

Transmittal Sheet

Proposed Action on Regulations	
Date Filed with AELR Committee February 13, 2024	Date Filed with Division of State Documents Document Number 23-251-P-I Date of Publication in MD Register

1. Desired date of publication in Maryland Register: March 8, 2024

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
14	39	02	01
14	39	02	02
14	39	02	03
14	39	02	04
14	39	02	05
14	39	02	06
14	39	02	07
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14	39	02	09
14	39	02	10
14	39	02	11
14	39	02	12
14	39	02	13
14	39	02	14
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14	39	02	22

3. Promulgating Authority

Interagency Commission on School Construction

4. Name of Regulations Coordinator

Cassandra Viscarra

Telephone Number

4107670611

Mailing Address

200 W Baltimore St. 2nd Floor
Baltimore, MD 21201

Email

cassandra.viscarra@maryland.gov

5. Name of Person to Call About this Document

Victoria Howard

Telephone Number

4107670600

Mailing Address

200 W Baltimore St. 2nd Floor Baltimore, MD 21201

Email

victoria.howard@maryland.gov

6. Check applicable items:

☒	New Regulations
☒	Amendments to Existing Regulations
☐	Repeal of Existing Regulations

- ☒ Recodification
- ☒ Incorporation by Reference of Documents Requiring DSD Approval

7. Is there Emergency text that is identical to this Proposal:

☐ Yes ☒ No

8. Incorporation by Reference

- ☒ Incorporation by Reference (IBR) approval form(s) attached and 16 copies of documents proposed for incorporation submitted to DSD. (Submit 16 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 General Provisions Article, §3-302(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 Heidi Dudderar, Assistant Attorney General, telephone #4107670526, on October 18, 2023. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Alex Donahue

Title

Executive Director

Telephone No.

4107670617

Date

October 17, 2023

Title 14

INDEPENDENT AGENCIES

Subtitle 39 INTERAGENCY COMMISSION ON SCHOOL CONSTRUCTION

14.39.02 Administration of the Public School Construction Program

Authority: Education Article, §§4-126, 5-112, and 5-303; State Finance and Procurement Article, §5-7B-07; Annotated Code of Maryland

Notice of Proposed Action

[23-251-P]

The Interagency Commission on School Construction proposes to:
recodify Regulations .01-.31 as .02-.32, adopt new Regulation .01, and amend Regulations .04 and .06 under COMAR 14.39.02 Administration of the Public School Construction Program. This action was considered by the Interagency Commission on School Construction at an open meeting held on October 12, 2023, notice of which was given by publication on the General Assembly website pursuant to the General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to incorporate by reference the adopted Gross Area Baselines and amend State Rated Capacity calculation requirements for certain physical education and gymnasium spaces.

Estimate of Economic Impact

The proposed action has no economic impact.

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 no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Victoria Howard, Policy Analyst, Interagency Commission on School Construction, 200 W Baltimore St. 2nd Floor Baltimore, MD 21201, or call 4107670600, or email to victoria.howard@maryland.gov. Comments will be accepted through January 29, 2024. A public hearing has not been scheduled.

Open Meeting

Final action on the proposal will be considered by Interagency Commission on School Construction during a public meeting to be held on April 11, 2024 at 9:00 AM, at https://iac.mdschoolconstruction.org/?page_id=315.

ALEX DONAHUE
Executive Director

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: **FY 2024**

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:

undefined

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

Proposed change modifies administration of the Public School Construction program, but is not anticipated to have any economic impact.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Proposed change modifies administration of the Public School Construction program, but is not anticipated to have any impact on small businesses.

G. Small Business Worksheet:

1a. Local Education Agencies

1b. N/A

1c. N/A

2a. Businesses are not impacted by the proposed regulation.

2b. It is not anticipated that promulgation of this proposed change will result in a significant change to the overall school construction spending in Maryland. Therefore, there are no anticipated benefits to businesses.

3. N/A

4. N/A

14.39.02 Administration of the Public School Construction Program

Authority: Education Article, §§4-126, 5-112, and 5-303; State Finance and Procurement Article, §5-7B-07; Annotated Code of Maryland

14.39.02.01 Incorporation by Reference

The Interagency Commission on School Construction Gross Area Baseline Per Student Square Footage Allowances (September 14, 2023) is incorporated by reference.

[14.39.02.01] 14.39.02.02 — **[14.39.02.03]** 14.39.02.04 (text unchanged)

[14.39.02.04] 14.39.02.05 State-Rated Capacity.

A. Definition. In this regulation, State-rated capacity means the number of students that the IAC or its designee determines that an individual school has the physical capacity to enroll.

B. Elementary Schools.

(1) For purposes of determining State-rated capacity, elementary schools are schools enrolling students in one or more grades from prekindergarten through grade 6.

(2) An elementary-school classroom is a space in which the majority of the school day is spent in instruction of the core curriculum.

(3) The approved capacity for an elementary school classroom is:

- (a) Prekindergarten classroom —20;
- (b) Kindergarten classroom —22;
- (c) Grades 1 through 5 classroom —23;
- (d) Grade 6 classroom —25; and
- (e) Special education classroom —10.

(4) State rated capacity for an individual elementary school is calculated according to the following formula:

- (a) Multiply the number of classrooms in each grade by the approved capacity for that grade; and
- (b) Then add the resulting products.

(5) Open-space classroom capacity is calculated according to the following formula:

- (a) Divide the open space area by a square foot number the IAC determines;

- (b) Next, round the quotient to the nearest whole number; and
 - (c) Then, multiply the rounded quotient by the State-approved capacity for the elementary grade.
- C. Secondary Schools.
- (1) For purposes of determining State-rated capacity, secondary schools are schools enrolling students in one or more grades from 6 through 12.
 - (2) Classrooms.
 - (a) A secondary-school classroom is a space in which any scheduled instruction takes place.
 - (b) Secondary-school classrooms include laboratories, career technology rooms, music rooms, art rooms, consumer science rooms, gymnasiums, and auxiliary physical education classrooms. *One physical education classroom up to 2,500 square feet which contains specialized equipment that cannot be stored or relocated may be excluded upon application to and approval of the IAC or its designee.*
 - (c) A gymnasium up to 13,000 square feet [with a standard interscholastic basketball court] counts as two classrooms. A gymnasium exceeding 13,000 square feet counts as three classrooms.
 - (3) The approved capacity for a secondary school classroom is:
 - (a) Grades 6 through 12 classroom —25; and
 - (b) Special education classroom —10.
 - (4) State-rated capacity for an individual secondary school is calculated according to the following formula:
 - (a) For regular classrooms:
 - (i) Multiply the number of regular classrooms by the approved capacity;
 - (ii) Next, add the resulting products; and
 - (iii) Then, multiply this sum by 85 percent;
 - (b) For special education classrooms, multiply the number of special education classrooms by the approved capacity;
- and
- (c) Then, add results from §C(4)(a) and (b) of this regulation.
 - (5) Open-space classroom capacity is calculated according to the following formula:
 - (a) Divide the open space area by a square foot number the IAC determines;
 - (b) Next, round the quotient to the nearest whole number;
 - (c) Then, multiply the rounded quotient by the State-approved capacity for the secondary grade; and
 - (d) Finally, multiply by 85 percent.
- D. Career and Technology Programs.
- (1) Career and technology programs are occupational programs approved by the Maryland State Department of Education.
 - (2) The approved capacity for a career and technology classroom is as the IAC or its designee determines on a case-by-case basis.
 - (3) State-rated capacity for an individual career and technology program is calculated according to the following formula:
 - (a) Multiply the number of classrooms by the approved capacity for that career and technology classroom;
 - (b) Next, add the resulting products; and
 - (c) Then, multiply by 85 percent.
- E. The IAC or its designee shall determine on a case-by-case basis the State-rated capacity for a school that is not defined in §§B, C, and D of this regulation.
- F. Cooperative use space dedicated in a written agreement to noneducational purposes is not included in the State-rated capacity.

[14.39.02.05] 14.39.02.06 (text unchanged)

[14.39.02.06] 14.39.02.07 **Maximum State Construction Allocation**

- A. The maximum State construction allocation is the maximum amount the State may fund of eligible construction costs for each public school construction project.
- B. The maximum State construction allocation for each approved public school construction project is set in the State capital improvement program.
- C. The maximum State construction allocation is set at the first year of construction funding approval.
- D. The actual funding is based on the costs of approved contracts and may be less than the maximum State construction allocation.
- E. Gross Area Baselines.
 - (1) The gross area baseline is the product of the approved student enrollment and the baseline gross square footage per student, and may be adjusted by the IAC on a case-by-case basis, based upon presented evidence of program need.
 - (2) The approved student enrollment may be reduced only if the sum of available seat count in all adjacent schools is 15 percent or more of the project school's enrollment.
 - (3) The baseline gross square footage per student is set by the IAC and may be adjusted by the IAC on a case-by-case basis, based upon presented evidence of program need.

(4) *Gross Area Baseline Concentration of Poverty Add-On.* School projects with a concentration of poverty level above 55% are eligible for a concentration of poverty square footage add-on, upon submission of a concentration of poverty square footage usage plan, based upon the following:

(a) School projects with an eligible enrollment of less than 600 are eligible for a concentration of poverty add-on of up to 1,000 square feet plus the concentration of poverty level percentage points above 55% multiplied by 60 square feet, up to a maximum of 1,500 square feet.

(b) School projects with an eligible enrollment between 600 and 900 students are eligible for a concentration of poverty add-on of up to 1,500 square feet plus the concentration of poverty level percentage points above 55% multiplied by 60 square feet, up to a maximum of 2,000 square feet.

(c) School projects with an eligible enrollment of more than 900 students are eligible for a concentration of poverty add-on of up to 2,000 square feet plus the concentration of poverty level percentage points above 55% multiplied by 60 square feet, up to a maximum of 2,500 square feet.

(5) *Gross Area Baseline English Learner Add-On.* School projects with an English learner population above 10% are eligible for an English learner square footage add-on, based upon the following:

(a) School projects with an eligible enrollment of less than 600 are eligible for an English learner add-on of 500 square feet plus the number of percentage points of the project school populations of English learners above 10%, multiplied by 25 square feet, up to a maximum of 1,500 square feet.

(b) School projects with an eligible enrollment between 600 and 900 students are eligible for an English learner add-on of 1,000 square feet plus the number of percentage points of the project school populations of English learners above 10%, multiplied by 25 square feet, up to a maximum of 2,000 square feet.

(c) School projects with an eligible enrollment of more than 900 students are eligible for an English learner add-on of 1,500 square feet plus the number of percentage points of the project school populations of English learners above 10%, multiplied by 25 square feet, up to a maximum of 2,500 square feet.

(6) *Gross Area Baseline Career and Technology Education Add-On.* School projects approved for Career and Technology Education Programs are eligible for a Career and Technology Education square footage add-on based upon the program size. Program sizes shall be regularly reviewed and updated by the IAC and published to the IAC website. Square footage allocations for program sizes are as follows:

(a) Extra small career and technology education programs receive an add-on of 500 gross square feet.

(b) Small career and technology education programs receive an add-on of 1,000 gross square feet.

(c) Medium career and technology education programs receive an add-on of 3,000 gross square feet.

(d) Large career and technology education programs receive an add-on of 4,000 gross square feet.

(e) Extra large career and technology education programs receive an add-on of 6,000 gross square feet.

F. The average Statewide per-square-foot school building cost that applies to each annual capital improvement program:

(1) Is established by July of the calendar year in which applications are submitted;

(2) Is based on:

(a) Bids received for new school construction in the prior year; and

(b) Cost information derived from industry sources; and

(3) May be adjusted by the IAC to reflect market conditions before submission of the final State capital improvement program.

G. New Construction. The maximum State construction allocation for new construction is calculated according to either:

(1) The following formula:

(a) Multiply the lesser of the gross area baseline or the actual project gross area by the average Statewide per square foot school building cost, which is based on bids received for new school construction in the prior year and cost information derived from industry sources;

(b) Next, add site development costs, figured as a percentage of the building cost set forth in §F(1)(a) of this regulation;

(c) Finally, multiply by the State cost share percentage; or

(2) The estimated or actual cost of construction multiplied by the State cost share percentage, not to exceed the amount calculated in §G(1) of this regulation.

H. Renovation.

(1) The maximum State construction allocation for projects proposed to renovate buildings or portions of buildings, 16 years or older, is calculated according to either:

(a) The following formula:

(i) Beginning with the oldest portion of the building, and using the gross area baseline 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 §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 §H(1)(a)(ii) of this regulation;

(v) Next, add site development costs, figured as a percentage of total building costs set forth in §H(1)(a)(iv) of this regulation; and

(vi) 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 §H(1)(a) of this regulation.

(2) Adjustments to the Maximum State Construction Allocation for Renovation Projects. The IAC may:

(a) Subtract funding from the maximum State construction allocation that the State has approved for other projects less than 16 years old at that school; and

(b) Adjust the maximum State construction allocation for renovation of a building that exceeds the gross area baseline.

(3) The State may not further participate in funding projects in the school within 15 years after the project is placed in service.

I. Limited Renovation.

(1) The estimated cost of construction of a limited renovation may not exceed the estimated cost of construction for a renovation.

(2) The maximum State construction allocation for a limited renovation is calculated by multiplying the estimated costs of construction, including site work, by the State cost share percentage.

(3) At the time of contract award, the actual funding is based on the costs of items eligible for State participation, up to the maximum State construction allocation.

(4) Adjustments to Maximum State Construction Allocation for a Limited Renovation.

(a) The IAC may subtract from the maximum State construction allocation funding approved for other projects not older than 15 years old at that school.

(b) If projects in the school have been funded within the previous 15 years, the LEA shall provide documentation to identify all previously funded scope of work that may be replaced or upgraded in the limited renovation.

(5) For a limited renovation, the new average year of completed construction of the building or portion of the building is determined by the average year of completed construction of the original building, plus the year of completed construction of the limited renovation, divided by 2.

(6) The State may further participate in funding projects in the school within 15 years after the project is placed in service.

J. Addition. When a project involves an addition only, the IAC at its discretion may calculate the maximum State allocation according to either:

(1) The following formula:

(a) Subtract the existing square footage from the gross area baseline; and

(b) Then use the lesser of that amount or the actual area of the addition when calculating the maximum State construction allocation according to §E of this regulation; or

(2) The estimated or actual cost of construction multiplied by the State cost share percentage.

K. Addition in Conjunction with Renovation or Limited Renovation. When an addition involves both an addition and a renovation or a limited renovation, the maximum State construction allocation is established by adding the renovation or limited renovation maximum State construction allocation calculated according to §G or H of this regulation and the addition (new construction) maximum State construction allocation calculated according to §J of this regulation.

L. Replacement.

(1) An LEA that proposes to abandon a facility or demolish more than 50 percent of the gross square footage of a facility shall submit a feasibility study to the reasonable satisfaction of the IAC.

(2) Based on the review of the feasibility study, the IAC may set the maximum State construction allocation for a replacement school based on the cost of renovating an existing school according to §H of this regulation, or the cost of building a new school according to §G of this regulation.

(3) If the State approves renovating an existing school and the LEA builds a replacement school, the IAC may reduce the renovation maximum State construction allocation for that project by 15 percent.

(4) The IAC or its designee may waive the requirement for a feasibility study on submission of supporting documentation.

M. Forward-Funded Project. If the maximum State construction allocation for a forward-funded project is calculated according to the formulas in §G, H, or I of this regulation, the following factors shall be applied:

(1) Gross area baseline that applied on the bid-opening date, using the 7-year enrollment projections applied as follows:

(a) If the bid opening was between October 1 and March 31, the prior September 30 enrollment is used as the approved student enrollment; and

(b) If the bid opening was between April 1 and September 30, the September 30 enrollment at the end of that time frame is used as the approved student enrollment;

(2) Average square foot school building cost published by the IAC or its designee for the July that falls within the calendar year of the bid-opening date;

(3) State cost share percentage that applied on the bid-opening date; and

(4) For a limited renovation project, the amount of the awarded scope of work, not to exceed the maximum State construction allocation as developed in §H(1)(a) of this regulation.

N. Cooperative Use Space.

(1) The maximum State construction allocation for an approved project may include the State's share of eligible costs to construct or renovate up to 3,000 gross square feet of co-located or shared space to support LEA or community initiatives to serve school children and the general community.

(2) This cooperative use space is in addition to the size of typical school-function areas provided by the LEA.

(3) There shall be a written agreement between the county board and the space occupant that establishes the term and conditions.