric and gas companies serving 40,000 or more customers shall use the benchmarking tool's web services API to deliver data to requesters on an ongoing basis.

(4) Investor-owned electric and gas companies serving fewer than 40,000 customers, municipal electric and gas companies, or cooperatively owned electric and gas companies shall provide data in the spreadsheet template specified by the benchmarking tool, or through the benchmarking tool's web services API to requesters on an ongoing basis.

(5) Electric and gas companies shall develop and maintain a process to identify and confirm with the building owner the list of meters that will be used to calculate the aggregated total as follows:

(a) Electric and gas companies shall provide to the building owner a listing of all meters included in the whole building energy consumption data for verification purposes; and
(b) If any correction or update takes place at a meter that is included in the whole building energy consumption data, then the affected value(s) shall be proactively updated by the electric or gas company through the benchmarking tool's web services API or through an updated spreadsheet template with a notification provided to the building owner/data requestor.

(6) For covered buildings with five or more tenants, electric and gas companies shall deliver to requestors the monthly whole building energy consumption data capturing total consumption by fuel type of all relevant fuel(s) across all meters at the building.
(a) The whole building energy consumption data shall not be deemed confidential information by the electric and gas companies for purposes of delivery to the building owner.
(b) Electric and gas companies will not be required to acquire explicit authorization for data release by the individual tenants.

(7) For covered buildings with fewer than five tenants, electric and gas companies shall deliver whole building energy consumption data to the building owner if the building tenants provide written or electronic consent for the delivery of the tenant's energy data to the building owner.

(a) The building tenant's consent may be provided in a lease agreement provision.
(b) The building tenant's consent is not required if an electric or gas company customer vacates the covered building before explicitly denying consent for the delivery of the tenant's energy data to the building owner.

(8) When providing whole-building consumption data to a property with onsite generation of renewable electricity (e.g., solar or wind energy), electric and gas companies shall ensure that the consumption values delivered to the building owner capture total (gross) grid electricity consumption as metered by the electric or gas company, rather than net (or net-metered) consumption of grid electricity.

B. District Energy Providers.

(1) Starting no later than January 1, 2025, district energy providers shall maintain all records that are necessary to comply with this regulation for a period of not less than five years. At the request of the Department, such records shall be made available for inspection and audit by the Department.

(2) District energy providers shall provide greenhouse gas emissions factors per unit of district energy input (steam, hot water, chilled water, etc.) to the owners of covered buildings and to the Department for benchmarking and compliance purposes.

(3) Emissions factors and a full and detailed accounting of their calculation must be provided by the district energy provider by March 1st of each calendar year and cover the previous calendar year based on actual fuel consumption and system performance data. The Department may require a third party review of such calculations paid for by the district energy provider.

(4) District energy providers shall use methodology for allocating emissions that will be based on the "Efficiency Method" in the World Resources Institute's "Calculation tool for direct emissions from stationary combustion: Allocation of GHG Emissions from a Combined Heat and Power (CHP) Plant."

.05 Disclosure of Covered Building Benchmarking and Performance Standards Information.

A. Before a buyer signs a contract for the purchase of a covered building, the building owner selling the covered building must:

(1) Disclose to the prospective buyer that the building is subject to requirements under this Subtitle;

(2) Transfer the following records to the prospective buyer:

(a) A copy of the complete benchmarking record from the benchmarking tool;

(b) Documentation of data verification;

(c) Documentation of any alternative compliance payments made to the Department; and

(d) Any other records relevant to maintain compliance under this Subtitle.

(3) Provide to the prospective buyer the following information:

(a) Performance baseline; and

(b) Interim and final performance standards.

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 28 BUILDING ENERGY PERFORMANCE STANDARDS

Chapter 03 Performance Standards and Compliance Demonstration

Authority: Environment Article, §§1-404, 2-301, 2-302, 2-1205, 2-1602, Annotated Code of Maryland

.01 Purpose.

The purpose of this chapter is to establish performance standards for covered buildings.

.02 Performance Standards

A. Interim and final net direct emissions and final site EUI standards are:

Table 1. Performance Standards.

	Net Direct Emissions Standards kg CO2e per square foot			**Site EUI Standards** kBTU per square foot
Property Type	**Interim Standard for 2030-2034**	**Interim Standard for 2035-2039**	**Final Standard for 2040 and beyond**	**Final Standard for 2040 and beyond**
Adult Education	2.34	1.17	0	46
Ambulatory Surgical Center	1.76	0.88	0	46
Aquarium	2.40	1.20	0	145
Bank Branch	1.01	0.50	0	85
Bar/Nightclub	1.70	0.85	0	220
Barracks	0.57	0.29	0	38
Bowling Alley	2.07	1.03	0	84
Casino	1.03	0.52	0	41
College/University	2.43	1.21	0	57
Convenience Store with Gas Station	2.25	1.13	0	137
Convenience Store without Gas Station	2.25	1.13	0	137

	Net Direct Emissions Standards kg CO2e per square foot			**Site EUI Standards** kBTU per square foot
Property Type	**Interim Standard for 2030-2034**	**Interim Standard for 2035-2039**	**Final Standard for 2040 and beyond**	**Final Standard for 2040 and beyond**
Convention Center	0.39	0.19	0	40
Courthouse	1.14	0.57	0	47
Data Center	1.26	0.63	0	145
Distribution Center	0.58	0.29	0	19
Enclosed Mall	0.24	0.12	0	44
Fast Food Restaurant	exempt	exempt	exempt	exempt
Financial Office	0.32	0.16	0	58
Fire Station	1.70	0.85	0	47
Fitness Center/Health Club/Gym	2.87	1.43	0	59
Food Sales	2.25	1.13	0	137
Food Service	exempt	exempt	exempt	exempt
Heated Swimming Pool	2.07	1.03	0	84
Hospital (General Medical & Surgical)	6.10	3.05	0	144
Hotel	1.47	0.74	0	60
Ice/Curling Rink	2.07	1.03	0	84
Indoor Arena	1.03	0.52	0	41
K-12 School	exempt	exempt	exempt	exempt
Laboratory	5.35	2.68	0	144
Library	1.92	0.96	0	55
Lifestyle Center	0.91	0.46	0	58
Mailing Center/Post Office	0.92	0.46	0	48
Medical Office	0.18	0.09	0	70
Movie Theater	0.78	0.39	0	57

	Net Direct Emissions Standards kg CO2e per square foot			**Site EUI Standards** kBTU per square foot
Property Type	**Interim Standard for 2030-2034**	**Interim Standard for 2035-2039**	**Final Standard for 2040 and beyond**	**Final Standard for 2040 and beyond**
Multifamily Housing	0.82	0.41	0	29
Museum	0.75	0.38	0	29
Non-Refrigerated Warehouse	0.09	0.05	0	30
Office	0.22	0.11	0	55
Other - Education	1.59	0.80	0	45
Other - Entertainment/Public Assembly	0.54	0.27	0	48
Other - Lodging/Residential	0.002	0.001	0	37
Other - Mall	1.40	0.70	0	81
Other - Other	1.60	0.80	0	54
Other - Public Services	2.12	1.06	0	61
Other - Recreation	0.70	0.35	0	78
Other - Restaurant/Bar	exempt	exempt	exempt	exempt
Other - Services	2.63	1.31	0	51
Other - Specialty Hospital	6.10	3.05	0	144
Other - Stadium	0.31	0.16	0	23
Other - Technology/Science	0.001	0.001	0	183
Outpatient Rehabilitation/Physical Therapy	1.76	0.88	0	46
Parking	exempt	exempt	exempt	exempt
Performing Arts	2.38	1.19	0	57
Personal Services (Health/Beauty, Dry	2.17	1.09	0	47

	Net Direct Emissions Standards kg CO2e per square foot			Site EUI Standards kBTU per square foot
Property Type	**Interim Standard for 2030-2034**	**Interim Standard for 2035-2039**	**Final Standard for 2040 and beyond**	**Final Standard for 2040 and beyond**
Cleaning, etc)				
Police Station	1.52	0.76	0	54
Pre-school/Daycare	2.45	1.23	0	48
Prison/Incarceration	0.57	0.29	0	38
Race Track	1.03	0.52	0	41
Refrigerated Warehouse	1.37	0.69	0	38
Repair Services (Vehicle, Shoe, Locksmith, etc)	2.16	1.08	0	52
Residence Hall/Dormitory	0.70	0.35	0	38
Residential Care Facility	1.43	0.72	0	50
Restaurant	exempt	exempt	exempt	exempt
Retail Store	0.60	0.30	0	48
Roller Rink	2.07	1.03	0	84
Self-Storage Facility	0.19	0.10	0	7
Senior Living Community	1.43	0.72	0	50
Social/Meeting Hall	1.53	0.76	0	39
Stadium (Closed)	0.31	0.16	0	23
Stadium (Open)	0.32	0.16	0	21
Strip Mall	1.90	0.95	0	58
Supermarket/Grocery Store	2.25	1.13	0	137
Transportation Terminal/Station	2.22	1.11	0	56
Urgent Care/Clinic/Other Outpatient	1.76	0.88	0	46
Vehicle Dealership	2.23	1.12	0	61

	Net Direct Emissions Standards kg CO2e per square foot			Site EUI Standards kBTU per square foot
Property Type	**Interim Standard for 2030-2034**	**Interim Standard for 2035-2039**	**Final Standard for 2040 and beyond**	**Final Standard for 2040 and beyond**
Veterinary Office	1.76	0.88	0	46
Vocational School	2.34	1.17	0	46
Wholesale Club/Supercenter	0.60	0.30	0	48
Worship Facility	0.87	0.44	0	32
Zoo	1.03	0.52	0	41

B. Interim Site EUI Standards. Interim site EUI standards are calculated using a straight-line trajectory from a covered building's baseline performance to the final performance standards in 2040, set by the compliance tool as specified in the Department's TM 23-01, "Technical Guidance and Calculation Methodologies to Comply with Building Energy Performance Standards".

C. Interim and Final Standards for Mixed-Use Covered Buildings. Area-weighted standards for net direct emissions and site EUI for mixed-use buildings will be set by the compliance tool as specified in the Department's TM 23-01, "Technical Guidance and Calculation Methodologies to Comply with Building Energy Performance Standards".

D. Achieving and Maintaining the Standards.

(1) Each covered building must be at or below the interim site EUI and net direct emissions standards for 2030-2034 in each calendar year including 2030, 2031, 2032, 2033, and 2034.

(2) Each covered building must be at or below the interim site EUI and net direct emissions standards for 2035-2039 in each calendar year including 2035, 2036, 2037, 2038, and 2039.

(3) Each covered building must be at or below the final site EUI and net direct emissions standards in calendar year 2040 and each calendar year thereafter.

Title 26 DEPARTMENT OF THE ENVIRONMENT

Subtitle 28 BUILDING ENERGY PERFORMANCE STANDARDS

Chapter 04 Alternative Compliance and Special Provisions

Authority: Environment Article, §§1-404, 2-301, 2-302, 2-1205, 2-1602, Annotated Code of Maryland

.01 Alternative Compliance Pathway.

A. Alternative Compliance Pathway for Net Direct Emissions Standards.

(1) In lieu of meeting the net direct emissions standards in COMAR 26.28.03, the building owner shall come into compliance with the net direct emissions standards by paying an alternative compliance fee for the greenhouse gas emissions in excess of the net direct emissions standards.

(2) An alternative compliance fee shall be paid for every metric ton of net direct emissions in excess of the net direct emissions standard in a given calendar year. The fee shall be:

(a) $230 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2030;

(b) $234 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2031;

(c) $238 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2032;

(d) $242 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2033;

(e) $246 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2034;

(f) $250 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2035;

(g) $254 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2036;

(h) $258 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2037;

(i) $262 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2038;

(j) $266 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2039;

(k) $270 per metric ton of excess CO2e in 2020 dollars, adjusted for inflation, for 2040; and

(l) The fee rate increases by $4 per metric ton of CO2e per calendar year in 2020 dollars, adjusted for inflation, in each calendar year following 2040.

(3) The annual fee rate set forth in this chapter shall be increased each calendar year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year.

B. Other Provisions. If covered building ownership changes in 2030 or any calendar year thereafter, then the owner of the building on December 31 is responsible for compliance with this regulation and paying alternative compliance fees or penalties for the calendar year ending on December 31 and every calendar year thereafter until that person is no longer the owner of the covered building.

.02 Exemptions.

A. Exemptions from Benchmarking and Performance Standard Requirements. A building owner may apply for an exemption from the requirements of this regulation for one calendar year when the building owner can provide documentation showing that one of the following conditions are met:

(1) Financial distress;

(2) The covered building was not occupied for the entirety of the calendar year being reported; or

(3) The covered building was demolished during the calendar year for which benchmarking is required.

B. Exemption from Establishing Baseline Performance.

(1) The Department may, in its sole discretion, grant an exemption from the requirement to establish baseline performance when, during the baseline year, less than 50% of the floor area of the covered building was occupied for at least 180 days and where the building owner applies for such exemption.
(2) A covered building may not receive an exemption from the requirement to establish baseline performance for more than three years.

C. Exemptions for Affordable Housing Providers.

(1) The Department may grant the application of reduced alternative compliance fees to an affordable housing provider when the building owner submits in writing such request by June 1st of each calendar year, beginning in 2031 which demonstrates to the Department that it has made a good faith effort, as demonstrated under §C(2) of this regulation.
(2) A good faith effort may be demonstrated to the Department by submitting a copy of the application to a Federal or Maryland administered program that aids with making the building more energy efficient and/or reduces greenhouse gas emissions. The submission must also include the benchmark report, intended scope of work, and estimated greenhouse gas reductions expected from the intended scope of work to achieve at least the applicable Interim or Final Standard.
(3) An alternative compliance fee granted by the Department under §C(1) of this regulation is good for one calendar year.
(4) A project that has applied to a program under §C(2) of this regulation but has not yet completed the improvements, can submit a confirmation received from the program administrator to the Department, verifying the project's active participation status to satisfy the good faith effort for a second year.

(5) An alternative compliance fee granted by the Department under §C(1) of this regulation does not exempt the owner from complying with the benchmarking and reporting requirements in COMAR 26.28.02.
(6) An affordable housing provider may apply for the alternative compliance fee annually.

.03 Option for Campus-Level Compliance.

A. The owner of a covered building may choose to meet site EUI and net direct emissions standards, as specified under this regulation, at the campus level instead of the individual building level when two or more covered buildings are:

(1) Connected to a district energy system;

(2) Served by the same electric or gas meter; or

(3) Served by the same heating or cooling system(s), which is not a district energy system.

B. Campus-level reporting shall include energy consumption and greenhouse gas emissions for all buildings and stationary equipment located on the campus, including all central plants, except as provided in §B(1) of this regulation.

(1) Campus-level reporting does not include energy consumption and greenhouse gas emissions from activities/sources that are excluded from the benchmarking report requirements in COMAR 26.28.02.

(2) The owner of a campus shall report to the Department annually by June 1st:

(a) Any permits to build new buildings or change the footprint or usage of existing buildings on the campus; and

(b) Any buildings have received new certificates of occupancy.

(3) The Department shall, in consultation with the principal owner of a campus, determine whether the affected buildings will be included in campus-level compliance following the rules established in this chapter and whether and how to adjust the campus' interim and final performance standards.

C. Performance Standards for Campus-Level Compliance.

(1) For a campus that consists of one property type, the interim and final net direct emissions and site EUI standards are those that correspond with that property type.

(2) For a campus that consists of more than one property type, the interim and final net direct emissions and site EUI standards are based on area-weighted standards as specified in the Department's TM 23-01, "Technical Guidance and Calculation Methodologies to Comply with Building Energy Performance Standards".

(3) Interim site EUI standards are calculated using a straight-line trajectory from baseline performance to the final performance standards as specified in the Department's TM 23-01, "Technical Guidance and Calculation Methodologies to Comply with Building Energy Performance Standards".

(4) Achieving and Maintaining the Standards.

(a) Campus-level energy use must be at or below the interim site EUI and net direct emissions standards for 2030-2034 in each calendar year including 2030, 2031, 2032, 2033, and 2034.

(b) Campus-level energy use must be at or below the interim site EUI and net direct emissions standards for 2035-2039 in each calendar year including 2035, 2036, 2037, 2038, and 2039.

(c) Campus-level energy use must be at or below the final site EUI and net direct emissions standards in calendar year 2040 and each calendar year thereafter.