



Centering Equity in the Rules and Regulations of A Building Performance Standard

Introduction

History shows that energy and climate policies can perpetuate inequity and create additional economic hardship for already disadvantaged communities. Policies and programs that aim to reduce energy consumption and emissions from buildings tend to favor those with the means and capital required to take on improvement projects. There are many benefits to improving the performance of buildings including reduced energy costs, improved indoor comfort, and healthier living environments. For some, building performance policies facilitate these improvements. For others, these policies impose significant barriers. With state and local governments working towards achieving climate goals, it is critical to develop equitable programs that deliver benefits to all buildings, owners and tenants.

[Building performance standards](#) (BPS) are emerging as a tool that policymakers can implement to reduce carbon emissions from the existing building sector. However, these policies need to be designed carefully so they do not perpetuate inequity but instead provide the intended benefits to all building owners. It is critical that policymakers center equity in a BPS by engaging the community using restorative justice principles. [Restorative justice](#) is “a process where all the stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the harm.” Regulators should listen to community members and identify specific challenges, needs, and opportunities that can be reflected in the regulations and implementation.

Building performance standards are relatively new in practice and there is no uniform standard for how they are designed or operated. This document is meant to guide policymakers, regulators, and others involved in program design, specifically as the rules and regulations for a BPS are crafted. The sections below identify the benefits of a BPS policy, the points of inequity, and specific sections of regulatory development where equity must take center stage. Because every jurisdiction has different needs and barriers, the recommendations in this document are not intended to be exhaustive and may not work for every location.

What Is a Building Performance Standard?

A building performance standard (BPS) is a type of policy that requires owners of commercial and large multifamily buildings to meet performance targets over time, usually with the goal of reducing greenhouse gas emissions in accordance with climate change goals. Common metrics used in these programs include energy use intensity (EUI), greenhouse gases (CO₂ equivalent), an ENERGY STAR Score, and/or water use intensity (WUI). A BPS can be implemented at any level of government including federal, state, and municipal. At the time of writing, three cities (Washington D.C., New York City, and Boston), one county (Montgomery County, Maryland), and one state (Maryland) in the Northeast region that have passed a building performance standard, with many others actively considering the development of their own.



Benefits and Risks of Building Performance Standards

Benefits

The overarching goal of any BPS is to reduce the energy usage and/or carbon emissions of the building stock. However, there are many benefits – beyond energy and carbon savings and reduced utility bills – that come with improving the performance of buildings.

Health and Comfort

High performing buildings are also healthier, more resilient, and often more comfortable than inefficient ones. A building that is well insulated and designed with energy efficient best practices is less susceptible to weather changes, indoor temperature swings, and moisture issues like mold. Excessive humidity and constant temperature swings can lead to asthma, headaches, and fatigue. These health and comfort benefits extend beyond the residential sector. [One study](#) showed that in the commercial space, energy efficient buildings increased productivity for employees. Additionally, many BPS promote electrification as a strategy to reduce emissions, which may also have positive health benefits for occupants. According to the [Midwest Energy Efficiency Alliance](#), the “Pollutants from burning fossil fuels contribute to four of the leading causes of death in the nation: cancer, chronic lower respiratory disease, heart disease and stroke.” A well-designed BPS will advance these benefits without harming the community.

Local Job Growth and Workforce Development

A building performance standard creates demand for a wide range of energy and building-related jobs with a skilled workforce able to implement them. Local clean energy jobs such as insulation and air-sealing technicians, electricians, plumbers, HVAC technicians, energy auditors, home performance contractors, and more will be in high demand to help buildings comply with a BPS program.

These clean energy jobs can offer competitive pay and an expanded array of opportunities to further develop the local workforce and make the community more resilient. However, women and people of color are noticeably underrepresented in the clean energy and building workforce. The American energy efficiency workforce employs [more men than women and a smaller proportion of Hispanic and Black people compared to the national workforce](#). These jobs often require training and certifications for which there is a lack of compensation and support.

A BPS can make workforce development a priority both to facilitate BPS compliance and to create a resilient and diverse local workforce. Some best practices include targeting existing educational pathways, creating workforce retraining pathways, engaging community and local workforce, leveraging new and existing workforce funding, and offering on-the-job training and paid compensation. See NEEP’s [“Equitable Workforce Best Practice Guidance”](#) for a more in-depth look.



Building Workforce Development into a BPS

Several cities are building workforce development into the implementation of their BPS. Boston has taken a step to bolster its workforce through the [Building Energy Resource Retrofit Hub](#), which promotes building operator certification training classes. The BERDO 2.0 Equitable Emissions Investment Fund encourages the development of green jobs and training for Boston residents who have been disproportionately affected by climate change. The Washington D.C. BEPS program requires that 30 percent of generated funds from increases to assessments be used for workforce development initiatives in energy efficiency.

While growing the local clean energy workforce is not a specific goal of a BPS regulation development process, it is an important long-term benefit of a program that should be considered during the adoption of a program.

Risks

A BPS will not inherently result in the benefits described above for all those impacted by the program. Every jurisdiction must invest time in stakeholder engagement processes to ensure that equity is at the forefront of the rule making process. Stakeholder engagement will help identify specific needs and concerns of the most vulnerable populations while creating appropriate opportunities to benefit all those impacted. The risks described below indicate where potential obstacles could arise in the BPS regulatory development process.

Inequitable Burden

A BPS creates a burden on owners to make capital expenditures to improve performance. For many, these burdens are exacerbated by a lack of capital resources, staffing, and historical discrimination, such as red lining, that still shape the building landscape today. The least efficient buildings will have the most to gain from complying with a BPS but will also cost the most to improve. It is not uncommon for older and neglected buildings to be owned by populations that will be challenged to make upgrades. Exempting this sector will only lead to bigger disparities between low-performing and average-performing buildings.

Displacement

A BPS may also cause [compounding issues](#), such as increased property values of upgraded buildings. Compounding issues might include the displacement of tenants if efficiency investments are made and result in higher home values. Improvements that lower a building's operating costs such as modern efficient HVAC systems and appliances, renewable energy, and weatherization improvements make a building more desirable and can increase the upfront cost to buy or rent the space, thus pushing out historically marginalized populations. For rental spaces, BPS policies create [landlord tenant split incentives](#) that can lead to displacement. When tenants pay for utilities, the financial savings of energy improvement projects go to tenants, while owners pay upfront cost. Thus, property owners may be inclined to increase rent to recoup losses from paying for the efficiency upgrades.



Equity in Regulation Development

Typically, a BPS is established in legislation which provides guidelines and a timeline for the development of rules and regulations. The BPS takes shape during the regulatory development process, when important determinations on core components are made such as compliance periods, covered buildings, exemptions, metrics, alternative compliance pathways, and fees and penalties. These determinations have very real impacts on building owners and occupants so it is important that this process relies heavily on stakeholder and community engagement and that final decisions are equitable. The following section highlights specific components of a BPS regulation and identifies points of inequity and solutions.

Stakeholder and Community Engagement

Regulatory development must begin with stakeholder and community engagement—the crucial first step toward the design and implementation of an equitable BPS. Historically marginalized communities must be part of the development process to ensure that benefits are distributed to all. Private stakeholder groups such as owners, operators, and users of hospitals, manufacturing, colleges and universities, utilities, affordable housing, environmental and housing advocates, and more must be consulted so the BPS can consider their unique barriers and needs. Procedural equity, as defined in the Urban Sustainability Directors Network’s [four dimensions of equity](#), is the inclusive and authentic representation in processes to develop or implement sustainability programs and policies. In the design process for a BPS, decision makers should create processes that are accessible and inclusive to the demographics of those impacted and allow these community members to have authentic leadership roles and engagement. Procedural equity and restorative justice can be built through an [inclusive structure for participation](#), taking into consideration those who will be impacted most by the policy and those that have been negatively impacted by historical policy and socio-economic barriers. This means having accessible meeting times and locations, providing childcare, holding multi-lingual meetings, circulating meeting agendas and notes, providing various opportunities to engage, providing compensation for participation, allowing for input in any form, and so on. This process of democratic, community-based decision making generates [community ownership](#). For example, the process to create Boston’s Equitable Emissions Fund included help from a neutral third-party consultant, which ameliorated some of the mistrust community members felt and created greater distribution of power.

Regulatory Section: Exemptions

Description: A BPS can be designed to exempt specific buildings from compliance. Exemptions might include buildings of specific use types (such as hospitals and other hard-to-reduce buildings) or buildings owned by specific demographics or income levels. For example, New York City’s Local Law 97 exempts religious houses of worship, and housing developments and buildings on land owned by the New York City Housing Authority.

Inequity: Exemptions must be handled with care and should not be the first line of defense for creating equity. It is true, some buildings house high-energy processes where energy reduction is very challenging. Exemptions can make sense in some instances. However, careful consideration should be given in exempting buildings owned by members of historically marginalized communities. By exempting a building, policymakers have consigned that building to fall below the performance of the jurisdiction’s average. If not handled correctly, exemptions can perpetuate inequity instead of alleviating it. These buildings will fall farther into disrepair and continue to pay high utility bills.



Recommendations:

Conduct extensive stakeholder engagement to consider whether an exemption makes sense. Alternatively, consider providing timeline extensions/flexibility to allow all of the buildings to improve in their own time, rather than meeting the rigid schedule of the BPS program. Extra incentives can be leveraged to help meet the new standards. For example, accommodations could instead include [adjusted compliance timelines](#), providing [additional support](#) for buildings in historically marginalized communities through technical and financial assistance, [reduced upfront costs](#), and [lowering barriers](#) for women- and minority-owned businesses. Washington D.C. and Boston provide financial assistance and have established investment funds to direct benefits to historically marginalized communities. In Boston, the Equitable Investment Fund was created to provide direct financial incentives to building owners that need the most help in complying with the standard. The funding comes from alternative compliance payments or fines from the BPS program. [The Washington DC Retrofit Accelerator](#) provides one-on-one technical assistance and financial incentives to make retrofits easier for owners. In Washington, D.C., affordable housing buildings are allowed to apply for an extension of three years. (See also section on Compliance).

Regulatory Section: Covered Buildings

Description: The covered buildings list refers to which buildings must comply with the regulations. These are often determined by building use type and size or emission thresholds. For example, a regulation may require all commercial buildings bigger than 35,000 square feet to comply. A BPS is intended to target the largest and highest emitting buildings in a community so as to maximize savings while limiting the number of covered buildings.

Inequity: There are two main considerations when determining which buildings should comply with the BPS. The first relates to the square footage threshold. The smaller the size threshold, the more family-owned, small, and independent businesses will be included in the BPS. These facilities may struggle with resources and may be unfamiliar with tracking and reporting energy usage. Larger buildings often benefit by being managed or owned by professional companies that have the sophistication to deal with a program such as a BPS, especially as performance standards increase in popularity across the country. The second consideration in defining covered buildings is how the square footage threshold impacts the number and type of affordable housing buildings within the covered buildings list. Affordable housing should be included to make sure the benefits of a BPS are distributed equally and certain groups of people are not left out. For example, if a size threshold is too large, it may exclude the majority of affordable housing buildings if they are smaller than the stated threshold. If this group of buildings is exempt, over time they could fall further behind the performance of other buildings. These tenants may not feel the positive impacts of the BPS program.

Recommendations: Analyze the covered buildings list and observe how it changes with different size thresholds. Consider key questions such as: How many small businesses are included? How many affordable housing buildings are included? Who are the beneficiaries? Who bears most of the burden? Staggered compliance timelines that begin with the biggest buildings and incorporate smaller buildings over time will allow the community to learn, plan, and adjust to the standard.

Additionally, jurisdictions should make sure resources and trainings are available for buildings both large and small and provide extra resources for those who need them the most. For example, Washington D.C. and Boston



provide financial assistance and have established investment funds to direct benefits to historically marginalized communities. The [Washington DC Affordable Retrofit Accelerator](#) provides one-on-one technical assistance and financial incentives to help buildings meet the BPS. To avoid displacement, decarbonizing rental spaces can be paired with anti-displacement strategies such as [renter protections, right to return, and first right to buy](#), or regulators must adopt mechanisms to help property owners pay for upgrades they do not benefit from.

Regulatory Section: Compliance Pathways

Description: A BPS sets metric-based targets for buildings to achieve over time. These may include energy-based targets, such as energy use intensity; carbon-based targets, such as greenhouse gas emissions; an aggregated energy score, such as EPA’s ENERGY STAR Score; or a combination of these. Buildings that fail to meet the targets must make improvements or may be subject to penalties. A jurisdiction can offer multiple alternative pathways to comply with the standard, rather than meeting one designated target.

Inequity: There are some instances where complying with a BPS might be exceptionally or unreasonably burdensome for a building. Factors preventing compliance may include buildings that require major investments and improvements, building owners that do not have the necessary financial or staffing resources to make improvements, or buildings that have high energy or carbon emitting systems that still have a useful life and do not make economic sense to replace yet.

Recommendations:

- In addition to traditional compliance, jurisdictions could offer alternative compliance pathways (ACPs) that would provide building owners with flexibility on how to comply. These can take many forms such as alternative performance targets, alternative timelines, prescriptive pathways, roadmap planning, renewable energy or carbon credits, or financial payments. ACPs offer building owners flexibility when determining how to comply. Without them, building owners may be forced to make financial investments that they are not ready to make, such as being forced to replace an HVAC system that may have been newly installed.
- One popular ACP involves assessing a fee on a building owner to offset a building’s noncompliance. It is usually offered as a per-metric unit dollar amount. For example, if a building is out of compliance by 10 tons of CO₂ and there was an alternative compliance fee of \$250, the building could pay \$2,500 (10 tons x \$250) to come into compliance. This fee rate could be the result of an impact study or be tied to the federal social cost of carbon, which is a dollar amount that estimates the damages emitting a ton of carbon has on society. Boston and New York City performed economic impact analyses to identify an average cost per ton of carbon that was more expensive to pay than to make efficiency improvements. This creates long term flexibility for building owners to make upgrades as they make financial sense.
- Jurisdictions can form advisory boards/groups to oversee the implementation of a BPS and of ACPs. Advisory boards can have many responsibilities, including but not limited to, managing exemption and extension requests, drafting revisions to the regulations, and managing investment funds. Advisory groups should be diverse and comprised of a number of different stakeholders and include community members and representatives from environmental justice and environmental advocacy groups, as well as tenant organizations and workforce professionals. Inviting a wide variety of stakeholders to lead the development of a BPS can help meet the needs of both property owners and residents. Boston, New York City, Montgomery County, Maryland, and St. Louis, Missouri require the establishment of boards to



monitor implementation and review equity within the policy. Each of these boards has requirements to include community members like those listed above.

Equity in Action – Examples from established BPS Programs

	Washington, D.C. <i><u>Title III of the Clean Energy DC Omnibus Act of 2018</u></i>	New York City, NY Climate Mobilization Act, including <i><u>Local Law 97</u></i>	Boston, MA <i><u>BERDO 2.0</u></i> (Building Energy Reporting and Disclosure Ordinance)
Year	2018	2019	2021
Size Threshold	50,000 sq. ft. and greater	25,000 sq. ft. and greater	35,000 sq. ft. and greater
Compliance Metric	District Median ENERGY STAR Score	Carbon Emission Intensity	Carbon Emission Intensity
Noteworthy Equity Considerations	<ul style="list-style-type: none"> Offers 3-year compliance delay pathway for affordable housing Obligates \$3 million minimum annually to affordable housing and rent-controlled building compliance assistance 	<ul style="list-style-type: none"> Outlines methods to invest equitably and limit localized pollution in historically marginalized communities Requires two members representing historically marginalized communities on the BPS advisory board 	<ul style="list-style-type: none"> Establishes Equitable Emissions Investment Fund Encourages green jobs hiring and training

Conclusion

Building performance standards have the potential to benefit local populations and redistribute resources to community members that need it most. They can improve the building stock resulting in healthier buildings and lower utility bills for tenants and they can create well-paying sustainable jobs. To ensure the equitable distribution of these benefits, the regulatory process must involve rigorous stakeholder engagement and build in considerations for equitable outcomes.

A community engagement-first mindset and a focus on restorative justice will give a building performance standard the best chance of identifying specific needs of the community and helping those who need it the most. The feedback from these engagements should inform regulatory development and be reflected in the adopted language. There are specific sections of the regulation that could benefit from careful consideration and community engagement such as exemptions, covered buildings, and alternative compliance, but a truly equitable BPS will thoughtfully integrate equity into every section. Each jurisdiction is unique and so too are the BPS programs that have been adopted across the region – each requiring customization to meet the needs of those impacted by these programs.