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Colorado Considering New Rules to Cut Commercial and Multi-Family Greenhouse Gas Emissions

February 2023 • [Jessie Fischer](#) and [Andy Peters](#)

Summary. Colorado air quality regulators are mulling new rules to implement a 2021 law that requires most large buildings statewide to reduce greenhouse gas emissions and report on their efforts. In 2021, the General Assembly passed HB 21-1286 aiming to reduce greenhouse gas emissions of covered buildings by 7% from 2021 levels in 2026 and 20% by 2030. As required by that law, the Colorado Air Quality Control Commission (“AQCC”) has published proposed rules implementing the statutory scheme. The rules are set to go into effect on June 1, 2023. Among other things, those rules require most buildings that are 50,000 square feet or more to track and report energy consumption and set forth compliance pathways to reducing energy-use intensity (“EUI”) to target levels. The deadline to seek party status in the AQCC’s rulemaking process is February 13, 2023.

History. In 2021, Governor Jared Polis signed HB 21-1286 (now, C.R.S. §25-7-142), with the objective of improving large buildings’ energy efficiency statewide. The law included various requirements, including that (i) utility companies must provide data to building owners regarding the building’s energy use/consumption, (ii) by December 1, 2022, owners of “covered buildings” (generally, non-industrial building comprising

50,000 sq. ft. or more) must report benchmarking data of the building's energy use, and then on or before June 1 of each subsequent year, and (iii) benchmarking data must be supplied to prospective buyers or lessees when a covered building is listed for rent or for sale. This law also required that the Colorado Energy Office ("CEO") establish a task force to develop recommendations on performance standards for covered buildings, with a requirement that the task force submit final recommendations to CEO by October 1, 2022. The statute further mandated that the AQCC publish proposed rule-making for the adoption of rules to implement performance standards by January 1, 2023, and enact such rules to establish performance standards by June 1, 2023.

Proposed Rules. The proposed rules have two main requirements. First, they detail the information building owners must provide to CEO by June 1 of each year, which includes benchmark data, as well as a demonstration of progress towards meeting the EUI performance standards. They also set forth the required 2026 EUI targets, which are defined by building uses. Building owners must reduce the energy consumption of their buildings through implementation of energy efficiency measures (the AQCC's preferred option) or electrification of the building's fossil fuel-fired space and water heating equipment with high-efficiency electric equipment. Under the proposed rules, buildings that are unable to achieve building performance standards through these two pathways may use a combination of energy efficiency, electrification and/or the use of distributed renewable energy generation, and must demonstrate reduction of greenhouse gas emissions by a certain percentage – yet to be determined.

The rules set out ways to request an adjusted timeline for compliance, an adjusted EUI target, and/or waivers or extensions for the annual benchmark reporting requirements. There are penalties for the failure to submit a benchmarking report (\$500 for a first violation and up to \$2,000 for each subsequent violation) or failing to meet the building performance standards (\$2,000 for a first violation and up to \$5,000 for subsequent violations); each month that the building owner does not demonstrate compliance with the building performance standards (or progress towards meeting same) constitutes an independent violation. While the financial penalties will not be assessed until 2024, buildings for which there is no benchmarking data will be automatically assigned an EUI target based on data submitted for other buildings of the same property type.

Rule-making procedure. Although HB 21-1286's statutory requirements are enacted law, the AQCC's rulemaking process to implement those requirements is ongoing. Individuals who wish to be involved in the rulemaking process may offer public comment – either written or oral – by the deadlines set forth by the AQCC and at the public comment session, or by seeking party status. Party status allows more opportunity to become involved in the process, but imposes additional obligations, such as attendance at the status and prehearing conferences, and submission of prehearing statements. A party may deliver an alternate proposal for the AQCC to consider, will receive copies of submission by everyone else with party status, and may provide

comment or present testimony during the two day hearing. More information regarding the rulemaking process can be found at:

https://drive.google.com/file/d/1uthevxG4eu0hV6jg5F5C_IZ8ggRUV9f2/view.

If adopted, the rules will go into effect on Jun 1, 2023. A copy of the proposed rules can be found by selecting Regulation Number 28 on the AQCC's hearing notice public drive:

<https://drive.google.com/drive/u/0/folders/16i5fHHU3gLjaxiNFf6DUvAupMKnlXtAb>.

More information about how to request party status can be found in this document; the deadline to make this request is February 13, 2023 at 5:00 p.m.

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