

COLORADO REGULATION 28 AND ENERGIZE DENVER LEGAL CHALLENGE REVIEW

APARTMENT ASSOCIATION OF METRO DENVER & COLORADO APARTMENT ASSOCIATION | NOVEMBER 2023

Regulation 28 & Energize Denver

Colorado Regulation 28: Building Benchmarking and Performance Standards

- Adopted by Air Quality Control Commission on August 17, published in the Colorado Register on September 25 and became effective on October 15
- Requires “covered buildings” 50,000 square feet or larger to slash emissions to achieve building-sector-wide carbon reductions.
- Requires 7 percent reduction by 2026 and 20 percent by 2030 from a 2021 baseline.
 - In order to hit these overall metrics since some buildings already meet Reg. 28 standards, buildings pursuing “flat percent reduction” compliance pathway will need to reduce their Energy Use Intensity (EUI) by 13 percent in 2026 and 29 percent in 2030.

Energize Denver (Denver Ordinance No. 20211310)

- Extends the Reg. 28 “covered buildings” to 25,000 square feet or larger for carbon reductions in the City and County of Denver.
- Requires buildings to meet 2030 EUI standards by drawing a “straight line” from the building’s 2019 EUI baseline to the 2030 EUI standards set by the Denver Office of Climate Action, Sustainability, and Resiliency.

“Covered Buildings”

Reg. 28 is estimated by the CDPHE to impact 8,000 “covered” buildings statewide, including:

- Multifamily housing
- Office buildings
- Hospitals, nursing homes and surgical centers
- Hotels, event spaces and large venues
- Grocery stores and large retailers
- Warehouses
- Shopping malls
- Private schools and colleges
- Churches

- Reg. 28 and Energize Denver will impact Colorado’s natural gas providers by effectively outlawing natural gas in “covered” buildings over 50,000 square feet (State) and 25,000 square feet (Denver).
- Energize Denver’s 25,000 square-foot requirement will impact many more “covered” buildings.

Financial Impacts

- Reg. 28 and Energize Denver come with significant impacts to buildings and ultimately Colorado’s economy.
- Conversions will be costly, time consuming and disruptive.
- Colorado’s natural gas sector may experience significant adverse effects in the form of losing customers across the state, costing the energy sector thousands of jobs and reducing local tax revenue generated by energy production.
- Significant concerns that Colorado’s electric grid will not be capable of handling significantly increased electrical load if both regulations are enforced and electrification of buildings continues.

.0007 PERCENT

Estimated impact on the global climate with 100 percent Reg. 28 compliance across Colorado.

Reg. 28 Compliance

To meet the 2026 and 2030 Reg. 28 reduction goals:

- New and existing buildings will be forced to convert to fully electrified systems, including HVAC systems, very quickly.
- Given the tight deadlines, building owners will need to immediately begin hiring consultants to conduct energy audits and start designing, purchasing and scheduling for retrofitting from natural gas to electric.
- For existing buildings, retrofitting costs are estimated to be \$1 million or more per building, not counting the significant engineering and consultant fees.

\$6 to \$8 BILLION

Current cost estimates for the state’s 8,000 buildings to comply with Reg. 28

Compliance & Penalties

Non-compliance, including missing the deadlines, will subject “covered building” owners to civil fines and enforcement actions forcing them to retrofit.

Reg. 28 Penalties

- First time offenses—including not submitting an annual benchmarking—result in a \$500 fine, with \$2,000 for each subsequent violation.
- Failure to meet a building performance standards are tracked on monthly basis after each compliance year.
 - Penalty for not meeting the building performance standards is \$2,000 for a first offense and then \$5,000 for each subsequent offense
 - Each month not meeting the standards is a subsequent occurrence and a new \$5,000 fine.

Energize Denver Penalties

- “Covered building” owners are subject to civil penalties for violating any provision of the ordinance of up to \$0.70 per year for each required kBtu reduction that the covered building’s owner fails to achieve in that year.
- Failure to pay any civil penalty within 180 days is considered a debt to the City and County of Denver until paid in full, and the debt represents a perpetual lien on the property superior to all other liens, except for liens for general taxes and prior special assessments
- **Energize Denver has a compliance deadline in 2024 ... just a few months away.**

Energize Denver Example:

1200 Humbolt Street
Size: 99,000 square feet
Use: Apartment building

2021 energy usage reported:
7.2 million kBtu

Energize Denver requirement:
Needs to get from a 73.2 Energy Use Intensity (EUI) score to 44.2 EUI by 2030

Overall energy reduction:
2.8 million kBtu or 40% reduction

Penalty with no improvements: \$2 million (\$0.70 times 2.8 million kBtu)

Legal Challenge



- Colorado Apartment Association and Apartment Association of Metro Denver have engaged attorney Paul M. Seby of Greenberg Traurig to develop lawsuits for both federal and state courts.

Paul M. Seby,
Greenberg Traurig

Next Steps

- CAA and AAMD are working to build a coalition of “covered building,” energy providers, utilities and other impacted stakeholders to fund the legal challenge.
- CAA and AAMD have already assumed the costs for the initial legal review, complaint filings in federal and state courts, staff time and other expenses.
- CAA and AAMD’s Board and members are committed to seeing this legal challenge through, but your support and contributions will allow our legal team to be more impactful and have the evidence and witnesses necessary for this scale and scope of a legal challenge.



Both Reg. 28 and Energize Denver have fast approaching compliance deadlines, so we must act now.

For more information:

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