

Cooper, Kathy

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**From:** Tom Hardiman <tom@modular.org>  
**Sent:** Thursday, August 21, 2014 12:13 PM  
**To:** IRRC  
**Cc:** kward@pasen.gov; mconte@pa.gov; fontana@pasenate.com  
**Subject:** Reg 4-95 Department of Community and Economic Development IRRC No 3063  
**Attachments:** industry comments to DCED 8.20.14.pdf

Please find attached the Modular Building Institute's (MBI) comments to the proposed regulations submitted by the Department of Community and Economic Development.

MBI is the national trade association serving the commercial modular industry and requested and supported legislation on two separate occasions (SB 195 of the 2009 session and HB 124 of the 2013 session) in an effort to provide greater predictability, consistency, and safety within our industry.

Unfortunately, these regulations as submitted will have a significant adverse economic impact on our industry as tens of millions of dollars in industry assets would be rendered obsolete in the Commonwealth. We have suggested possible language that if included would garner the industry's full support and ensure our Pennsylvania members are able to continue conducting business.

We hope that our concerns will be addressed by the agency in its final regulations. Thank you for considering this matter.

Tom Hardiman, CAE  
Executive Director  
Modular Building Institute  
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August 20, 2014

Mark A. Conte, Chief  
Commercial Buildings Division  
Department of Community and Economic Development  
400 North St. 4th Floor  
Harrisburg, Pennsylvania 17120-0225.

Re: Regulation # 3063 – Industrialized Housing Components

The commercial modular construction industry has been working for nearly a decade in an effort to bring the industry under a single, state-wide administrative program, similar to more than thirty other states in the country and similar to the industrialized program for residential structures in Pennsylvania. The latest proposed rules as submitted by the agency will need to be modified prior to being acceptable to the industry.

The current proposed regulations submitted to the IRRC are virtually identical to the draft regulations the agency proposed at its July 2011 public hearing, which stemmed from the passage of the industry backed Senate Bill 195 of the 2009 session (now Public Act 13).

The July 2011 proposed regulations contained no provision for the sale or lease of industrialized buildings constructed PRIOR to the adoption of the regulations. Given that this was a key provision for the industry and the primary intent of SB 195, the industry expressed its concerns and requested inclusion of relocatable buildings.

After the hearing, the industry was informed that the original bill was too vague to allow the DCED to promulgate rules to regulate commercial modular construction. Ironically, the bill's original industry-proposed specific language was made more general at the request of DCED to allow the agency the maximum flexibility when drafting rules. As a result of this setback, the industry sought new legislation and later House Bill 124 from the 2013 session, sponsored by Representative Aument, passed (now known as Act 8).

After passage of House Bill 124, the DCED continued to maintain that the legislation lacked the language to give the agency authority to regulate relocation of existing industrialized buildings. Since passage of HB 124, the agency has not formally met with the industry advisory council as set forth in Section 5 of the bill. In fact, the advisory group has not met with the DCED since September 2012. As such, these proposed regulations were not drafted in consultation with the industry advisory council and still contain no provision for the relocation of industrialized buildings. The DECD for a second time, drafted rules that actually prohibit the use of existing units that do not bear an agency insignia. This is completely counter to the legislative intent of both industry-supported bills.

These regulations, as written, will have a significantly negative economic impact on the commercial modular industry and the state. One of the largest provider of relocatable industrialized buildings in the world is headquartered in Berwyn, PA. Additionally, several other owners and providers of industrialized units call Pennsylvania home. In all, this industry supports nearly 2,000 Pennsylvania families.

Passage of these regulations will cause Pennsylvania businesses to move tens of millions of dollars of inventory and assets out of the state into more business-friendly states like Virginia. The transfer of these assets will undoubtedly have a negative impact on state and local tax receipts.

During its regulatory analysis, the agency replied to Question 12 - How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states? The agency's response was as follows: "This regulation is very similar to programs in Virginia, Maryland, New Jersey, Minnesota, Rhode Island, and North Dakota. As this regulation only impacts production destined for Pennsylvania regardless of where the home or building is constructed, this regulation does not impact Pennsylvania's ability to compete."

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This agency reply is incomplete at best. Most state programs provide a process for the certification and labelling of existing industrialized buildings that were constructed prior to the adoption of the agency programs, or that were brought in from another state and bear that state's insignia. Without such language addressing existing units, the industry feels that these regulations do not pass the test of "reasonableness" and therefore cannot support them.

At a minimum, Section 145.31 needs to be amended to clarify that the sale, lease, and installation of industrialized housing, buildings, or components constructed prior to the adoption of these regulations shall be allowed. This may be as simple as adding language making approval of existing unlabeled units subject to the local authority having jurisdiction.

Alternatively, the rules could include a process for labelling existing units, which would allow them to become state-certified, similar to provisions in Virginia's program. The advantage with this is that all units would be able to bear the insignia after some implementation date. This option would also generate additional labelling revenue for the agency.

These options are critical and necessary for the industry and consistent with other state programs. Perhaps more importantly, this language can prevent these regulations from being interpreted to apply retroactively to existing code-compliant buildings. As written, local code officials would be looking for a DCED label on an industrialized unit as a sign of compliance, prior to issuing a certificate of occupancy. Absent the label (and a process to obtain a label), these buildings could be denied occupancy permits. Schools, general contractors, health care facilities, government agencies, and sales centers would also be negatively impacted as these entities are typical owners of relocatable industrialized units.

We are once again offering our industry's input, expertise, and willingness to share best practices and regulatory language from neighboring states with the DCED in an effort to address this fundamental flaw with these regulations. We do appreciate your careful consideration of our concerns and appreciate the opportunity to assist in drafting language to address these concerns for the final regulations.

Please feel free to contact me at 1-888-8211-3288 or by email: [tom@modular.org](mailto:tom@modular.org) for further assistance on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Tom Hardiman".

Tom Hardiman  
Executive Director  
Modular Building Institute