

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
		Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 6/12/2015

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
23	03	02	05, .06
23	03	05	02
23	03	06	01, .02, .03, .04

3. Name of Promulgating Authority

Board of Public Works

<b>4. Name of Regulations Coordinator</b>	<b>Telephone Number</b>
Devan B Perry	410-260-7793

**Mailing Address**

80 Calvert Street

<b>City</b>	<b>State</b>	<b>Zip Code</b>
Annapolis	MD	21401

**Email**  
devan.perry@maryland.gov

<b>5. Name of Person to Call About this Document</b>	<b>Telephone No.</b>
David Lever	410.767.0610

**Email Address**

dlever@msde.state.md.us

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 04/23/2015.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes  No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Elliott Schoen, Assistant Attorney General, (telephone #410.576.6465) on April 29, 2015. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Sheila McDonald

**Title**

Executive Secretary

**Telephone No.**

410.260.7335

**Date**

April 29, 2015

## Title 23

### BOARD OF PUBLIC WORKS

#### Subtitle 03 PUBLIC SCHOOL CONSTRUCTION

#### 23.03.02 Administration of the Public School Construction Program

#### Subtitle 03 PUBLIC SCHOOL CONSTRUCTION

#### 23.03.05 Alternative Financing

#### Subtitle 03 PUBLIC SCHOOL CONSTRUCTION

#### 23.03.06 Relocatable Classroom Indoor Environmental Quality Standards

Authority: Education Article, §§4-126, 5-112, and 5-301; State Finance and Procurement Article, §5-7B-07; Annotated Code of Maryland

### Notice of Proposed Action

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The Board of Public Works proposes to 1) Amend Regulation .05 and .06 under COMAR 23.03.02, and Regulation .02 under COMAR 23.03.05; and 2) adopt new regulation .01, .02, .03, and .04 under COMAR 23.03.06 Relocatable Classroom Indoor Environmental Quality Standards.

This action was considered at a Board of Public Works meeting held on April 1, 2015.

### Statement of Purpose

The purpose of this action is to a) update the State-local cost share percentages applicable to State-funded public school construction projects; b) correct certain technical errors in current regulations; and c) implement in accordance with statute new regulations regarding the indoor air quality of relocatable classroom buildings.

### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

### Estimate of Economic Impact

#### I. Summary of Economic Impact.

Chapter 23.03.06 Relocatable Classroom Indoor Environmental Quality Standards may increase the cost of construction of relocatable classrooms; however, it would require a detailed study by a cost estimator to separate the cost increase due to these regulations from other factors that affect construction cost.

Revenue (R+/R-)

#### II. Types of Economic Impact.

Expenditure (E+/E-)      Magnitude

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A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	(E+)	Moderate

Benefit (+)	Magnitude
Cost (-)	

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D. On regulated industries or trade groups:	NONE	Unknown
E. On other industries or trade groups:	NONE	Unknown
F. Direct and indirect effects on public:	(+)	Improvement

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

C. There may be a modest increase of cost to relocatable classrooms in order to meet the indoor air requirements of the regulations.

The cost impact cannot be known at this time, since it will depend on several factors:

How many new relocatable classrooms each local board of education will require.

To what extent the manufacturers of relocatable classrooms already meet the requirements of the regulation, including restrictions on volatile organic compounds (VOCs).

Other market and regulatory factors that may increase costs that would need to be differentiated from the impacts of the new regulations.

D. As in C above, the cost impacts on the relocatable classroom manufacturers cannot be known at this time.

These cost impacts, however, will be passed on to the local boards of education that purchase the relocatable classroom units.

E. As in C above, the cost impacts on other industries, e.g. vendors of electrical, mechanical, sitework, concrete, etc. services, cannot be known at this time.

F. The regulation will improve the indoor air quality of relocatable classrooms.

Maryland currently has almost 3,000 relocatable classrooms, with indications that the number will grow in future years. Currently, the relocatable fleet has the capacity to house about 67,600 students, or approximately 8% of the total student population of the state. If the number of relocatables continues to grow, many students will benefit from the improved indoor air quality that will result from the regulations. Studies have generally found that the quality of indoor air has an effect on the alertness and productivity of building occupants, and on avoidance of respiratory problems that can lead to loss of productivity and time spent on task. It is difficult to quantify the economic impact of these improvements, particularly in the case of students whose economic contributions will come later in life.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

### **Impact on Individuals with Disabilities**

The proposed action has an impact on individuals with disabilities as follows: Because Chapter 23.03.06 Relocatable Classroom Indoor Environmental Quality Standards will lead to an improvement in the indoor air quality of relocatable classrooms, it will have a positive effect on students and adults who suffer from respiratory ailments and sensitivities. It is estimated that at this time, the relocatable classrooms in Maryland have the capacity to house up to 67,000 students, or approximately 8% of the total public student population of the state.

### **Opportunity for Public Comment**

Comments may be sent to David Lever, Executive Director, Public Schools Construction Program, 200 West Baltimore Street, Baltimore, MD 21201, or call 410-767-0610 TTY: 410-333-6442, or email to [dlever@msde@state.md.us](mailto:dlever@msde@state.md.us), or fax to 410-333-6522. Comments will be accepted through July 13, 2015. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

- A. Fiscal Year in which regulations will become effective: FY 2016
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?  
No
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:  
No funds are required to implement the regulations.
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.  
Economic impact is unknown (New Chapter 23.03.06 Relocatable Classroom Indoor Environmental Quality Standards).
- G. Small Business Worksheet:

**Attached Document:**

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# Title 23 BOARD OF PUBLIC WORKS

## Subtitle 03 PUBLIC SCHOOL CONSTRUCTION

### Chapter 02 Administration of the Public School Construction Program

Authority: Education Article, §§4-126, 5-112, and 5-301; State Finance and Procurement Article, §5-7B-07; Annotated Code of Maryland

#### .05 State Cost Share Percentage.

A. (text unchanged)

B. Percentages

(1) (text unchanged)

(2) *The maximum State Share of public school construction funding for eligible costs of approved projects beginning Fiscal Year 2019 is 98%.*

[(2)] (3) For Fiscal Year [2013] 2016 through Fiscal Year [2015] 2018, the State share percentages of public school construction funding for eligible costs of approved projects are as follows:

[County	FY 2013	FY 2014	FY 2015
Allegany	93%	93%	93%
Anne Arundel	50%	50%	50%
Baltimore City	93%	93%	93%
Baltimore	50%	50%	50%
Calvert	56%	56%	56%
Caroline	81%	78%	78%
Carroll	58%	58%	58%
Cecil	70%	69%	69%
Charles	72%	67%	63%
Dorchester	69%	69%	69%
Frederick	67%	62%	60%
Garrett	54%	50%	50%
Harford	63%	63%	63%
Howard	60%	60%	60%
Kent	50%	50%	50%
Montgomery	50%	50%	50%
Prince George's	68%	63%	62%
Queen Anne's	50%	50%	50%
St. Mary's	70%	65%	64%
Somerset	83%	82%	82%
Talbot	50%	50%	50%
Washington	71%	71%	71%
Wicomico	96%	96%	96%
Worcester	50%	50%	50%]

(County	FY 2016	FY 2017	FY 2018
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<i>Allegany</i>	88%	83%	83%
<i>Anne Arundel</i>	50%	50%	50%
<i>Baltimore City</i>	93%	93%	93%
<i>Baltimore</i>	52%	52%	52%
<i>Calvert</i>	53%	53%	53%
<i>Caroline</i>	80%	80%	80%
<i>Carroll</i>	59%	59%	59%
<i>Cecil</i>	64%	63%	63%
<i>Charles</i>	61%	61%	61%
<i>Dorchester</i>	76%	76%	76%
<i>Frederick</i>	64%	64%	64%
<i>Garrett</i>	50%	50%	50%
<i>Harford</i>	63%	63%	63%
<i>Howard</i>	55%	55%	55%
<i>Kent</i>	50%	50%	50%
<i>Montgomery</i>	50%	50%	50%
<i>Prince George's</i>	63%	63%	63%
<i>Queen Anne's</i>	50%	50%	50%
<i>St. Mary's</i>	59%	58%	58%
<i>Somerset</i>	100%	100%	100%
<i>Talbot</i>	50%	50%	50%
<i>Washington</i>	71%	71%	71%
<i>Wicomico</i>	97%	97%	97%
<i>Worcester</i>	50%	50%	50%

[(3)] (4) Reductions in cost share that exceed -5% shall be phased in over 3 years so that a 1-year reduction in the cost share percentage does not exceed -5%.

(5) *The State share percentage for the Maryland School for the Blind shall be 93% of eligible costs of approved projects.*

C. (text unchanged)

## **Title 23 BOARD OF PUBLIC WORKS**

### **Subtitle 03 PUBLIC SCHOOL CONSTRUCTION**

#### **Chapter 02 Administration of the Public School Construction Program**

Authority: Education Article, §§4-126, 5-112, and 5-301; State Finance and Procurement Article, §5-7B-07; Annotated Code of Maryland

##### **.06 Maximum State Construction Allocation.**

A.– G. (text unchanged)

H. Renovation

- (1) The maximum State construction allocation for projects proposed to renovate buildings or portions of buildings, 16 years old or older, is calculated according to either:
- (a) The following formula:
    - (i) Beginning with the oldest portion of the building, and using the maximum gross area allowance as the upper limit, determine the eligible square footage of the renovation categorized according to the age group of the building portion containing the renovation;
    - (ii) Multiply the eligible square footage for each age group by the average Statewide per square-foot building cost, and then multiply each product by the percentage in §[G] H(1)(a)(iii) of this regulation;
    - (iii) Age of building portion containing renovation as measured from January 1 following the IAC December 31 submission of the preliminary State capital improvement program: 40 years or older—100 percent; 31 to 39 years—85 percent; 26 to 30 years—75 percent; 21 to 25 years—65 percent; 16 to 20 years—50 percent; and 0 to 15 years—0 percent;
    - (iv) Add the products calculated in §[G] H(1)(a)(ii) of this regulation;
    - (v) Next, add site development costs, figured as a percentage of total building costs set forth in §[G] H(1)(a)(iv) of this regulation;
    - (vi) Then, add the contingency amount, figured as a percentage of the sum of §[G]H(1)(a)(iv) and (v) of this regulation; and
    - (vii) Finally, multiply by the State cost share percentage; or
  - (b) The estimated or actual cost of construction multiplied by the State cost share percentage, not to exceed the amount calculated in §[G]H(1)(a) of this regulation.
- (2) – (3) (text unchanged)  
 I.– O. (text unchanged)

## **Title 23 BOARD OF PUBLIC WORKS**

### **Subtitle 03 PUBLIC SCHOOL CONSTRUCTION**

#### **Chapter 05 Alternative Financing**

Authority: Education Article, §§4-126, 5-112, and 5-301, Annotated Code of Maryland

##### **.02 Alternative Project [Delivery] Proposal Review Assistance.**

The State Superintendent or designee may request assistance from the IAC or its designee when reviewing alternative project financing proposals.

## **Title 23 BOARD OF PUBLIC WORKS**

### **Subtitle 03 PUBLIC SCHOOL CONSTRUCTION**

#### **Chapter 06 Relocatable Classroom Indoor Environmental Quality Standards**

Authority: Education Article, and §5-301(b-1), Annotated Code of Maryland

##### ***ALL NEW***

##### **.01 Definitions.**

*A. In this regulation, the following words have the meanings indicated.*

*B. Terms Defined.*

(1) *“Locally-constructed relocatable classroom” means a relocatable classroom that is constructed at the school site.*

(2) *“Model Performance Code” means the construction standards stated in COMAR 05.02.01.03:*

(3) *“Pre-manufactured unit” means a relocatable classroom that is constructed off-site and transported to the school site.*

(4) *“Relocatable classroom” means a classroom unit that is capable of being disconnected and transported from one school site and reinstalled at another school site.*

##### **.02 Relocatable Classrooms Indoor Environmental Quality Standards**

*A. All relocatable classrooms used for student instruction at public schools must conform to Indoor Environmental Quality Standards that meet the Maryland Green Building Council International Green Construction Code (IgCC) Supplement, Chapter 8, Section 801 through 806; and*

*B. One of the following:*

*(1) The Model Performance Code for pre-manufactured units; or*

*(2) Local building codes for locally-constructed relocatable classrooms.*

**.03 Exceptions**

*A. This chapter does not apply to relocatable classrooms constructed before July 1, 2015.*

**END ALL NEW**

STATE OF MARYLAND  
EXECUTIVE DEPARTMENT

**OFFICE OF THE SECRETARY OF STATE  
DIVISION OF STATE DOCUMENTS**

**LAWRENCE J. HOGAN, JR.**  
Governor

**BOYD K. RUTHERFORD**  
Lt. Governor

**JOHN C. WOBENSMITH**  
Secretary of State

**Maryland Register**  
**Code of Maryland Regulations**  
**(COMAR)**

Incorporation by Reference  
APPROVAL FORM

Date: April 23, 2015  
COMAR: 23.03.06.02

Devan B. Perry  
80 Calvert Street  
Annapolis, MD

Dear Devan:

The document entitled "Maryland Green Building Council International Green Construction Code (IgCC) Supplement" is approved for incorporation by reference:

Please note the following special instructions: Please place the document in an ACCO-Press type binder. Affix the standard COMAR label to the upper left corner of each binder.

Attach a copy of this approval form when submitting an emergency or proposed regulation to the AELR Committee and when submitting a proposed regulation to DSD for publication in the Maryland Register. If submitting through ELF, include as part of the attachment.

Any future changes to the incorporated documents do not automatically become part of the regulation. If there are subsequent changes to the incorporated documents, and the agency wishes those changes to become a part of its regulations, the agency must amend the regulation incorporating the documents.

Please call us if you have any questions.

Sincerely,  
Gail S. Klakring  
Senior Editor

