Building Energy Performance Policy FAQs

The Building Energy Performance Program (BEPP) – more commonly referred to as “Building Tune-ups” – was signed into law by Mayor Kenney in late 2019. The Office of Sustainability (OOS) finalized regulations that provide more detail to the policy in Fall 2020.

OOS wants to address – to the extent possible – the numerous questions it has received from interested stakeholders. Read the Q & A below for clarification on the language found in the legislation and regulations:

Compliance Overview

- **Which buildings must comply?**
  - Non-residential buildings with indoor floor space of at least 50,000 square feet (sq. ft.). These buildings are defined as “covered buildings” in the legislation.
  - In the regulations, covered buildings are further specified as any non-residential building with indoor floor space of at least 50,000 square feet of floor space, including but not limited to:
    - Mixed-use buildings in any mixed-use zoning classification with nonresidential use greater than fifty thousand (50,000) square feet;
    - Industrial and manufacturing facilities; and
    - Temporary lodgings, including but not limited to hotels, motels and short-term rental facilities, or any other use in which occupants are primarily transient and not utilizing the premises as a primary residence.

- **Which buildings do not have to comply?**
  - Non-residential buildings of less than 50,000 square feet;
  - Residential buildings including residence halls, dormitories, and other non-transient large lodging places; and
  - Parking lots and parking garages, or the portions of otherwise-Covered Buildings thereof used for parking.

- **Can I comply with BEPP now?**
  - OOS is still working on finalizing a program guide and a compliance reporting templates. The program guide will combine language from the legislation and regulations, and the compliance reporting templates will provide an easy way to share required compliance materials with OOS. Please do not submit any compliance documentation until these resources are available.

- **What are my compliance options?**
  - Buildings have a choice between two compliance pathways:
    - Conduct a building “tune-up” (see Compliance – Building Tune-Up section) or
• Seek an exemption from conducting a tune-up through one of the following pathways:
  • Demonstrate high performance of your building (see Compliance – High Performance Pathway section)
  • Your building received its initial certificate of occupancy within 3 years of the scheduled tune-up date
  • Your building is scheduled to be demolished within one year of the date of the scheduled tune-up
  • Such other factors as determined by the OOS to justify an exemption

• When must my building comply?
  o Buildings will be required to follow this schedule of compliance deadlines:
    ▪ September 30, 2021*: Buildings with 200,000 sq. ft. or more
    ▪ September 30, 2022: Buildings with 100,000 sq. ft. to 199,999 sq. ft.
    ▪ September 30, 2023: Buildings with 70,000 sq. ft to 99,999 sq. ft.
    ▪ September 30, 2024: Buildings with 50,000 sq. ft. to 69,999 sq. ft.

After compliance with the tune-up legislation in accordance with the schedule above, all covered buildings will be required to repeat the tune-up compliance process five years after their initial compliance deadline.

  o If a building owner is seeking an exemption from conducting a tune-up – either through a high-performance pathway, receipt of initial certificate of occupancy, or scheduled demolition - that building must report at least six (6) months prior to this compliance deadline.

*The City is in the process of updating the regulations to delay the first compliance period for buildings over 200,000 square feet to 2022. The City will post these regulations which will be open for public comment for 30 days. A hearing can be requested to receive public comment on the regulations. After that, the extension will be automatically granted to those buildings. The process and timeline is unchanged for buildings required to comply in subsequent years.

• Can I comply before my building’s compliance deadline?
  o Yes, but submitted building tune-up reports must cover inspections and corrective actions completed no earlier than two years prior to the scheduled tune-up date.

• Are COVID-19 extensions available for the 2021 compliance deadline?
  o Yes. Due to COVID-19, buildings 200,000 square feet or larger with a compliance deadline of September 30, 2021 can apply for a six-month extension. This includes buildings that are certifying high performance or requesting an alternative exemption. This will shift the compliance deadline to either:
    ▪ October 5, 2021: For buildings certifying high performance or requesting an alternative exemption, OR
    ▪ March 31, 2022: For buildings performing a tune-up.
- The 6-month extension also applies to all interim deadlines (e.g. alternative compliance plan for large portfolios.)
- To request an extension, please submit the Compliance Extension Request Form by April 5.

- Am I eligible for an extension if my building’s compliance deadline is 2022 or later?
  - Potentially. OOS, through its director, may grant an extension upon a showing of “good cause”. The legislation states that “good cause” may include: 1) occupancy of less than 50% of a building’s rentable floor area or 2) a burden that is disproportionate to the value of the building. But, there is no guarantee that an extension will be granted – even for these aforementioned reasons.
  - OOS will not consider exemption requests for 2022 until 180 days prior to the compliance deadline (e.g. April 3, 2022.)
  - If an extension request is denied, a tune-up must be completed within one year of the notice of rejection.

- What if my building doesn’t comply by the required deadline?
  - Buildings that do not meet the compliance requirements by the deadline will be subject to a fine of $2,000. Further, additional fines will be imposed if noncompliance extends beyond 30 days following the deadline. These are daily fines of $500 that will be levied until compliance is achieved.

- I’m a building owner with a large portfolio of properties – do I have to abide by the same compliance deadlines?
  - Not necessarily. Building owners have the option of working with OOS to develop an alternative compliance schedule if they own either:
    - 20 or more covered buildings or
    - Cumulative floor area in covered buildings of at least 5,000,000 square feet.
  - Large Portfolio Owners seeking alternative schedule(s) for compliance will submit the BEPP Large Portfolio Compliance Plan for review.
  - Alternative compliance plans are due 270 days prior to a building’s compliance deadline (e.g. January 4, 2021 if the building must comply by September 30, 2021. The 6-month COVID-19 extension also applies to the alternative compliance plan submission deadline (i.e. July 5, 2021 for buildings complying by March 31, 2022.)
  - OOS will respond to Compliance Plans within thirty (30) days. If the OOS Director requests additional information, that information shall be submitted in full within thirty (30) days of the date of the Director’s written response.
  - Compliance plans may be amended in subsequent years.
• Do I still have to report my building’s energy and water use through the City’s Benchmarking ordinance?
  o Yes. All buildings previously subject to the benchmarking ordinance will still have to comply annually by reporting energy and water use. BEPP is separate and does not affect benchmarking compliance timelines or requirements.

Compliance – Building Tune-Up
• What is a “tune up”?
  o A tune up is comprised of two parts:
    ▪ An assessment (i.e. an inspection) of the building and its systems and
    ▪ Corrective actions (i.e., repairs) to resolve issues identified during the assessment. These corrective actions will all be “minor repairs”, which is defined as “low-cost repairs to existing equipment such that the scope of work does not require permits from the Departments of Licenses and Inspections.”

• What systems will need to be assessed during a tune-up?
  o Base building systems must be assessed including "systems or subsystems of a building that use energy or impact energy consumption including building envelope, the HVAC (heating ventilating and air conditioning) systems, conveying systems, domestic hot water systems and electrical lighting systems." This assessment will involve:
    ▪ Bill analysis: examine and verify energy and water data and perform basic billing analysis.
    ▪ Sensors: examine for proper operation and appropriate location.
    ▪ Schedules: examine schedules of all equipment for actual daily, weekly, holiday, and seasonal schedules; determine optimal schedules.
    ▪ Set points: examine setpoints for all zones and equipment.
    ▪ Outside air control: calculate ventilation requirements, measure actual ventilation rates, and determine optimal ventilation delivery and control.
    ▪ Equipment controls: determine optimal equipment controls for energy efficient operations.
    ▪ Maintenance check: check for common maintenance items that impact energy usage.
    ▪ Design issues: identify design issues leading to a high energy use such as missing insulation, mission controls, large leaks, unbalanced systems, critical zones.
    ▪ Lighting: identify outdated lighting technologies, over-lit spaces, and areas needing lighting controls.
    ▪ Domestic plumbing system: determine maintenance needs.
  o Detailed requirements for each area of assessment may be found in the Tune-up Workbook.

• What guidelines should be used for a tune-up?
  o Tune-up reports should be complied using the Tune-up Workbook. The Tune-Up Instructions tab, contains overarching guidelines to follow.
    ▪ Where an Assessment Element allows a sampling of system components, for instance the inspection of grilles and coils, the Specialist can conduct a
randomized inspection of at least 15% of that Element, unless otherwise specified in the Assessment Overview column of Exhibit A. The inspection should be random in that it should not only include Elements that are known to be new or in working order, or be focused on a specific zone and/or floor, when multiple zones and/or floors are present in the building. Within the "Sampling Approach" column, the Tune-up Specialist must note the number of elements included in the random inspection, the total number of elements in the building (can be estimated), and the number of floors (as a % of total) on which an element was inspected.

- No tenant of a covered building may deny reasonable access to a building owner or a tune-up specialist for purposes of compliance with this Section, unless the Office of Sustainability provides an exemption for legitimate security concerns.

  - Optional best practice suggestions include:
    - Evaluating the operations and control performance data over a roughly two-week timeframe to capture conditions during all occupancy levels.
    - Capture performance data during full heating and/or cooling season, rather than shoulder seasons when the equipment may be shut down or not operating at full capacity.

- What is exempt from tune-up assessments and corrective actions?
  - The following are exempt from assessment and corrective actions during a tune-up:
    - Tenant-owned systems
      - Although tenant systems are exempt, we strongly encourage you to engage tenants on efficiency considerations and to have them reduce their energy use through all possible means.
    - Condominium or cooperative units
    - Systems that serve only a tenant’s leased space
    - Industrial processes
  - Where a Covered Building utilizes an inefficient system of operation, the owner may be exempt from Corrective Action for adequate cause. This includes, but is not limited to:
    - Public health reasons – including but not limited to alterations to ventilation and outside air percentage recommended by ASHRAE or the CDC to reduce transmission of diseases during health emergencies - or specific uses.
      - For example, building management teams are increasing their ventilation rates to minimize transmission rates, which may cause higher energy use to condition the outside air and potentially humidity issues in the summer months. A normal tune-up procedure may recommend lowering ventilation rates. In lieu of the recommendation to lower ventilation rates, a specialist may evaluate outside air dampers controls and sensors to ensure the building owners can properly control ventilation rates. ASHRAE also has guidance on ventilation strategies under COVID-19 conditions, the commercial guidance can be found here.
      - For example, as a voluntary measure, building owners can implement air filtration strategies, like increasing the MERV rating of mechanical filters.
ASHRAE recommends filters with MERV 13 or higher to mitigate transmission of infectious aerosols.

- A valid reason does not include personal preference, and OOS reserves the right to reject any exemptions. The Specialist shall sign-off on the exemption and its reasoning, and include it in the Description of Extenuating Circumstances column of the workbook or analogous section of the report.

- Will I have to take corrective actions on everything found during the assessment?
  - No. There will be both required and voluntary corrective actions. This is specified in the Tune-up Workbook.

- Will I have to replace a large piece of equipment, such as a boiler or a chiller?
  - A building is not required to replace a major piece of equipment to comply with BEPP. We do, however, encourage your building to consider installing the most efficient equipment possible, especially as it could potentially allow your building to comply with BEPP through the high-performance pathway option related to energy use reduction.

- Who can conduct the tune-up assessment?
  - The assessment must be supervised by a “qualified tune-up specialist”, which is currently defined as a licensed Professional Engineer or Certified Energy Manager. This specialist will provide the building owner with a signed assessment report setting out findings and recommendations regarding each of the required assessment elements. The Office of Sustainability may establish other qualification requirements for tune-up specialists through the regulations. All “qualified tune-up specialists” must be approved by OOS.

- Who can undertake the corrective actions included in the assessment findings?
  - In-house staff or contracted service providers can complete the corrective actions. The qualified tune-up specialist must verify the work and ensure it fulfills the assessment recommendations.

- What do I have to do, and by when, to comply through the tune-up pathway?
  - By the deadline referenced in the Compliance Overview section, your building must 1) have a tune-up specialist conduct an assessment, 2) implement the corrective actions raised by the assessment, and 3) submit to OOS a report detailing the results of the assessment and corrective actions.

- My compliance period does not occur this year. Can I still conduct a tune-up?
  - Buildings owners can complete their assessments and corrective actions no earlier than two years prior to the scheduled compliance deadline.
Compliance – High Performance Pathway

- How can I demonstrate my building is a high performer?
  - Currently, the legislation lists the following options for demonstrating high performance:
    - ENERGY STAR certification (75 or greater)
    - Gold rating under USGBC’s LEED for Building Operations and Maintenance v4
    - Net-Zero Energy Certification
    - Participation in utility retro-commissioning program
    - Demonstrated energy savings of at least 15%
    - Conducted an energy audit no less stringent than the ASHRAE Level II standard and implemented all the no-cost/low-cost energy efficiency measures, defined as providing a simple payback of three years or less, identified in the audit.
    - Demonstrated continuous commissioning/monitoring
    - Low site EUI
  - Additional alternative compliance pathways may be included in the rules and regulations or upon determination by the Director of the Office of Sustainability.

- Are there any prerequisites for high-performance pathways?
  - Yes. An owner may only apply for an exemption to the Tune-up requirement if the building has been compliant with the City’s Benchmarking Policy for the two (2) consecutive years preceding its Tune-up Compliance Date.
  - Applications for an exemption shall be made on a form provided by the Office and shall include (1) the proposed reason for the exemption; (2) evidence for this qualification; and (3) all items listed in the “Data Requirements” section of the Workbook, except for the Specialist’s information. No exemption shall be granted as of right.

- When do I have to demonstrate high performance to avoid conducting a tune up?
  - Your building must demonstrate that it meets a high-performance pathway at least six (6) months prior to the compliance deadline.

- Does it matter when my building met the requirements of a high-performance pathway options?
  - Yes. For the ENERGY STAR certification option, your building must have been certified in the year prior to its compliance deadline. For the remaining options, your building must have met the requirements at most three years prior to the compliance deadline.

- My building is old and it will never perform to high standards. Does that mean I can’t comply?
  - No. It just means that complying through the tune-up pathway may be more appropriate (see Compliance – Building Tune-Up section). Any building can undergo a tune-up assessment – regardless of age, energy use, or other characteristics. The corrective actions required as a result of a tune-up assessment will be specific to your building and its existing systems, which means that you’ll be able to comply with the policy. We encourage all buildings, however, to look for opportunities to go beyond the tune-up pathway and consider undertaking measures that will both lead to significant
efficiency improvements and enable compliance through the high-performance pathway.

- Is there any more information on these high-performance options or details on specifically how my building can comply through the high-performance pathway?
  - Yes. Each high-performance pathways has specific submission requirements outlined in the associated workbook. The High Performance Workbook may be found here.

- Are there any COVID-19-related accommodations for the high-performance pathways?
  - Yes, for ENERGY STAR Certification. For tune-ups scheduled in calendar years 2021 and 2022:
    - A 2019 ENERGY STAR Certification will be accepted for buildings with a Compliance Deadline in 2021 and 2022 to be exempt from the tune-up requirement.
    - To qualify for the 2019 ENERGY STAR exemption, owner(s) shall submit (1) either a copy of the EPA-issued ENERGY STAR Certificate of Achievement or (2) the congratulatory email confirming certification; and either (1) a copy of the application for Certification or (2) the Statement of Energy Performance (SEP) with the same year-ending date as the application.
    - This provision shall expire on December 31, 2022.

- Are there any other extensions granted for the high-performance pathways?
  - Yes. For building owners pursuing the active optimization pathway may, upon application and no sooner than 180 days prior to the Compliance Deadline and approval by OOS, receive an extension of no more than two years from the Compliance Deadline to implement the Active Optimization and collect relevant data.
    - Extension applications under this subsection include:
      - Description of the type of program;
      - Systems to be actively optimized;
      - Timeline for launch and data qualification; and
      - Verification by a person possessing Specialist qualifications.
  - For building owners pursuing the 15% energy savings pathway may request a non-guaranteed one-year extension to submit the required documentation. No sooner than 180 days prior to the Compliance Deadline, the owner shall provide in writing and in a form acceptable to the OOS, evidence sufficient to the OOS that the building will meet the exemption requirement, and if the application fails the Covered Building shall conduct a Tune-up within one year of the date of its exemption denial.

Qualified Tune-Up Specialists
- What does it mean to be a qualified tune-up specialist?
  - An individual must be either a licensed Professional Engineer or Certified Energy Manager to qualify as a Specialist. A specialist must also demonstrate at least seven (7)
years of combined education and experience with commercial building operations and/or building energy management.

- How does one become a qualified tune-up specialist?
  - By submitting the above credentials via an application provided by the Office of Sustainability, that shall include, but is not limited to, a resume proving necessary education and experience and documentation of licensure and/or certification.

- Can a tune-up specialist be an in-house employee?
  - Unless otherwise provided herein, Specialists shall be third-party contractors of the building owner(s), and not employees.
  - A building owner may only use its employee(s) as specialists if:
    - The owner is a Large Portfolio Owner, and the employee received approval from the Director pursuant to these regulations; and
    - If the employee, or a combination of the owner’s employees, produce(s) Tune Up Reports for greater than eighty-five percent (85%) of that owner’s total covered square footage in any Compliance Year, the owner conducts a subsequent quality-assurance audit of the completed work by a third-party Specialist; and
    - That Specialist shall submit his or her own report. For every portfolio of Covered Buildings, the Specialist shall randomly select Assessment Elements to inspect, but shall inspect each Assessment Element at least once. Each report shall state (1) which Assessment Elements were reviewed; (2) whether each Assessment Element had been properly addressed; (3) if not addressed, a satisfactorily explanation as to why; and (4) a signed assessment that either the building owner complied in good faith or did not, with an optional explanation; and
  - If the results from these quality assurance audits demonstrate significant deficiencies – as defined by the Director - the Director may require the Large Portfolio Owner to (1) reduce the percentage threshold for requiring a quality assurance audit in future Compliance Years; (2) require a certain percentage of Tune-up inspections be conducted by a third-party, and/or (3) disallow in-house staff from conducting future Tune-ups.
  - OOS reserves the right to reject any third-party Report, or request more information
  - Building owners other than Large Portfolio Owners may petition the Director of OOS in writing to conduct a Tune-up with employees. The petitioner must demonstrate a hardship in hiring a third-party Specialist, such as financial hardship, to the satisfaction of OOS. If the Director provides this exception, the employee must demonstrate the appropriate qualifications for acting as a Specialist.
• Do I have to reapply to remain a qualified tune-up specialist over time?
  o No but OOS may reject, or revoke, Tune-up approval at any time if an applicant is found to have provided false, misleading, or otherwise untrue information to the Office, or if the City conducts a quality-assurance assessment and finds errors in a Specialist’s work and/or reporting that, to the determination of the Office, contains significant errors.

Glossary of Terms
• **Active Optimization** – Ongoing maintenance of building systems by the owner or his or her designee, either through computerized or manual protocols, that determines on a consistent basis compliance with Tune Up protocols.
• **Assessment Element** – an individual facet of a Tune-Up, to be noted on the provided report template and used in assessing the compliance with these regulations and their enabling ordinance.
• **Base Building System** - shall have the meaning as set forth more fully in Section 9-3403 of the Philadelphia Code.
• **Benchmarking Policy** – Benchmarking Policy shall have the definition as set forth in Section 9-3402 of the Philadelphia Code.
• **Building tune-up report** – shall mean a document summarizing the energy and water performance issues identified during an initial inspection and those issues which were subsequently resolved through corrective action.
• **Compliance Deadline** – the calendar date by which a given Covered Building must submit a Tune-up report satisfactory to OOS.
• **Compliance Plan** – The alternative compliance schedule set forth by Large Portfolio Owners, where applicable.
• **Compliance Year** – the three hundred sixty five (365) day period comprising the Compliance Deadline and the preceding three hundred sixty four (364) days.
• **Corrective action** - shall mean adjustments and minor repairs to existing building energy and water equipment.
• **Covered building** - shall mean any non-residential building with indoor floor space of at least 50,000 square feet.
• **Director** - shall mean the Director of the Office of Sustainability or his/her assign(s).
• **Large Portfolio Owner** – the owner(s) of record of either (1) twenty (20) or more Covered Buildings, or (2) any number of Covered Buildings with a cumulative floor area of five million (5,000,000) square feet or more.”
• **Minor repairs** - shall mean low-cost repairs to existing equipment such that the scope of work does not require permits from the Departments of Licenses and Inspections.
• **Qualified tune-up specialist** - shall mean a licensed Professional Engineer or Certified Energy Manager and shall meet such other qualifications as the Office of Sustainability may establish through regulations.
• **Tune-up** – Inspection by a Specialist and subsequent appropriate Corrective Actions to increase a Covered Building’s energy efficiency.
Additional Questions and Resources

- Who can I go to with questions about the policy, or to generally stay informed about it?
  - For immediate questions, to be informed when the public comment period opens for the rules and regulations, to get general updates about the policy, or to learn more about opportunities to be involved, please contact tuneups@phila.gov.