

BEPS Task Force Meeting – December 15, 2020

Updated Benchmarking Rulemaking and BEPS Rulemaking Presentation and Q&A

Task Force Member Attendees: Katie Bergfeld, Patti Boyd, Dave Good, Max Greninger, Adrian Gross, Reshma Holla, Jessica Jones, Anica Landreneau, Cliff Majersik, Todd Nedwick, Matt Praske, Joe Reilly, Jay Wilson, Marshall Duer-Balkind

Public Attendees: Sharon Jaye, Kristian Hoffland, JoAnna Saunders, Molly Hofsommer, Andrew Held, Julie Wolfington, Amanda Clevinger, Kevin Carey, David Glass, Tom Lenar, Jamie Donovan, Emily Curley, David Sidorsky, Alexandra Laney, Patrick Cheek, Smriti Nayak, Harrison Miller, Boyu Li, Harry Warren, Aykut Yilmaz, Kevin Folkes, Edwin Luevanos, Brendan Hall, Kathleen Macfarlane, Katie Henderson, Nathan Jeffay, Joe Andronaco, George Miroshnikov, Aric Edwards, Liz DeBarros, Tara Berger, Chris Laughman, Michael Coleman, Sean Fish, Sarah Johnson, Jake Torok, Kehan DeSousa, Lewis Shapiro, Nicole Wolfe, Janell Pagats, Erica Ling, Lee Simon, Ken Terzian, Melissa Burandt, Diane Stewart, Lindsey Falasca, James Ball, Joi Ruffin, Myles Scott, Stephanie Snoich, Gary Decker, Bryan Sobonya, Michelle Christopher, Jim Nitschke, John Samson, Frann Francis, Jenna Bolino, Excetral Caldwell, Joseph Knackstedt, Joseph Borger, Meaghan Trentacost, Michael Rennard, Jochen Schaefer, Joe Messier, Alexandra Wyatt, John Martinez, Lisa Pannell, Alexandra Harry, Luke Lanciano, Anna Scallet, Chris Pendley, Andrea Foss, Joel Cohn, William Atkinson, Amy Edwards, Donald Walker, Lindsey Shaw, Vincenzo Palmigiano, Eric Kinsey, Amy Jacks, Ana Robertson, Matthias Paustian, Katherine Elliot, Ashley Poore, Cristobal Puig, Pallavee Panchal, Emily Jones, Aaron Landry, David Sidorsky, Kate Johnson, Michael Feldman-Wiencek, Eric Tilden, Justino Brokaw, Ellen Richer, Joey Trimboli, Shyrah Kum, Frank LeBlanc, Scott Emery, Sofia Melo, Jordan Chan, Mike Barboza, Bri Widmoyer, Brittany Ryan, Dave Epley, Katie Spencer, Scott Dicke, Margaux Nguyen, Mikel Solupe, Journey Williams, Anthony Hubbard, Beth Mullin, Dan Wilcox, Jessica Long, Cole Atwood, Michael Brown, Janine Helwig, Ben Adams, Matt Borger, Scott Pomeroy, Julia Field, Stacy McMahon, Wes Huffman, Michele Good

The text below is a transcript of the presentation and Q&A recording, with slides referenced.

Opened meeting at 2:35pm.

Slide 1

Greetings everyone, this is the Building Energy Performance Standards Task Force meeting for December 15th, 2020, starting at 2:35pm. My name is Sharon Jaye and I work for the Department of Energy and Environment. This meeting is being recorded and the slides and recording will be posted to our website. Today's meeting will run a little different because it will serve as the public Q&A session for the proposed updated rulemaking for the benchmarking program and the proposed rulemaking for the BEPS program.

Slide 2

Everyone has been muted upon entry and will stay muted throughout the session. If you have any questions during the webinar, please enter them into the chat box and make sure you send them to all panelists. So, everyone is going to be muted, make sure you have the chat box open. We have one question, James, thank you very much. This is the right place to be in the Webex link. If you went to the bluejeans link, I have a slide over in bluejeans saying that this is not the normal place that we were going to be. We just couldn't handle the volume of participants in bluejeans that we could in Webex. So, this is the right place to be.

We do take attendance at our task force meetings, including public attendees. So please go to the chat box now and type in your name and organization. If you'd like to be added to our contact list, make sure to include your email address. And for Task Force members, your attendance will be recorded through the chat box instead of through a verbal roll call but from looking at the attendees in our participant list, we do have a **quorum** of Task Force members to make this an official Task Force meeting.

Slide 3

So, for each program, we will go through the entire presentation before opening it up for Q&A, if you have a question during the presentation, please enter it into the chat box along the way. I'll turn it over to Katie Bergfeld, our chief of the building performance and enforcement branch, and she will go through the information.

Thank you, Sharon. Sharon mentioned my name is Katie Bergfeld. I'm the branch chief for the building performance and enforcement branch here at the energy administration in the Department of Energy and Environment. As Sharon mentioned, what we'll be doing today is going over the proposed rulemaking related to the district benchmarking program. I'll be giving that presentation and then we'll be taking questions after I go through the presentation.

We will then move on to the proposed rulemaking for the building energy performance standards program; which I will give a presentation and after we will take questions. After that, we will close the meeting. And again, as Sharon mentioned, if you have any questions, please enter them into the chat. Before I get started, I just want to thank everyone for being here and showing interest in our programs.

I want to quickly say that what I'm about to present here today is a culmination of all the work that we've been doing on the BEPS program, and also on the benchmarking program over the last year and a half or so. Starting way back when we had our working group sessions in the summer of 2019 to our current ongoing biweekly task force meetings, we've really enjoyed engaging with our stakeholders collecting your feedback, and incorporating them into how we're implementing the program and then how we've made a few changes into the benchmarking program.

And I want to give a special shout out before I start to anyone who has attended our working groups who has met with us to talk about these things, such as AOBA, DCBIA, consortium of universities.

These folks are amazing Taskforce members who have been meeting literally bi-weekly for a year now. And also, my very talented and dedicated staff here at DOEE that I've been working around the clock to make sure that both of these programs are successful.

I want to reiterate a few things so today's presentation. This is not an exhaustive review of the rules for either program. We've essentially pulled out the information that we feel is most important for our stakeholders to know, and we encourage you to read the rules thoroughly on your own time. I wanted to put out there that we will not be taking any verbal public comments out of this meeting. So, all public comments will still need to be submitted using the instructions within the rules and noted on the following sites.

Slide 4 – Benchmarking rulemaking

So, first, we're going to go over the proposed rules related to the district benchmarking program. They were posted in the DC register December 4th, 2020. There is a link right there on the slide. It will have a 30-day public comment period. The comments are due to DOEE by January 4, 2021. You can see the register posting for more instructions on how to submit the comments either through USPS mail, or you can email them to us at info.benchmark@dc.gov. And I suspect a lot of you are very familiar with that email address. That is the basics of how you can submit your formal public comment to us; again, we're taking all comments in writing, so they need to be submitted in the manners described. And I also want to point out that all citations that are referenced in this presentation are related to propose regulations and are subject to change based on the final rules that come out.

Slide 5

This is an overview of the updates that have been made to the benchmarking rules, many of, you know, that our benchmarking rules for our original benchmarking rules were finalized in 2013. They've been around for a while, but the updates that we've made, have basically been to introduce new requirements and to clarify and streamline old requirements. Most of the updates come from laws that have been passed since the original regulations were published, including the Sustainable DC Amendment Act of 2014. And then most recently, the Clean Energy DC Omnibus Act of 2018. There were some changes made in both of those legislations that affected the benchmarking program. Most of the other updates that reflect changes that have happened in Portfolio Manager, and many of you know, portfolio manager makes updates to their program pretty regularly. So, we are responding to those changes through some of the changes we're proposing to the rules.

Slide 6

I want to just quickly go over the sections in the benchmarking regulations. We have, in the past, just had one section to the rules. There was 3513, and so essentially, we have taken a lot of the things that were in that section, and we split them up into separate sections.

The 3513 has been amended and then we have added new sections; 3514, which talks about the specific requirements related to benchmarking; 3515 which talks about the new data

verification requirement that was established in the Clean Energy DC; 3516 which specifically talks about the benchmarking penalties and enforcement. 3513 has specifically been narrowed down to talk about the applicability. This is just to give you a sense of sort of the structure and the reorganization that we have done in the.

Slide 7

We also I want to talk a little bit about the definitions. So, definitions play a big part, because that defines the terms that you'll be looking at through the document. I want to point out some, some that we have amended and added. We amended the definition for the district benchmark results and compliance report. You can see here I've included underlined portions that have been changed or added. One of the things you're going to want to pay attention to is that now the proposed definition includes the addition of data verification information so a district benchmark result and compliance report will now need to contain the data verification information when it's required to be provided to, which I'll go over in a minute when that is supposed to happen.

Definitions that have been added are the Energy Star data verification checklist. This is a US Energy Star form that is used to complete the third-party verification of the district benchmark results and compliance report. This is an industry standard verification checklist that's maintained by the U. S. Environmental Protection Agency.

Property use information - these are the characteristics such as the condition floor area, weekly, operating hours number of occupied units and a number of computer number of computers in use described by portfolio manager for our particular building type. I believe in the past these were called space use details. Now, portfolio manager refers to them as property use details, so we are now referring to them as property use information.

Slide 8

Now I'm going to get into what's actually changing or things that we think that are important for you all to know that's changing within the rules. In section 3513, as I mentioned, this section is now narrowing down to just applicability of the program we added in the new benchmarking size threshold that's coming out of the Clean Energy DC Act. And as many of you know, the threshold for benchmarking reporting is dropping down to 25,000 square feet starting with the calendar year 2021 data, which means it will be due to us by April 1, 2022. Then it will drop down to 10,000 square feet starting with the 2024 data that is due to us by April 1, 2025.

Another section I want to point out is 3513.3(b), which is talking about how to calculate your gross floor area of your building. That has been amended a bit to say that you must include the gross floor area of any structure that shares building systems, or, at least one common energy or water meter. So that is a bit of a change from the previous rules as well.

Slide 9

Moving on to section 3514 where we're talking about the actual benchmarking requirements. This is if you are determined to be the term to be applicable to your building what you actually

have to do. The major points we wanted to point out are 3514.1(d), where it specifies to enter complete and accurate information for each building property or campus into portfolio manager, including (and I just pulled out a few sections that I feel like would be important), energy and water utility information. We basically specify that you must enter energy and water utility information for each building, and that the use of estimated values is not permitted without written DOEE permission for instances where determines that a non-estimated value is not feasible. Essentially, we are not accepting estimated values without strict written permission from DOEE on your energy and water data.

The other thing that is to note is that buildings are required to enter values for all property use information. The use of default or temporary values are again, not permitted without written permission. So, these are things that we had been implementing in the past. We are now just formalizing them into the rules. I want to point out that this is not again, not an exhaustive list of the requirements for benchmarking and you should refer to section 3514.1 for a list of all the requirements.

Slide 10

Moving on focusing on section 3514, I wanted to point out again section 1(e), when entering complete and accurate information into portfolio manager, the building owner shall exclude the gross floor area and energy consumption of property spaces, so long as they meet portfolio manager criteria for excluding a property space. In the past, I believe, we had put this in guidance. This is now going to be or we're proposing it to be in the rules, and that we are requiring that people exclude spaces that are allowed to be excluded by portfolio manager.

The other thing to note in 3514.1(f), we are now requiring that all buildings complete the data quality check functions within portfolio manager within 7 calendar days prior to submission of a district benchmark results and compliance reports. I think attendees are probably familiar with the data quality checker so now we're proposing that this is required within 7 days prior to submission.

Slide 11

Moving on, this is clarifying the information that came out the Sustainable DC Omnibus Act of 2014, basically clarifying that if a building a sold, it is not exempt again. This is something we've been implementing and enforcing for years. Now, we are just putting it into the rules. It basically states that if an ownership of a building is transferred during reporting year, the former building owner shall no later than 60 days after the transfer, provide complete and accurate information necessary to the buildings that are required to complete the benchmark reporting requirements for the full calendar year in which the transfer occurred.

We also clarify incomplete data here. If a building owner has made a reasonable effort to obtain information and does not have complete whole building information to fulfill the requirements of this section, the building owner shall submit an incomplete building district benchmark results and compliance report containing as much information as is available and shall notify DOEE which sets of utility data are incomplete. So again, these are things that we

have been enforcing in the program. We're just putting them into the rulemaking. And what we're saying here is that if you have an incomplete report, you need to let DOEE know and let us know the reason why.

Slide 12

Now, we're moving on to section 3515. This is what I think most of you will be paying a lot of attention to; these are the data verification requirements. This is coming out of requirements that buildings get their property third-party verified every three years out of the Clean Energy DC Omnibus Act of 2018. So, you're going want to pay attention to section 3515.1 where it states every three years building owners, or their designee, shall perform third-party verifications of their district benchmark results and compliance reports.

Section 3515.2 third-party verification begins in 2024 with verification of the district benchmark results and compliance reports submitted for calendar year 2023. So, this is when we are proposing to start enforcing this requirement. Verification shall be submitted as part of the district benchmark results and compliance report no later than the April 1st deadline of the reporting year. And again, these are the major components of 3515 that talk about the basic requirements, but you should review that section for all of details.

Slide 13

So, moving on again on data verification section 3513.3, the building owner, or the building owner's designee, shall make the Energy Star data verification checklist, and any appropriate supporting documentation available to an Approved District Data Verifier.

The data verification checklist is not required to be submitted with the district benchmark results and compliance report. So, the data verification checklist is the main tool for which the compliance will be met with this requirement. However, we are not proposing that the actual checklist be submitted with the report. But I will go over in a minute what information will be needed to be submitted.

Slide 14

Let's talk about sort of the definition of what an approved district data verifier is. So, in 3515.4 an individual is an approved district data verifier if they possess one of the following licenses credentials or certifications and are in good standing with the license credentialing or certifying entities at the time the data verification conducted: professional engineer, a licensed architect, certified energy manager, building energy assessment professional; and then there's a provision that there may be other additional data verification licenses or training program credentials recognized by the department and posted on his website.

Slide 15

So, now to talk about the way that third party is defined. 3515.7 says that the approved district data verifier shall not be an employee of the building owner, or of the building owner's designee who prepares or submits benchmarking information in portfolio manager. And then we clarify in 3515.5 that the US Environmental Protection Agency is an approved district data

verifier for the purpose of this section when it performs data verification as part of an energy star certification that uses data including at least 6 months of the calendar year for which this section requires data verification.

Slide 16

And then in section 3515.7 is where we actually talk about the process. To meet the requirements of the sections, the building owner or building owner's designee may request that the approved district data verifier review the Portfolio Manager entries and supporting documentation provided by the building owner or building owner's designee to identify any errors or gaps in the data. Also work with the building owner or designee to correct any errors.

And then certify on the final page of the data verification checklist that the data verification checklist is complete and accurate by signing and listing any credential license or certification. I want to clarify that we are proposing that the approved district data verifier will not be required to conduct a site visit or to complete the waste or an indoor environmental air quality section of the data verification checklist from Portfolio Manager, found within 3515.9.

That talks a little bit about what the building owner is going to be required to do. This data verification requirement is going to be a requirement of the building owner to ensure that it is completed by someone with the proper credentials and following the process.

Slide 17

Section 3515.10 states that building owners, or their designee, shall use the property notes section, or other relevant section, in Portfolio Manager to report the third-party verification and provide the following information: the name, title, telephone number, and email of the approved district data verifier, the date of the verification, and the name of the credential license or certification, the license or certification number held by the approved district data verifier. Again, this is going to be required of the building owner or their designee provide this information.

Slide 18

Section 3515.11 - building owner or designee may use a current energy star certification, which includes third-party data verification to meet the third-party verification requirements. The building owner, or owners designee, shall include the following information the date that it received Energy Star certification, the date range, the date of the data verified, and then the name, title, email address of the professional who provided the data verification.

Slide 19

3515.12 talks about the retaining of the information. It states that building owners or designee shall retain a signed copy of the data verification checklist, and all supporting documentation of the verification for a minimum of 3 years, and shall provide a copy of that to DOEE upon request. That's about data retention, coming from the data verification.

We also wanted to clarify when these requirements would begin for the different size thresholds for the buildings that are currently required to benchmark (50,000 sq. ft). It would start in 2024 with the 2023 data. Same for buildings that are 25 to 50,000 square feet, it would start in 2024 with the 2023 data. Then for buildings 10 to 25,000 square feet, it would start in 2027 with the calendar year 2026 data.

Slide 20

So, lastly, we'll get to the section on penalties and enforcement. Section 3516.1 this essentially, right now, if you look in our rules, there's really only one citation and it states that a building owner who does not submit a complete inaccurate report can be subject to the 100\$ per day fine. However, we have split that out now into different citations to be a little bit more clear about what is actually being violated in terms of when we find something wrong with the report, or we don't receive a report. I mean, you can see here, the first citation would be for failure to submit and accurate and complete benchmarking report. The second would be for our failure to submit a report at all. The third would be failure of a former building owner to submit complete and accurate benchmarking information to the new building owner. The next would be failure to update or correct information within the report within 30 days (which is a requirement). And then the last one would be failure of a non-residential tenant to submit complete and accurate benchmarking information to the building owner within 30 days.

All of these things again are things that we have been enforcing upon and things that we have been issuing fines on, but now we're just going to be a little bit clearer in the citation of what is what the violation actually is. I urge you to review section 3516 for a list of all the violations.

Slide 21 – Benchmarking Questions & Answers

Q1: Can a company providing benchmarking services for an owner also complete the data verification?

A1: So, the answer to that would be no, in that if in terms of what we are proposing the rules is that if someone is actually submitting the benchmarking data on your behalf, or doing the benchmarking on your behalf, it also cannot then provide the third-party verification.

Q2: What is the difference between a notice of violation and a notice of infraction?

A2: So, a notice the violation for the benchmarking program is a warning. Typically, what we've done in the past is we've provided a notice of violation and given building owners a certain amount of time to comply before we actually issue a fine. A notice of infraction is a fine. So, it's a civil infraction telling you that you violated the law and that you are now being fined.

Q3: Is there any exemption or differing rules for rent-controlled and/or low-income properties?

A3: For the benchmarking program no, there are not any exemptions, or there's no exemptions based on property type or type of ownership. And then there are not any sort of differing rules for rent-control or low-income when it comes to the benchmarking requirements.

Q4: What remedy does DOEE have to compel benchmarking disclosure beyond the \$100/day fine? This is far less than potential fines some owners could face for BEPS violations.

A4: Right now we don't have any sort of other enforcement tool other than the \$100 per day fine. So, yes, that is far less than the proposed fines for BEPS, but I would say that BEPS and benchmarking are very different programs and have very different requirements and different levels of cost of compliance. But if you think about 100 dollars per day, if you don't comply for 30 days, you're already looking at a \$3,000 fine. So, the potential for \$100 daily fine could be high. Historically as a program, we have kept them at around \$1,000 dollars. Katie, just to chime in and add onto that it's also worth mentioning, and we'll get into this a little bit later, but failure to meet benchmarking requirements might also result in failure to meet BEPS if you don't submit data to us. We can't determine if you've met the energy performance requirements and thus you cannot meet the requirements of BEPS.

Q5: What if several buildings share a water meter and grouping them together causes them to no longer be eligible for an ENERGY STAR score (as, historically, at least, has been the case for some property types)? Do they still need to group those properties together?

A5: So, based on what we're proposing in the rules, yes, they would need to be grouped together.

Q6: Do licensed Data Verification Approvers need to be licensed in DC, i.e. architects and professional engineers?

A6: Right now, that is not what we are requiring, so that's not what we are proposing in the rule. So, the answer would be no, it wouldn't have to be in DC.

Q7: How does DOEE's use of web services as a way for owners to share data interact with the use of the Benchmark Results and Compliance Report, and why was web services not referenced in the rules?

A7: So basically, the benchmark results and compliance report, let me go back to that definition on Slide 7. We expanded the definition of it so that the use of web services and automatic reporting process is now sort of a part of this, so the benchmark results and compliance report is now encompassing of the web services process, so we can use that. We didn't specifically mention web services because we wanted to ensure that there's flexibility enough in there if the process changes or something like that. Then we have that flexibility to still require it to be ready to us in an automated fashion.

Q8: What exclusion criteria, if any, will be specified for buildings that are scheduled to be demolished after the benchmarking reporting deadline? Will these buildings still need to be benchmarked?

A8: So, if a building is demolished, then it won't have to submit for the year that it was demolished. If it's demolished in 2019, it won't have to report in 2020 for 2019 data. However, it would still be required to report in 2019 for the 2018 data. Once it's demolished, the best thing for you to do is to reach out to our help center, let us know that the building has been demolished, so that we can note it in our records. We track all of this data so we can note it in our database, and we know that that the building should not be required to report. We would also want to most likely see a copy of the demolition permit, and evidence that it's been demolished and so that we don't enforce on it unnecessarily.

Q9: This is a follow up clarification on the web services question. So, DOE will require use of ESPM web services through guidance instead of through rule making?

A9: So, you can consider it guidance if you go to our website and try to report your data. Yes. The option that you will be given to report your data is through web services.

Q10: So, all buildings need to verify their data for the same year, every three years--it is not staggered? Does this also mean the year for which BEPS compliance is measured is NOT required to be verified?

A10: Yes, all buildings will be verifying their data every 3 years. That is not staggered. We've been intentional about lining up the year of verification with the year that's setting the BEPS. So, the idea is that we would have verified data when we are setting the BEPS.

***Note:** There were several questions received that were held over for the BEPS section as they were more directly related to the BEPS program.*

So, I think we're finished with benchmarking section. So, Katie, if you want to take a drink of water, pause for a second, and then we can move on to the BEPS section.

Slide 22 – Building Energy Performance Standards Rulemaking

So, let's move on to the BEPS rulemaking. I imagine this will take a little bit longer just because these are new, so quite a bit more to go over. With the BEPS rulemaking, this was also posted in the DC register on December 4th. We posted the link on this slide; however, it will have a 60-day public comment period, which means the comments will be due by February 2, 2021.

You can see the register posting for instructions and how to submit comments through the USPS mail, or you can email them to info.beps@dc.gov. Please notice the difference between the public comment email addresses for the benchmarking rules versus the BEPS rules. Again, please note that all citations referenced in the presentation in relation to these proposed regulations are subject to change until the regulations are finalized.

Slide 23

This is the structure of how we've structured the proposed rules. We've split them up into 5 sections: Section 3517 addresses the actual building energy performance standards; Section 3518 talks about the BEPS compliance pathways; 3519 talks about the BEPS reporting and verification and requirements; 3520 talks about the BEPS exemptions and compliance delays; and then 3521 talks about the BEPS alternative compliance penalty violations and enforcement. And I will go over these sections one by one on the following slides.

Slide 24

Before I do that though, since this is a new program, I want to go over some of the key definitions that are in the proposals because I think since we're creating this program, we really need to create this sort of standard language when we're talking about the program and the

way that we either talk about the program locally, or the way that we talked about the program legally. And here we are talking about how we talk about the program legally.

So, the first definition I want to go over is the building energy performance standards, or BEPS. So this, when we say that's within these rules, we are talking about the actual level of energy efficiency set forth, ideally as an energy star score or normalized source EUI value for each property type as provided in section 301b of the Act that is on BEPS. I just want to clarify that, because a lot of folks, when they talk about that space, sometimes they're talking about the program. We do it as well on our side. But when we're talking about them in the rules, we're actually talking about the standards. I just want to clarify that.

The next definition that is key for folks to know is the building energy performance standards period, or the BEPS Period. So, the BEPS Period is the period of time in which in which specific BEPS are in effect, which shall run from the date DOEE establishes the BEPS until the next BEPS establishment. So that would be in the legislation when it talks about, we shall set BEPS by January 1 of 2021 and then every 6 years after those, creates the BEPS Period.

The time in between those, then the next key definition to know is the Compliance Cycle. So, in the rules, when we talk about the Compliance Cycle, you're talking about a period of 5 years from the date of the establishment of BEPS during which, in the absence of a delay of compliance granted by DOEE, a building must meet the performance requirements set forth in section 3518 in the rules and procedural requirements set forth in section 3519 within the rules. So, these are for buildings that are identified to be below the BEPS that are then placed in a Compliance Cycle and have to meet the energy performance requirements.

The other one is the definition of property type, so this is key when you're trying to figure out how BEPS applies to you. This talks about the primary function of a building as determined through portfolio manager.

Slide 25

So, now that I moved on from the definitions, I'll go through each section one by one. Section 3517 is talking about the about the BEPS and 3517.1 states that every 6 years DOEE shall establish the BEPS and shall publish notice of the BEPS in the DC register before the relevant compliant cycle starts.

3517.2 states that a building that does not meet the BEPS as of the effective date of the BEPS shall have a Compliance Cycle of 5 years from that date to meet the performance requirements set forth in 3518 and the procedural requirements set forth in 3519, and I will talk about those sections later.

Slide 26

Also, here in this section we talk about the applicability of BEPS beginning January 1, 2021 the BEPS applies to private buildings over 50,000 square feet and DC-owned buildings over 10,000 square feet. Beginning January 1, 2027, BEPS apply to buildings 25,000 square feet and above

and then beginning January 1, 2033 it will apply to all privately owned and DC-owned buildings over 10,000 square feet. I just wanted to point out that in the rules what those dates are, and we're defining for you again what we're calling those BEPS Periods.

Slide 27

Section 3517 again, it also talks about the applicability of property types and size. Standards will be set for each Energy Star portfolio manager primary property type; this is a term you can find in Portfolio Manager. It states that you should refer to your Portfolio Manager benchmarking report for which property type applies in terms of the applicability of BEPS and the size of your building. We basically point building owners to follow the benchmarking rules, which is 3513, which we just went over, to determine the size of the building. So, you must refer to your benchmarking and the requirements under the benchmarking regs to figure out the building size.

Slide 28

Moving on to Section 3518 we talk about the different BEPS compliance pathways. There are three that are described at the beginning. One is the performance pathway, which is described in 3518.1(a), which requires a 20% decrease in site energy use intensity, averaged over the last two years of the Compliance Cycle as compared to the site EUI averaged over the 2 years preceding the first year of the Compliance Cycle. Please read that section to see a little bit more detail. It's broken out a little bit differently, depending on the type of property, and whether it can receive an Energy Star score so please review that section for more information

We're talking about the Standard Target pathway in Section 3518.1(b), in the proposed rule this pathway will only be available for property types where the BEPS is above the national median. So, when you look at the actual standard for that property type, if that's above the national median, either Energy Star score or the source EUI, then this Pathway will be available to that building. And it requires that building either increase the Energy Star score to the level of the BEPS or decrease the weather normalized source energy use intensity to the BEPS that was set at the beginning of the of the period.

So, moving on, there's the third pathway as described, which is the prescriptive pathway, which is in section 3518.1(c) and it states that the building shall implement one or more DOE pre-determined energy efficiency measures designed to achieve energy savings comparable to the performance pathway. And I want to note that there are reporting milestones for all three of these pathways. So, this section just describes what the pathways are and the basic requirements of the reporting milestones for all three are described in 3519, which I will go over in a second.

Slide 29

Two other pathways that are described in section 3518 are an alternative compliance pathway, which is described in section 3518.1(d) that this is a pathway that will be agreed upon between DOE and the building owner, and it's designed to achieve energy savings comparable to the performance pathway.

Moving on to the other pathway option we are describing a 2021 pathway option in 3518.1(e) this is available only for the BEPS period beginning on January 1, 2021 and why it's called the 2021 pathway. Buildings may use the average of calendar year 2018 and 2019 as a baseline, compared to the performance of 2026. So, this is allowing you to use a different baseline when you're tracking that 20% savings for the pathways that were described on the previous slide. This is applicable to the performance pathway, the standard target pathway, prescriptive and alternative compliance. This is a pathway that we are offering in response to issues that we know buildings are undergoing due to the ongoing COVID pandemic, and we received feedback from the buildings about that. We needed to try to provide some flexibility allowing building owners to not have to count the weirdness of calendar year 2020 in their baselines, so this is the way we are doing it. We are allowing building owners to choose this other pathway option.

Slide 30

Moving on to section 3519 to talk about reporting and verification. This is a big section to pay attention to. So, for the BEPS Period beginning in 2021, reporting and verification requirement deadlines, set forth in the section, shall be extended by one year due to the COVID- 19 public health emergency. You can see 3519.1 for more information. Again, this is based on stakeholder feedback that we received and the idea that a lot of building owners are going through a lot right now. So, we are using our authority within the law to extend the reporting of verification requirements by one year.

For all pathways under this section, we described that the building owner shall select a Compliance Pathway for review and approval no later than February 1, one year from the start of the Compliance Cycle. If an owner does not select a Compliance Pathway, or does not receive DOEE approval for a pathway, DOEE shall assign a pathway. It will be either be the performance or standard target pathway.

In order to change a pathway - a building owner may change a pathway during the Compliance Cycle for good cause shown by submitting a pathway change application and receiving approval from DOEE. A building owner will have to select a pathway - if they don't, DOEE will select it for them. If the building owner would like to change a pathway during a Compliance Cycle, they will have to submit an application to DOEE and get it approved.

The last bullet talks about the completed actions reporting, so this is for the end of a Compliance Cycle. So, for a building owner, pursuing either a Performance or Standard Target Pathway, a building owner shall submit a report of completed actions to DOEE through the online portal no later than February 1 five years from the start of the Compliance Cycle.

Slide 31

Section 3519 talks about some more reporting requirements, but specifically I'm going to focus here on the prescriptive pathway reporting. So, we've broken down the Prescriptive Pathway reporting into several phases. You can see here, there's 4 different phases described.

In the rules, I'm in section 3519.6. Phase 1 is due by February 1, one year from the start of the Compliance Cycle. And that on that date, what is due is a preliminary assessment plan also known as an energy audit. So, it's essentially what to do at that time. This is again for buildings that are choosing to follow the Prescriptive Pathway.

Phase 2 is due by February 1, two years from the start of the Compliance Cycle and an action plan is due at that time. Phase 3 is due by February 1, four years from the start of the Cycle and what is due at that time is an implementation and testing report. Phase 4, which is due by February 1, five years from the start of the Compliant Cycle is an evaluation monitoring and verification report that will be due to us.

You should note at the top of the slide, and this is noted in the rules also, any additional documentation as identified by DOEE, so DOEE may identify additional documentation and require the building owner to provide. So that again specifically was talking about buildings that are choosing Prescriptive Pathway.

Slide 32

Now we're talking about other reporting and verification for other Compliance Pathways. For an Alternative Compliance Pathway that's been approved, a building owner shall sign an agreement and complete and submit all documentation in a timeframe required by the agreement. So, if entering into an Alternative Compliance Pathway, the building owner will have to sign an agreement and then complete all that information specified definitively by the agreement.

It also states in the section that a building owner may use a complete and accurate district benchmark results and compliance report to demonstrate compliance. So, as you can imagine, if you want to show a 20% reduction, the benchmark results and compliance report is the place to do that. Building owners shall provide any additional documentation as requested by DOEE to determine compliance in section 3519.9. And then a report, plan, or documentation submitted for compliance must be complete and accurate as stated in the rules. What you are submitting to us is complete and accurate and if it is not, that we are proposing that we have the authority to issue civil infractions if it is not.

Slide 33

This is the section we're talking about pathway denial, revocation or designation. So, in 3519.11, we state that DOEE may deny or revoke approval of the pathway and designate a different pathway specified in 3518.1 if the building owner (a) fails to submit a complete inaccurate report plan or documentation is required, (b) fails to implement a requirement of a pathway or (c) fails to demonstrate energy savings described by the approved pathway for the previous Compliance Cycle. So, just to clarify, section 3518.1 that's referenced here is what I talked about above where we described the actual Compliance Pathways. So, we have the ability to revoke or deny approval of the pathway. We can also designate a different pathway if any of these things happen this noted in the screen and in this section.

Slide 34

So this section talks about the change of ownership disclosure and it states that in cases where ownership of a building is transferred during the Compliance Cycle, the seller shall notify the buyer the following information prior to the transfer of sale: any information, plans, reports submitted to DOEE as required by the building's approved Compliance Pathway; the most recent, complete and accurate district benchmark results and compliance report for the building; and information describing any progress toward meeting the energy performance requirements. This section was drafted in specific reaction to stakeholder feedback about what could potentially happen if a building is sold so, this was added to require that whoever is selling the building, provide the buyer with the information necessary so that the buyer can continue to comply with the BEPS requirements.

Slide 35

All right, so we're on to the next section, which is talking about section 3520. We're talking about exemptions or delay of compliance. So, a building owner may apply for an exemption from, or delay in compliance with the performance and procedural requirements. So, this is just stating that a building owner has the ability to apply for an exemption or delay of compliance. The building owner seeking an exemption or delay shall submit a request describing the exemption or delay sought and the reason the exemption or delay is being requested. The request shall include documentation that substantiates the basis for the request. And then we list out what those documents that documentation could include, all in 3520.2.

And then, lastly, DOEE shall grant a delay in compliance for up to 3 years on a showing of good cause by the applicant that one or more of the circumstances described section 3520.6 exist and I'll talk in a minute what those circumstances are. For qualifying affordable housing buildings, DOEE may grant a delay in compliance of more than 3 years. So, this is stating that if the cause is shown as described by the circumstances in 3520.6, we shall grant a delay of compliances up to 3 years, and then may grant a further delay of compliance for buildings that are described as qualifying affordable housing.

Slide 36

So, here's one of the exemption criteria: completely demolished buildings – DOEE shall grant an exemption from the performance and procedural requirements for a building that is completely demolished immediately prior to the beginning of the Compliance Cycle, or during the Compliance Cycle. See Section 3520.4 in the rules.

Slide 37

Here, we're talking about a delay of compliance. So, for our property owner to demonstrate good cause for granting a delay of compliance, the property owner must provide substantial evidence that meeting the energy performance requirements is practically infeasible for any of the following reasons: financial distress; change of ownership during the Compliance Cycle, building undergoes major renovation; building becomes unoccupied; pending demolition; a change in a primary property type; or for the BEPS period beginning in 2021, the building was operating and consuming energy during the COVID-19 public health emergency declared on

March 11th, 2000 by mayors order 2020-045. So, these are the different reasons that are building on our could apply for a delay of compliance. Again, they would have to demonstrate good cause and then DOEE would have the authority to grant that delay of compliance for up to 3 years or more than 3 years for qualifying affordable housing.

Slide 38

Again, talking about delay of compliance here from the BEPS period beginning in 2021, an owner of a building subject to compliance may in keeping with 3520.6(g). So, that's what I just talked about, seek a one-year delay of compliance as set forth and 3519.1. A one-year delay of compliance granted pursuant to this subsection shall not preclude DOEE from granting additional delays and compliance; provided, that, for a building other than a qualifying affordable housing building, any additional delays may not, in total, exceed 2 additional years. So, this is talking about that one year that can be granted due to the public health emergency and then you can seek further exemptions based on the situations I described before and could be given an additional 2-year delay of compliance.

DOEE may attach additional conditions to a delay of compliance, including adjustments to the building's Compliance Pathway, or additional reporting and verification requirements to move a building toward compliance. And then lastly, an exemption or delay approved during one Compliance Cycle does not extend the requirement for a building to meet the BEPS established for the next Cycle.

Slide 39

Moving on, this is just to describe the COVID-19 delay a little bit. Because again, this is something that we've put in there due to stakeholder feedback and we really appreciate all of you talking to us about this. So, for the BEPS period, beginning in 2021, an owner of a building subject to compliance may seek a one-year delay of compliance. A one-year delay of compliance granted pursuant to the subsection shall not preclude DOEE from granting additional delays. So, this is just reiterating what I talked about before; I'm just showing you on a timeline that it's pushing out the compliance due date by a year. And this is going to be available again to any building that can confirm that they existed and were consuming energy during the COVID-19 PHE.

Slide 40

So, now moving on to section 3521, I'm sure this is what many people have been waiting for. We're talking about the alternative compliance penalties here. So, alternative compliance penalties are penalties established within the Clean Energy DC Omnibus Act. They say that a building under BEPS that does not meet the energy performance requirements as specified, DOEE, could be subject alternative compliance penalties at the end of that 5-year cycle.

Penalties shall be determined on (1) if the building met all the reporting requirements of the approved pathway (I described the reporting requirements earlier, so you have to meet all those reporting requirements); (2) the gross floor area of the building (you can see over on the right hand side that we have established gross floor area bins); and then (3) the maximum

penalties shall be reduced proportionately to the building's performance relative to its pathway targets.

So, if you look over, on the right-hand side, you'll see a chart of the different floor area bins and the max penalty level. So, if your building is 500,000 square feet or larger, the max penalty that building could receive would be 7.5 million dollars. However, that 7.5 million dollars will be reduced proportionally to the building's performance relative to its pathway targets, whatever it was, it was targeting on the compliance pathway that it was on. If you look in the rules in this section 3521.1 through 3521.3, you will see a nice handy chart that gives you some examples of what that looks like. So, if you reach 50% of the goal that you were supposed to reach, your fine would be reduced by 50%.

Slide 41

Moving on to talk a little bit more about enforcement. We want to point out that a building owner that knowingly submits inaccurate information will be subject to the assessment of the maximum alternative compliance penalty regardless of the building's performance relative to its pathway target in addition to any other applicable fines and penalties.

DOEE may enforce the requirements of this section, including assessment of an alternative compliance penalty by issuing one or more of the following (a) a notice of violation, (b) Enforcement notice, or (c) notice of infraction. DOEE may issue a notice of violation to notify a building owner of a violation under section 3516 through 3520 and any potential fine if the violation is not corrected.

DOEE may issue an enforcement notice or penalty for a violation under section 3516 through 3521. An enforcement notice may be appealed to DOEE pursuant to the instructions provided in the notice. So, we may provide a notice of violation, which, as I stated before, it is more like a warning. And then we may issue what's called an enforcement notice, which has a fine attached to it and can be appealed directly to the DOEE.

Slide 42

If a fine or penalty is not resolved, DOEE may issue a notice of infraction. So, a building that receives a notice of infraction may request a hearing or adjudication pursuant to the Office of Administrative Hearings Establishment Act of 2001. So, what this states is that we may issue a violation, which is a warning and may then issue an enforcement notice, which would have a fine attached and can be appealed to DOEE. Then we also issue what's called a notice of infraction, which then has to be adjudicated with the Office of Administrative Hearings.

A building owner may appeal to the District of Columbia Court of Appeals only after exhausting all administrative remedies. In addition to or instead of the civil infraction, the Attorney General of the District of Columbia may commence a civil action for damages, cost recovery, reasonable attorney and expert witness fees, and injunctive or other appropriate relief to enforce the compliance with section 3516 through 3521.

Slide 43 – BEPS Questions & Answers

While I've been talking, I think I think we've gotten a lot of questions, right? Yes, we have been organizing them behind the scenes, but much more coming in. So, we're going to pause for maybe 30 seconds before we start the Q&A. And Katie, if you want to look at the Q&A document, we've been working on the questions.

I just want to answer questions that have answers prepped. What can I start? Reading these. Yes, and then I'll start adding more to the end as they're coming in because we've just had 5 or 6 come in right now. But these are the ones we've already been working on and we group them by category. Just give you a little peek behind the curtain, my team has been taking your questions and trying to draft some basic answers while I've been talking.

Q1: How will DOEE publicly disclose any Alternative pathways that it will grant?

A1: So, we do plan to disclose alternative pathways that have been granted. This is based off feedback we receive from the Task Force that we should be disclosing if an alternative pathway has been approved so that other building owners would be able to potentially use that pathway if they follow it exactly as it's spelled out. I believe that our plan right now is to publish that publicly so that building owners can access that information and be able to follow up halfway through the proper approval chain with the agreement.

Q2: What happens to the Standard Target Pathway if ENERGY STAR recalibrates the scores for the covered building type? Does the building still need to hit the BEPS score DOEE identified, or will DOEE try to remap it based on equivalent EUI?

A2: DOEE, we're planning to remap it to be the equivalent source reduction. So, if that happens in the middle of the Compliance Cycle, as we all know, just went through a whole score model update. If that happens in the Compliance Cycle, we will work with the buildings that are following this pathway to remap it to be equivalent source EUI reductions.

Q3: What if an owner did not exclude certain spaces when benchmarking in 2018? Spaces that meet the definition of spaces that could/should be excluded. Is it appropriate to reevaluate the 2018 and 2019 baseline?

A3: So, in that case, the benchmarking report would have been incorrect. I guess you would ask them to correct that. And we need to request that benchmarking report for the year and then we could just use that new data to set that baseline. That's one thing that we can work with to make sure that it's correct before the Compliance Cycle really kicks in.

Q4: How would 3517.1 apply to the first BEPS cycle? Does this proposed rule accomplish this?

A4: Let me go back (refer to Slide 25), I'm just going to put this up on the screen, so everyone knows what we're talking about when we talk about 3517.1. So, we're talking about every 6 years when you shall establish the BEPS. So, this section just reflects the requirement that stated in the law and the regulations are simply just reiterating what the statute governs and the 6 years begin in 2021, which is when we are establishing the standards.

Q5: How do you submit the selected cycle (pathways) to DOEE?

A5: So, there will basically be an application on our website, and we're planning to have a box you can check or a radio button that you can click. And it's not quite live yet, but that will happen before that is required of any building.

Q6: Can you explain the one-year extension for the BEPS 2021 period? Does that mean they also get an extra year to choose a compliance pathway? But they still have to complete before 2026?

A6: (See Slide 29) What we're stating is that there are those requirements that you have to meet, depending on the compliance pathway that you choose. And we're giving an extra year in order to meet that. So, for example, if you were following the performance pathway, and you had to get a 20% reduction in EUI, you have an additional year to actually get to that 20% reduction in EUI. Oh, they did say, does that mean that you also get an extra year to choose a compliance pathway? Sorry I did miss that part of the question. I believe that we are. Andrew or Kristian, remind me we are allowing an extra year to choose the actual compliance pathway, correct? That's correct. All of the deadlines shifted back 1 year. (see Slide 30) Very good right here. So right here reporting verification requirements set forth in this section shall be extended by one year.

Q7: So, the BEPS 1 Period is not extended automatically by one year for everyone? The 1-year extension must be asked for?

A7: So, this is correct. However, we're going to make it, the plan is to make it very easy for someone to ask for this. This extension will basically just have a confirmation again that the building existed and was consuming energy during the COVID-19 public health emergency. And I will say that the reason for this is that the legislation states that for someone to get a delay of compliance, they must show good cause, DOE has to ask for someone to show that good cause in order to grant that delay of compliance. And that is what we have stated here. We will have to approve it and so we are planning to basically have it very easy for a building to do it.

Q8: Does a delay in compliance pull a building out of the next BEPS compliance cycle?

A8: No, it does not. The plan is that building has a delay that goes into the next Compliance Cycle, the building would then be subject to the BEPS also for that for the next Compliance Cycle. And so, if they're found still be under the Standard, they would be subject to the Compliance Cycle that falls under BEPS Period 2.

Q9: In the published rules, for the Standard Target Pathway, it states that the target is "for the applicable BEPS Period in the last year of the Compliance Cycle." Can you clarify this? What is meant by 'the, last year of the compliance cycle'? For example, for the first cycle, is this 2025?

A9: So, Compliance Cycles are 5 years and BEPS Periods are 6 years. The last year of a BEPS Period is outside of any Compliance Cycle. So, for example, if you ignore the COVID extension that was given (that's going to be provided for this first cycle for anyone who applies for it), the last year of the first Compliance Cycle is 2025 and the last year of the BEPS Period is 2026.

Q10: When will the target median 2018/2019 ENERGY STAR scores and median EUIs be released publicly? I think this person is asking when will the standards be established.

A10: That's what I'm getting from this, so the standards will be established very soon. And those are in that final approval stages, and they will be released publicly very soon. I think that's what that question is asking, but I want to clarify that the BEPS will be based on the calendar year 2019 ENERGY STAR data, and this mentions 2018 data. So, I just wanted to clarify and make sure that I'm answering the question.

Q11: What year is the proposed standard based on? Is it 2019 or an average of 2018 and 2019?

A11: Clarify that the standard is going to be based on the most up to date information that we have on hand, which is the calendar year 2019 data. When you're talking about compliance, so this is for buildings that are determined to be below the standard. When we're talking about compliance, if we talk about the performance pathway, the baseline for the performance pathway can be based on an average of 2018 and 2019, so that's the difference that we're talking about.

Q12: are there any pre-approved Alternative Compliance Pathways and can you speak to what they are and when more information on them will be published?

A12: Okay, this is a great time for me to mention, because I think I did not mention this yet. So, we are developing a technical reference guidebook that will be released soon. That is also moving through approval chain right now. The technical reference guidebook will provide more details on what the alternative compliance pathway process looks like. And as I said, those will be published soon, and when those are published folks, we will make sure to let you know that the guidebook has been published and people can go in and review that as well.

Q13: Can you please speak to the "Deep Energy Retrofit Pathway" proposed by the BEPS Task Force?

A13: So, the deep energy retrofit pathway, there are a couple different ways that we talk about deep energy retrofits. One is what we're calling early compliance. That would be a building owner is trying to go above and beyond what the typical compliance pathways require. In that 5-year cycle, so let's say a person is choosing a performance pathway. They're required to do a 20% reduction over 5 years, or a building owner would like to go above and beyond and do more than 20% and then get credit for that. Right? And so what the task force has talked about is potentially offering a building owner to go above and beyond and potentially get a 36% reduction in 5 years and then get a waiver for the next Compliance Cycle no matter whether they are below the standard or meet the standards for the next BEPS period. So that's one bucket of deep energy retrofits that we're talking about. The other thing that we've discussed with the Task Force is the idea that buildings may have either logistical issues, or have unique financing issues, such as our affordable housing folks, may need a little bit more time to actually comply with the energy performance requirements. So the idea is that the buildings would be given more time, but then required to go a little bit deeper and be required to go above and beyond what they would have if they were given 2 cycles to comply and go above and beyond what would actually be required in 2 cycles. And so, those are the 2 different types of energy retrofit pathways that the Task Force has talked about. And I would urge all of you to read the technical reference guidebook, which talks about both of those pathways and how they can apply to different properties.

Q14: Do you require 2 years to create a benchmark average or can the compliance cycle simply be measured against 2019 data?

A14: We could address this on a case by case basis. Right now, the way that it's proposed in the rules is that buildings would use an average of 2018 to 2019. But if the building owner wanted to talk to us and try to show the cause for otherwise, that would be something that it would have to be requested.

Q15: Why does the performance path metric differ between scored and unscored property types, where one is weather normalized site EUI and the other is straight site EUI?

A15: I don't think that's how currently in the rules, but there are metrics effectively available to properties that can receive a score and there are metrics that are not and one of the metrics is what's called an adjusted site EUI. So this basically accounts for all the various occupancy property use information and climate and weather adjustments that go into the industry score and so for the performance pathway, this is the performance metric, adjusted site EUI is what you're making your reductions based off of, and this will account for all those initial score factors. If you can't receive a score, then that metric isn't available to you. And therefore, you need to use the weather normalized, which accounts for climate and weather impacts. But doesn't account for the various occupancy and business use factors that go into any ENERGY STAR score. And then there are the rarer example of buildings that can receive neither an adjusted site EUI or adjusted site weather. They can only receive just plain Site EUI in which case we'll just default those numbers. But I think there's maybe 4 buildings at this time that are in that bucket.

Q16: Does ENERGY STAR certification meet the data verification requirements even in the case that the certification verification is done by an on-staff PE or RA (who may also have completed the benchmarking)?

A16: I think it's because it's on-site, they're saying on-site, not third-party so I don't think it would. Yeah, the ENERGY STAR certification requirements for verification and the benchmark requirements do not align. The certification allows in-house to verify the data, it also requires an on-site visit. By using the LP or representative, I don't think that is that is on our requirement. We're requiring separate from all parties, a third-party and there is no site visit required. I think what I'm understanding from this is that allows someone who is on staff of the building owner to do the data verification for ENERGY STAR certification. And then in our rules, we state that the EPA is an approved district data verifier if it is done through their certifications.

Q17: If a delay of compliance is granted, will the decision be made public?

A17: So, any final decisions on a particular case, including any compliance delays could be public information. So, this information could be requested, and it could be all the information to someone that asks for it.

Q18: Are there any are there Prescriptive Pathway examples?

A18: When we talk about examples, I guess we're talking about actual energy efficiency measures, or the actual process for the Prescriptive Pathway. So, this will be released in our guidebook, which is coming very soon. The details for the Prescriptive Pathway are coming out in that guidebook and will be coming out very soon.

Q19: Will you provide guidance on how to write or fill out reports for the prescriptive phases

A19: This will be in our guidebook. Also, you can contact our help center and our staff will be able to help provide guidance on that.

Q20: Are rent control buildings considered affordable housing.

A20: Not in all scenarios, the affordable housing is outlined in the rules (see Definition section). So, if you look in the building energy performance standard rulemaking, there is a definition for affordable housing, which I can read to you right now. But you can also go read it yourself, it states that buildings are primarily residential and contain 5 or more dwelling units and that they either; in which use restrictions or other covenants require that at least 50% of all the building's dwelling units are occupied by households that have household incomes of less than or equal to 80% of the area median income; or that the building owner can demonstrate that at least 50% of the dwelling units rent at levels that are affordable to households with incomes less than or equal to 80% of the area median income. I want to state that definition comes directly from how it was defined in the BEPS rulemaking.

Q21: I did not see anything in the presentation regarding Rent Controlled properties...can you please explain? We are limited by the district in how much we can increase rents and therefore recoup costs, how can we be mandated to comply with these very costly measures?

A21: We have definitely made considerations for affordable housing types as you can see. The buildings can request different delays of compliance and then there's different considerations that we've made in terms with compliance pathways. The different building types can choose the different ways that they can proceed with complying with the legislation and with the requirements.

Q22: How would 3517.1 apply to BEPS 1 re: the requirement to publish BEPS in the DC Register? I interpreted previous comments from DOEE that this would not be done through the DC Register, but separately through DOEE guidance. Do we now have to wait for BEPS levels to go through a proposed rule and comment period on the DC Register as suggested by 3517.1?

A22: DOEE has a requirement under the law to establish the standards by January 1, 2021, and the standards will be released by that date. So, we can confirm that we are required to do that, and we are going to do that.

Q23: What is the minimum Energy Star score to comply?

A23: DOEE will set the standard based on the calendar year 2019 benchmarking data and buildings that do not meet it will be required to choose a compliance pathway and meet the requirements of that compliance pathway that we described. So, the minimum Energy Star score, or the minimum Source EUI, it's going to be broken out by property type. It's different based on what property type you have.

Q24: Will the guidebook be subject to public comments as well?

A24: We will welcome comments on the guidebook. Yes. So, when they're published, we will welcome comments on that as well.

Q25: When should building owners apply the delay pursuant to 3520.7?

A25: So, we would recommend for the end of the compliance cycle since we're requiring a demonstration of good cause. If a building owner is to show good cause, most of those circumstances that were stated that would most likely happen towards the end of the Compliance Cycle.

Q26: Which pathway should be chosen to guarantee success in the 20% reduction if money is no object in making energy efficient improvements?

A26: So, DOEE is not going to recommend the pathway to anyone. That's something that a building owner would have to assess based on the requirements and based on probably, I would guess you're want to do some sort of audit of the building or a financial assessment of what it means to meet the requirements of these different pathways. This is not something that we're going to recommend to anybody. We are here to answer questions, so if there's clarification questions that a building owner or consultant would like to ask, we can help. But we do not provide sort of advice of what pathway to choose.

Q27: Has DOEE or DCSEU considered implementing a program similar to the Quick Home Energy Check-up (QHECs) offered by utilities in MD, which could substantially assist property owners in implementing certain efficiency measures?

A27: I'm going to say I don't know, because I am not familiar with the quick energy checkup. Anybody else on the team is familiar with that program? No, but I would also probably say, I think that when you're doing a home energy check on a single-family home versus a building that's 300,000 square feet, those are 2 completely different scopes of work. So, I think they're just completely in a different realm of how we've talked about audits at the Task Force meetings, but don't necessarily have a specific program for them at this moment.

Q28: Will DOEE be working with other District agencies to harmonize policies to support energy efficiency? For example, HPRB limits new windows and changes to "historic" buildings/areas-- will DOEE partner with building owners to help overcome these challenges?

A28: The answer is yes. My team is already talking to other agencies about what barriers exist and how we can address them, but we welcome comments from folks and these are the things that we talked about with the Task Force also, but we welcome other suggestions.

Q29: Are there going to be private 3rd party companies that can assist us with compliance? This is a lot to throw on our existing staff.

A29: So, again, this is a decision that a building owner would have to make for themselves. There's lots of consultants that are available in the District for building owners to engage with to help them kind of through this process. And so, I would recommend if the building owner

feels that is needed, then they should engage with a consultant and try to move through the process.

Q30: What if needed renovations to achieve required reductions require vacating significant parts of an occupied building containing tenants with valid leases, will there be exemptions provided for these situations?

A30: Yes, if we go back to where we talk about delays of compliance (see Slide 37). So, here you can see the building owner would have to demonstrate good cause for the delay of compliance. So, they would have to show that the building underwent maybe a major renovation that that it was impractical for them to be able to meet building energy performance requirements. Again, to something the owner would have to demonstrate, DOEE would have to review the paperwork and then decide if the building would be able to be granted the delay of compliance, and then it would be approved on a case by case basis.

Q31: Also, if there is no economic payback for required upgrades what DC incentives will be provided? The current published incentives are in many cases not sufficient or vague. When will additional information be available? I understand that this may not be DOEE's responsibility, but it all goes together.

A31: So it's not necessarily, like you said, our responsibility, but it is something that we want to make sure we're coordinating on across the district, because our job here is to make sure that buildings are successful in this program. Right? We're here to help buildings comply and make sure that that compliance is effective. So, in terms of incentive programs, I just went to a presentation from the - this wasn't really an incentive program, but it's a financing mechanism. I just went through a presentation from the DC Green Bank today, and they've already started talking about the offerings that they're providing to building owners and they've got some really exciting things that they're putting out. So, I would encourage building owners to check out the financing available for the DC Green Bank. I would encourage you to contact the DCSEU. They have incentive programs as well for building owners to make upgrades on their buildings. We also have a commercial PACE program here in the District that building owners could use for the financing piece. And then currently in front of a Public Service Commission is a program that PEPCO is applying to launch in the District to offer incentives to building owners. It's not quite final yet, but it's in the works right now. Those are some of the incentive programs that I can think of off the top of my head. The other place that I would encourage folks to start contacting, we do have a high-performance building hub here in the district that could start helping you figure out where those resources are. So that's another place.

Q32: When will DOEE lay out the prescriptive pathway? It is difficult to evaluate 3521.3 without knowing how "points" are proposed to be awarded.

A32: This will all be in the guidebook coming soon, and we will publish that and let everyone know when that has been published.

Q33: Is there a substantive distinction between "property owner" (see 3520.6) and building owner?

A33: (see Slide 37). It does say property owner. This should say “building” owner. So, there is not a difference. It should say building owner. We missed that in terms of consistency.

Q34: Is the deadline to select the pathway for the first cycle is then 2/1/21?

A34: No, it's February 1, 2023. Again, that is a deadline, so you can choose it before that. But that is the last date which can be chosen and building owners that do not choose a pathway could be subject to civil infections. That's something to keep in mind or be placed on a pathway automatically.

Q35: Can you confirm: the property type definition is the one ENERGY STAR/EPA assigns based on reported uses, which may differ from the "self-selected" property type, correct?

A35: You're asking whether it's the Portfolio Manager assigned type or the self-selected? We are planning to use the Portfolio Manager calculated one since that is most accurate to what is actually in Portfolio Manager.

I can probably go through 1 or 2 closing slides while we're trying to confirm the answers to the final questions.

Slide 44

So overall schedule of the Task Force meetings over the next couple of months, we will not have a Task Force meeting until January 5th so happy holidays to everyone! We do not have one on the regularly scheduled time on December 22nd. Our Task Force Co-chairs are going to follow up with the Task Force members by email over the next week or so to talk about what can happen in the Task Force during the rulemaking public comment period.

So, what we have on the agenda for future meetings in January, we're going to talk about discussing the long- and short-term role of the Task Force. We have some other things scheduled, but I don't know if they're going to happen on January 5th. We are going to do a workforce development discussion, but I think that's going to be closer to the end of February/ beginning of March with help from a nonprofit partner. We are going to talk about the results of the cost/benefit study, but we have to make sure that the reports come in and are ready to be released before we schedule exactly which meeting that's going to happen at. And then we may have a conversation about policy gaps, not controlled by DOEE, are there other recommendations that can be made by the Task Force that would help this program work better?

Slide 45

So, updates on our webinars. We have extended our monthly webinars into the new year. The next one will be scheduled for January 28th. We don't have the topic exactly decided on whether or not we're going to highlight a partner or if we're going to do another Q&A session on the rules. We'll just see what happens in the next few weeks and make the determination then. But it's scheduled for January 28. And if you want to sign up, go to the Eventbrite link again and we've added those new dates under that link.

The Building Innovation Hub is hosting some awesome events and webinar series. So please go to their website and bookmark this page, so you can get information about their events. We've also got more dates scheduled for our 2020 Green Building Professional Series extended into 2021. So, the next date is January 13th, talking about transportation electrification. We're going to talk about renewable electricity on our grid on February 10. Funding clean energy projects on March 10, and then getting ready for BEPS on April 14th. So, if you go to Eventbrite and just search for DOEE, you'll be able to find these items.

Slide 46

So, this is a reminder with the links on the rulemaking in the DC register, the due dates, how to submit information. As Katie mentioned earlier, there are 2 separate emails. So info.benchmark@dc.gov is how you submit public comments for the benchmarking rules and info.beps@dc.gov is how you submit comments for BEPS.

Now, the Q&A for today's session does not qualify as public comments in this process. So, if you had a question, maybe didn't get clarification, or want to submit more information or suggestions to the DOEE on the rules based on today's information, you need to submit it officially through the info.BEPS and info.benchmark emails. And it would be incredibly helpful if you mentioned the section so that we make sure we understand your public comment and we can account for that.

Final Questions & Answers - BEPS

Let me check with Katie and the folks if we're going to answer any other questions. We have a few more questions.

Q36: Can you briefly describe how DOEE determined the fine schedule in 3521? What was the basis when determining the max penalty values?

A36: So, I'll just go back to that slide (see Slide 40). Anytime you're building out an enforcement program, you have to make sure that the cost of non-compliance is commensurate or proportional to the cost of compliance. We did this such that buildings don't decide to not comply and just build a penalty into their business model. Right? So that's what you have to do any time you build enforcement program, so that's what the consideration was here. And then the amounts, the specific amounts were informed from initial analysis that was done through DOEE research.

Q37: If following the performance pathway, where can the building owner find the adjusted Site EUI for its property, from the benchmarking information submitted to DOEE. Specifically, for the compliance cycle starting in Jan 1, 2021, where can an owner find the baseline adjusted Site EUI, from the benchmarking 2019 and 2018 data?

A37: Great question. So, the adjusted site EUI would be in the Portfolio Manager account. So, if you are the building owner, or the building owner designee that has access to that Portfolio Manager account. Please reach out to my team if you're having trouble figuring out where to get that and we can answer that question for you. But I do want to point out that DOEE, right now, it doesn't have that data. So, in the past, we haven't collected that data. The reason that

we're offering it as an option within the rules proposed is this is actually based on stakeholder feedback that we use that metric to set the baseline, and so we want to kind of honor that that request and so now that we do automatic reporting, it's very easy for us to go back and collect that data on every building. So, we will be sending notification to building owners that we are about to go in and pull that data out, so that we can have that data to ensure that the baseline is accurate on our end as well.

Q38: Will the prescriptive guidance/guidebook be available before the public comment period ends?

A38: That is the plan. They are going through an approval process right now and so that's what we're aiming for.

Closing

I'd like to thank everyone for joining us today. If you have any public comments, please send them to the emails that are on the slides, and thank you very much for attending. The recording, slide deck, and a transcript will all be available on our website. And if you signed up through the Eventbrite link, then we will be sending them out to your email. But you can always check in the next day or two on our website to get the all the information about the event today. Thank you so much.

Katie: I just want to reiterate our team is here to answer questions, so the email addresses are also open for questions. We try to be as responsive and helpful as possible, so please reach out to us if we either didn't answer your question properly today, or you have other questions. And thank you so much again.

Meeting closed at 4:20pm.