



OTTEN JOHNSON ALERT

A Guide to Ensuring Compliance with and Understanding of Colorado's New Clean Energy Laws

February 2024 • [Klay McDowall](#) and [Rachel K. DeSimone](#)

Through a series of rulemakings, including [C.R.S § 25-7-142](#) and [CCR 1001-32 Regulation Number 28](#), the Colorado Legislature has set forth the beginning of a regime that requires building owners across the state to reduce emissions and lower energy costs of their existing buildings (collectively, the “Clean Energy Standards”). Denver City Council has passed a similar ordinance to ensure that the City of Denver reaches net zero greenhouse gas emissions by 2040 (“Denver’s Clean Energy Standards”). This client alert focuses on Colorado’s Clean Energy Standards but, for convenience, links and additional information regarding Denver’s Clean Energy Standards are provided at the end of this alert.

The Clean Energy Standards apply to buildings that: (1) have a gross floor area of 50,000¹ square feet or more and (2) are occupied by a single occupant or a group of tenants. Exempt buildings include storage facilities; standalone parking garages and airplane hangars that do not have heating and cooling features; buildings where more than half of the gross area is manufacturing, industrial, or agricultural; single-family homes; duplexes; or triplexes.²

If your building is subject to the Clean Energy Standards, there are two³ main requirements:

1. Benchmarking – The Reporting Requirements.

Building owners were required to submit their 2021 whole-building energy use data to the Colorado Energy Office by December 1, 2022. Each year thereafter, building owners are required to submit their energy consumption data by June 1 through the Energy Star Portfolio Manager (the “Benchmarking Reports”). (A step-by-step guide on using the Energy Star Portfolio can be found [here](#)).

Building owners may seek waivers from the benchmarking requirement if they meet one or more of the following criteria:

- the building was unoccupied for at least 30 consecutive days of the applicable benchmarking year;
- a demolition permit was issued for the entire building during the applicable benchmarking year;
- utility customers of the building refused to provide the owner with permission to access their energy-use data; or
- the building has four or more utility customers, is not located within a qualifying utility’s service territory, and the owner is unable to get aggregated data from the utility provider that serves the building.

2. Building Performance Standards – The Requirement to Reduce Energy-Use.

This requirement encourages building owners to take action to decrease their energy use and emissions by setting energy performance⁴ (“Targets”) for certain building types that must be met over the coming years. Some of the categories of building types used to create the Targets include, without limitation, commercial, multifamily, industrial, manufacturing, and many other similar building types. Building owners can comply with these standards through one of the following compliance pathways.⁵ In each instance, compliance is demonstrated if the building owner’s Benchmarking Reports show that the applicable Targets are met.

- **The Energy Efficient Pathway:** Requires building owners to reduce the building’s energy use through the implementation of energy efficiency measures and/or technologies. Building owners on this pathway must reach Targets set for their site energy use intensity based on the respective building type applicable to site energy use intensity by 2026 and maintain them through 2029, and they must reach the 2030 target and maintain it through 2050. After 2050, updated Targets will be established.
- **The GHG Reduction Pathway:** Requires building owners to reduce their building’s greenhouse gas emissions through replacing fossil fuel equipment with high-efficiency electric equipment, or through use or purchase of renewable energy credits. Building owners on this path must reach the 2026-2029 Targets applicable to greenhouse gas emissions.
- **The Standard Percent Reduction Pathway:** Requires building owners to reduce the building’s energy or greenhouse gas emissions by the following percent

reductions, in comparison to 2021 reporting data, in each reporting period:

- 2026 – 2029: 13%
- 2030 – 2050: 29%

Regardless of the pathway building owners choose to take, there are opportunities to adjust both Targets and timelines. Building owners may request various types of target adjustments, depending on building type. The two key Target adjustments are:⁶

- First, adjustments to the 2026 – 2029 Targets may be made by submitting standard target adjustment applications (which become available in June 2024), for buildings that have certain unique characteristics, including:
 - inherent and unique physical attributes that make Targets unachievable or cost prohibitive,
 - significant variations in operations from a standard building of the same property type located in the same utility service area,
 - installed integrated grid technologies that connect space and/or water heating equipment to the electric or natural gas grids, and
 - affordable housing and under-resourced buildings.
- Second, for some property types, the Colorado Energy Office is not able to develop Targets on a generalized basis. Accordingly, for the following property types, custom targets are developed:
 - mixed-use buildings;
 - certain manufacturing, agricultural, and industrial buildings (that are otherwise not exempt from compliance);
 - indoor marijuana and cannabis cultivation facilities; and
 - buildings with electric vehicle stations that are not sub-metered.

To receive a custom target, building owners must submit specific additional information, including documentation on the gross floor area, energy usage, climate control, lighting, and irrigation systems, in addition to the Benchmarking Reports.

Building owners may also submit for timeline adjustments that allow them more time to meet their applicable 2026 or 2030 target (depending on which pathway a building owner chooses). The timeline adjustment application includes:

- An ASHRAE Level 2 energy audit using the Department of Energy's Audit Template Tool.⁷
- Dates and documentation of planned or completed energy efficiency or emission reduction upgrades that will enable the building owner to achieve the performance Targets within the adjusted timeline.
- Metrics to demonstrate compliance with the pathway chosen for the building, as applicable (as may have been altered by the Colorado Department of Energy in previous adjustments).

When a timeline adjustment application is submitted, a number of factors will be considered, including whether the building:

- is an affordable housing or under-resourced building;
- has undergone major renovations;
- owner has experienced significant supply chain, workforce delays, or financial hardship;
- requires updates to the electrical infrastructure that cannot be completed in time to meet the performance standard deadline; or
- was purchased 12 months prior to a performance standard deadline.

Penalties for Failing to Comply

If a building owner fails to submit Benchmarking Reports or to demonstrate compliance with the target of their chosen performance standard pathway, they will be subject to a number of civil penalties. Exact amounts of these civil penalties are still being finalized and depend on the building and violation type; however, fines of six to seven figures are possible.

Disclosure Requirements

[C.R.S. §25-7-142\(6\)](#) also sets forth requirements that covered building owners must comply with when leasing or selling the building⁸. Among other things, the law requires that “at the time of listing a covered building or a portion of a covered building for sale or lease, the owner of the covered building shall furnish an electronic copy of reported benchmarking data from the previous calendar year or from the most recent twelve-month period of continuous occupancy to prospective buyers or lessees; any brokers who make inquiry about the property; and major commercial real estate listing services on which the property is listed.”

Tax and Financial Benefits

There are also a number of tax and other financial benefits associated with Colorado’s Clean Energy Standards. A summary of these benefits can be found [here](#).

As with any new statute, case law, governmental regulations, and long-term implementation will shed more light on the nuances of the Clean Energy Standards. As the case law and regulations evolve, so will the practice and compliance techniques outlined in this alert. Attorneys at Otten Johnson are routinely checking for case law, regulation updates, and developing practical knowhow.

A comprehensive guide on Colorado’s Clean Energy Standards, and the foundation for this alert, can be found [here](#).

More Notes on Denver's and Colorado's Clean Energy Standards

¹ Denver's Clean Energy Standards apply to buildings 25,000 square feet or larger. [Energize Denver Hub](#).

² Building owners can see whether their buildings are subject to Denver's Clean Energy Standards using [this map](#). The map allows users to search for a property's address and, if subject to Denver's Clean Energy Standards, the map will provide details about whether a building is in compliance, not in compliance or is exempt; and can show building owners what their target emissions are under the Denver's Clean Energy Standards.

³ Denver's Clean Energy Standards also require [electrification](#) and [roof replacement](#) at certain times in a building's life.

⁴ These Targets can be found on page 34-36 of this [technical resource guide](#) or page 19 of the [CCR 1001-32 Regulation Number 28](#).

⁵ Under Denver's Clean Energy Standards, building owners are required to meet energy use intensity metrics (similar to pathway one in Colorado's Clean Energy Standards) and are not given as much of a choice. [Click here for more information](#).

⁶ The Colorado Department of Energy plans to release detailed guidance on the target adjustment process in March 2024.

⁷ This audit uses operating data to conduct detailed energy calculations and financial analysis to produce a list of recommended upgrades. See [here](#) for more information, click [here](#) for more information on the audit process.

⁸ Denver's Clean Energy Standards also require that when a "covered building is listed for sale, including any listings, notices, advertisements of sale, term sheets, and contracts of sale, the current owner is required to disclose the building's compliance status with the performance requirements to a prospective buyer prior to the sale of the covered building." More information on Denver's disclosure requirements can be found [here](#).

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