

Title 24
DEPARTMENT OF COMMERCE

Subtitle 05 ECONOMIC DEVELOPMENT

Chapter 03 Biotechnology Investment Incentive Tax Credit

Authority: Economic Development Article, §2-108; Tax-General Article, §10-725; Annotated Code of Maryland

.01 Purpose.

A. This chapter describes the:

(1) Requirements for a qualified investor to receive a certificate allowing it to claim a credit against the State income tax for an investment in a qualified Maryland biotechnology company;

(2) Criteria to be applied by the Department of Commerce to determine whether a company will be certified as a qualified Maryland biotechnology company; and

(3) Procedures to be used by the Department of Commerce to:

(a) Receive, review, and approve or disapprove applications by investors claiming eligibility for the tax credit;

(b) Determine whether investors are qualified investors;

(c) Perform a criteria-referenced assessment and evaluation of companies to determine eligibility for certification as a qualified Maryland biotechnology company;

(d) Issue initial and final tax credit certificates;

(e) Issue certificates that a company is a qualified Maryland biotechnology company;

(f) Monitor and audit investments in qualified Maryland biotechnology companies;

(g) Monitor, audit, and make inquiries about:

(i) The continued eligibility of tax credit certificate holders for tax credits;

(ii) The continued eligibility for certification as a qualified Maryland biotechnology company; and

(iii) The continued presence of a qualified Maryland biotechnology company, and the continued maintenance by it of its headquarters and the base of its biotechnology activities, in the State;

(h) Rescind or revoke initial or final tax credit certificates; and

(i) Rescind or revoke certificates that a company is a qualified Maryland biotechnology company.

B. The Comptroller of the Treasury administers the tax credit, any recapture or assessment procedures in connection with the tax credit, and the Reserve Fund.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Act" means Tax-General Article, §10-725, Annotated Code of Maryland.

(2) "Active business" has the meaning stated in Regulation .14D(5)(c) of this chapter.

(3) Actual Amount of an Investment.

(a) "Actual amount of an investment" means the amount expressed in United States currency of an investment that is:

(i) Paid in exchange for an equity interest or other ownership interest in a qualified Maryland biotechnology company;

(ii) Immediately available to the qualified Maryland biotechnology company for the purpose of engaging in its primary biotechnology activities; and

(iii) Substantially used to engage in the primary biotechnology activities.

(b) "Actual amount of an investment" does not include start up or organization expenses not deductible as current business expenses of the qualified Maryland biotechnology company.

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

24.05.03.02

- (4) "Applicant" means a qualified investor that has filed an application for a certificate.
- (5) "Biotechnology" has the meaning stated in Regulation .14C of this chapter.
- (6) "Biotechnology company" means a company that is primarily engaged in the research, development, or commercialization of innovative and proprietary biotechnology.
- (7) "Certificate" means an initial certificate or a final certificate of eligibility for tax credit under this chapter.
- (8) Company.
 - (a) "Company" means any entity duly organized and existing under the law of any jurisdiction for the purpose of conducting business for profit.
 - (b) "Company" does not include an individual or a sole proprietorship.
- (9) "Comptroller" means the Maryland Comptroller of the Treasury, or the Comptroller's designee.
- (10) "Convertible Debt" means a debt, bond, or loan issued by a qualified Maryland biotechnology company to a qualified investor for a contemporaneous exchange of cash or cash equivalents expressed in United States dollars, at a risk of loss, convertible into a specified amount of stock, partnership or membership interests, or other ownership interest.
- (11) "Credit amount" means the amount of money expressed as United States currency approved by the Department with respect to an investment and set out in an initial certificate or a final certificate.
- (12) "Department" means the Department of Commerce.
- (13) Entity.
 - (a) "Entity" means an individual or a legal or juridical person which is:
 - (i) Created, organized, and existing under the laws of any jurisdiction; and
 - (ii) Subject to any express exclusions or limitations of particular entities set forth in the Act or this chapter.
 - (b) "Entity" includes a corporation, a limited liability company, a partnership, a limited partnership, a limited liability partnership, or a trust.
- (14) "Final certificate" means a certificate issued by the Department stating the final credit amount approved by the Department.
- (15) "Headquarters and base of operations" means the facility or facilities located in the State, where the qualified Maryland biotechnology company's financial, personnel, planning, management, administrative, biotechnology research, biotechnology development, and biotechnology production activities are primarily handled.
- (16) "Initial certificate" means a certificate issued by the Department stating a maximum credit amount for which the applicant is eligible based on an application.
- (17) Investment.
 - (a) "Investment" means the contribution of money in cash or cash equivalents expressed in United States dollars, at a risk of loss, to a qualified Maryland biotechnology company in exchange for stock, a partnership or membership interest, or other ownership interest, title to which equity or ownership interest vests in the qualified investor applying for an initial certificate of eligibility for tax credit.
 - (b) Investment includes convertible debt created on or after July 1, 2015, if the convertible debt is:
 - (i) Created by the qualified investor applying for an initial certificate of eligibility for tax credit;
 - (ii) Created within 1 year prior to the date that the qualified investor applies for an initial certificate of eligibility for tax credit; and
 - (iii) Converted to an interest described in §B(17)(a) within 30 days after the issuance of an initial certificate of eligibility for tax credit and prior to the issuance of a final certificate for tax credit.
 - (c) Investment does not include any other form of debt.
- (18) "Investment notice" means the notice submitted by an applicant that the applicant has made an investment in a qualified Maryland biotechnology company.

(19) "Invests" means to pay money in cash or cash equivalents in exchange for an equity or other ownership interest in a qualified Maryland biotechnology company with a view to profit and financial return or the growth in value of the equity interest acquired, as a result of the qualified Maryland biotechnology company's use of the investment to carry on its biotechnology research, biotechnology development, and commercialization of biotechnology.

(20) "Ownership interest" means the equity interest in a qualified Maryland biotechnology company owned and held directly by an applicant free of any encumbrances.

(21) Qualified investor.

(a) "Qualified investor" means any entity that:

- (i) Invests at least \$25,000 in a qualified Maryland biotechnology company; and
- (ii) Is required to file an income tax return in any jurisdiction.

(b) "Qualified investor" does not include a qualified pension plan, individual retirement account, or other qualified retirement plan as defined by the Employee Retirement Income Security Act of 1974, as amended, or fiduciaries or custodians under these plans, or similar tax-favored plans or entities under the laws of other countries.

(22) Qualified Maryland Biotechnology Company (QMBC).

(a) "Qualified Maryland biotechnology company (QMBC)" means a biotechnology company:

- (i) That has its headquarters and base of operations in the State;
- (ii) That has fewer than 50 full-time employees;
- (iii) That except as provided in §B(21)(b) of this regulation, been in active business not longer than 10 years;
- (iv) Whose securities are not publicly traded on any exchange; and
- (v) That has been certified as a qualified Maryland biotechnology company by the Department under this chapter.

(b) "Qualified Maryland biotechnology company (QMBC)" includes a company that has been in active business for up to 12 years if the Department determines that the company requires additional time to complete the process of regulatory approval of a biotechnology product.

(23) "QMBC certificate" means a certificate issued by the Department certifying that a company is a qualified Maryland biotechnology company.

(24) "QMBC certificate holder" means a company that has been certified by the Department as a qualified Maryland biotechnology company and has received from the Department a QMBC certificate evidencing that determination.

(25) "Recapture" means the process by which the Comptroller will recover all or part of any tax credit claimed by, or refund made to, an applicant.

(26) "Rescission" means the process by which the Secretary may rescind, make void, cancel, or render ineffective an initial certificate.

(27) "Rescission notice" means the notice issued by the Department to inform an applicant that an initial certificate has been rescinded.

(28) "Reserve Fund" means the Biotechnology Investment Tax Credit Reserve Fund which is administered by the Treasurer and the Comptroller.

(29) "Revocation" means the process by which the Department may revoke a final tax credit certificate or a QMBC certificate.

(30) "Risk of loss" means when repayment of an investment entirely depends upon the success of the business operations of the qualified company.

(31) "Secretary" means the Secretary of Commerce, or the Secretary's designee.

(32) "Tax credit" means the credit against Maryland income tax for an investment in a qualified Maryland biotechnology company equal to the credit amount approved by the Secretary in a final certificate.

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

24.05.03.03

(33) "Tax credit certificate holder" means an entity that has received an initial certificate or a final certificate from the Department under this chapter.

(34) "Treasurer" means the State Treasurer of Maryland, or the Treasurer's designee.

.03 Applications for Certificate of Eligibility for Tax Credit.

A. Biotechnology Investment Incentive Tax Credit Application. To claim eligibility for a tax credit and to be initially certified as eligible for a tax credit, an applicant shall submit to the Department, not less than 30 days before making an investment in a qualified Maryland biotechnology company, an application on a form approved by the Department.

B. An applicant may not file an application earlier than June 1 of the State fiscal year immediately preceding the State fiscal year in which the applicant intends to make the investment and claim eligibility for a tax credit.

C. Each application shall include the following:

(1) The legal name of the applicant;

(2) The street address of the principal place of business of the applicant, or the street addresses of the principals of the applicant, and the applicant's email address and telephone number;

(3) Except in the case of an individual applicant, the business mailing address, telephone number, and email address of an individual with authority to act on behalf of the applicant;

(4) The federal employer identification number of the applicant or, if the applicant is an individual, the Social Security number of the applicant; and

(5) Any other information required or requested by the Department.

.04 Applications for Certificate of Eligibility for Tax Credit — Required Supporting Documents and Statements.

An applicant shall submit to the Department an application that includes:

A. If the applicant is a corporation or limited liability company:

(1) Its legal name and the street and mailing address of its principal place of business and the applicant's email address and telephone number;

(2) A certified copy of its articles of incorporation, articles of organization, or other organizational documents, and all amendments to them;

(3) A certificate of good standing from the Maryland Department of Assessments and Taxation dated within 30 days of the date the application is filed, unless the applicant is not required to qualify or register to do business in the State of Maryland;

(4) The names and business addresses of its officers and directors; and

(5) The names and addresses of each of its shareholders or members who hold shares directly or indirectly or ownership interests of any class representing 5 percent or more of the total equity capital of the applicant.

B. If the applicant is a foreign entity in the nature of a stock corporation or limited liability company:

(1) All of the information required under §A of this regulation; and

(2) A certificate or other similar document, translated if necessary into standard English, from the appropriate official of the jurisdiction under the laws of which it is organized, attesting that it is duly organized, legally existing, and in good standing under the laws of that jurisdiction, and dated within 30 days before the date on which the application is filed.

C. If the applicant is a partnership, limited liability partnership, or limited partnership, or similar entity:

(1) A copy of its partnership agreement, and all amendments to it, certified as to completeness and accuracy by a general partner or a managing member;

(2) If applicable, a certified copy of its certificate of limited partnership or other similar publicly filed organizational document and all amendments or supplements to it; and

(3) The names and business addresses of its general partners or managing members.

D. If applicable, and if the applicant is a foreign limited partnership, limited liability partnership, or similar entity:

(1) All of the information required under §C of this regulation; and

(2) A certificate or other similar document, translated if necessary into standard English, from the appropriate official of the jurisdiction under the laws of which it is organized, attesting that it is duly organized, legally existing, and in good standing under the laws of that jurisdiction, and dated within 30 days before the date on which the application is filed;

E. The full legal name of the qualified Maryland biotechnology company in which an investment is proposed to be made;

F. The federal employer identification number of the qualified Maryland biotechnology company in which an investment is proposed to be made;

G. A conformed copy of the Certificate of the Department that the qualified Maryland biotechnology company in which an investment is proposed to be made is a qualified Maryland biotechnology company; and

H. If the qualified Maryland biotechnology company in which an investment is proposed to be made has not been certified by the Department as a qualified Maryland biotechnology company, a verified application for certification as a qualified Maryland biotechnology company by and on behalf of the company in which the proposed investment is to be made, on a form approved by the Department under Regulation .13 of this chapter, setting forth the information and accompanied by the documents required by the Department in Regulation .13 of this chapter and in the instructions to that application.

.05 Tax Credit Certification Procedures — Initial Certificate.

A. Initial Certificate.

(1) Order of Approval of Applications.

(a) The Department shall review applications on a first-come, first-served basis.

(b) The Department shall disapprove:

(i) Incomplete applications;

(ii) Applications that fail to establish that the applicant is a qualified investor or otherwise eligible to claim a tax credit under this chapter; or

(iii) Applications that fail to establish that the company in which the proposed investment is to be made is a QMBC on the date on which the application is filed.

(c) Disapproved applications shall be treated as not having been filed for the purposes of assigning priority to other applications.

(2) Approval. Subject to the limitations set forth in §B of this regulation and the eligibility restrictions set forth in §C of this regulation, the Department shall approve and issue an initial certificate to the applicant by regular mail at the address contained in the application with a copy by regular mail to the QMBC at the address contained on the QMBC's application if:

(a) An applicant satisfies the definition of qualified investor; and

(b) The biotechnology company to which the investment is proposed to be made is certified by the Department as a qualified Maryland biotechnology company.

(3) Tax Credit Amount.

(a) The tax credit allowed in an initial certificate is 50 percent of the investment in a qualified Maryland biotechnology company, not to exceed \$250,000.

(b) The maximum amount of the tax credit shall be stated in the initial certificate.

B. Limitations on Issuance.

(1) For the purposes of this section, the Department will review, process, and make allocations of available tax credit on a first come, first served basis in the order in which individual applications are received.

(2) Fiscal Year Appropriation Limitation.

(a) For any State fiscal year, the Department may not issue initial certificates for credit amounts that in the aggregate total more than a maximum credit amount calculated separately at the time each application is ready for the Secretary's approval

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

24.05.03.06

or disapproval and in the order in which applications are received, taking into account the effect of rescinded certificates and revoked certificates, as follows:

(i) The sum of the amount appropriated to the Reserve Fund for the State fiscal year in question, and any excess amounts appropriated in prior State fiscal years and carried forward;

(ii) Reduced by the amount of any funds transferred from the Reserve Fund under the authority of any provision of law other than Tax General Article, §10-725 (g)(4), Annotated Code of Maryland; and

(iii) Increased by the amount of tax credit appearing on the face of any initial certificate issued in that State fiscal year and subsequently rescinded.

(b) Upon request of the Secretary, the Comptroller shall certify to the Secretary the amount of the available funds in the Reserve Fund as of a date certain. The request shall be accompanied by a certification of the Secretary of the aggregate amount of initial certificates issued in the State fiscal year in question through the date of the request.

(3) Fiscal Year Aggregate Tax Credit Limitation for Single QMBC.

(a) During any fiscal year of the State, the Department may not certify eligibility for tax credits for investments in a single qualified Maryland biotechnology company that in the aggregate exceed 15 percent of the total appropriations to the Reserve Fund for that fiscal year.

(b) The Department may not issue an initial certificate for a credit amount with respect to a single qualified Maryland biotechnology company that when aggregated with previously issued initial certificates issued with respect to the same qualified Maryland biotechnology company in the same fiscal year total more than the maximum credit amount for that company under §B(3)(a) of this regulation, calculated separately at the time each application is ready for the Department's approval or disapproval and taking into account the effect of rescinded certificates and revoked certificates with respect to the same single qualified Maryland biotechnology company.

(c) If there is any remaining balance of fiscal year aggregate tax credit under §B(3)(a) of this regulation with respect to a single qualified Maryland biotechnology company, and the amount of tax credit claimed in the next application in order with respect to that single qualified biotechnology company would exhaust or exceed that remaining balance of fiscal year aggregate tax credit under §B(3)(a) of this regulation with respect to that single qualified Maryland biotechnology company, then the Department shall issue an initial certificate for a credit amount that will exhaust the remaining available annual maximum credit amount for that company although less than the amount of the investment requested in that application.

C. Eligibility Restrictions.

(1) To be eligible for a tax credit, a qualified investor that is a company as opposed to an entity:

(a) Shall be duly organized, existing and in good standing in the jurisdiction under the laws of which it is organized;

(b) Shall be current in the payment of all tax obligations to the State or any unit or subdivision of the State; and

(c) May not be in default or arrears under the terms of any contract with, indebtedness to, or grant from the State or any unit or subdivision of the State.

(2) To be eligible for a tax credit under this chapter, a qualified investor, determined by application of the ownership attribution rules of Regulation .15 of this chapter, may not, after making the proposed investment, own or control more than 25 percent of the equity interests in the qualified Maryland biotechnology company in which the investment is made.

D. Date of Issuance or Disapproval. The Secretary shall approve the application and issue the initial certificate, or disapprove the application, within 30 calendar days after the applicant submits a completed application and any other information requested by the Department.

.06 Investment.

A. Investment. Within 30 calendar days after the date of an initial certificate, the applicant shall make the investment in the qualified Maryland biotechnology company.

B. Investment Notice. Within 10 calendar days after the date on which a qualified investor makes the investment in the qualified Maryland biotechnology company, the applicant shall provide to the Department a notice and proof of the making of the investment on a form or forms prescribed by the Department.

C. Evidence of Investment.

(1) The investment notice shall be supported by evidence of the investment and of the equity interest issued or acquired in consideration of the investment. This evidence shall include an affidavit, in a form approved by the Department, of the applicant or its principals affirming under penalty of perjury the facts constituting the making of the investment including:

- (a) The date of the investment;
- (b) The amount of the investment;
- (c) Proof of the receipt of the investment by the qualified Maryland biotechnology company;
- (d) A complete description of the nature of the ownership interest in the equity of the qualified Maryland biotechnology company acquired in consideration of the investment; and
- (e) For convertible debt, acceptable evidence that the convertible debt instrument has been canceled and proof of conversion of the convertible debt into an investment.

(2) The Department may require additional documentation reasonably necessary to satisfy the Department as to the making of the investment and the nature of the ownership interest, including but not limited to cancelled checks, deeds, affidavits of officers or partners of the qualified Maryland biotechnology company, stock certificates, assignments, copies of amendments or supplements to shareholder or partnership agreements, executed investment agreements, securities law compliance filings, certifications of book entries, and reports of auditors.

.07 Tax Credit Certification — Final Certificate.

A. The Secretary shall issue a final certificate based on the actual amount of the investment as set forth in the investment notice.

B. The final certificate shall be issued within 30 calendar days after the applicant files the investment notice with the Department.

C. The issuance of the final certificate is subject to the Department's determination that the applicant made the investment and that the information in the application, the investment notice, and other documents is accurate and complete.

D. The final certificate shall include the following:

- (1) The information provided under Regulation .03C(1)—(5) of this chapter;
- (2) The actual amount of the investment;
- (3) The exact date of the investment;
- (4) The amount of the credit that can be claimed by the applicant; and
- (5) The date of issuance of the final certificate.

.08 Audits and Inquiries.**A. Audits.**

(1) The Department may require at any reasonable time before or after the issuance of a certificate that any information provided to the Department by an applicant be audited at the applicant's expense by an independent auditor selected by the applicant and reasonably satisfactory to the Department.

(2) The Department may require at any reasonable time an audit of any information submitted to the Department:

- (a) By any company that applies for certification by the Department as a qualified Maryland biotechnology company; or
- (b) By any company that has been certified by the Department as a qualified Maryland biotechnology company within the immediate past 4 calendar years.

(3) An audit under §A(2) of this regulation shall include, but is not limited to, the company's ownership, location, finances, capital structure, operations, facilities, equipment, contracts, research, development, and products.

(4) An audit under §A(2) of this regulation shall be conducted at the company's expense by an independent auditor selected by the company and reasonably satisfactory to the Department.

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

24.05.03.09

(5) The Department may initiate an audit by delivering to the applicant or company a written request, for the performance of an audit stating the scope of the audit to be undertaken and the matters to be examined in the course of the audit.

(6) Within 10 business days after an applicant or company receives a request from the Department for the performance of an audit under §A(1) or (2) of this regulation, the applicant or company shall submit to the Department a written response naming the independent auditor selected by the applicant or company.

(7) If the Department approves the auditor, it shall give written notice to the applicant or company that the Department approves the auditor and shall provide instructions to the auditor for the scope and conduct of the audit. If the Department disapproves of the selected auditor, the Department shall give written notice to the applicant or company of the disapproval and of the reasons for it. The applicant or company shall, within 5 business days, select an alternative auditor and submit to the Department a written response naming the alternate independent auditor selected by the applicant or company.

(8) The auditor shall proceed to conduct the audit with due diligence and dispatch, and in accordance with the Department's instructions. Within 90 days of the Department's notice accepting the selection of an auditor, the auditor shall submit to the Department, and to the applicant or company a full report of its audit procedures, tests, matters examined, and findings.

B. Inquiries; Duty of Applicants and Companies to Respond.

(1) The Department may make written inquiry, including a request for the production, inspection, or copying of documents specified in the inquiry, of any applicant for or holder of a certificate to obtain information bearing on the eligibility or continuing eligibility of the applicant or holder. This inquiry may include, but may not be limited to, whether a qualified investor has sold, transferred, or otherwise disposed of the ownership interest in a QMBC based on which the certificate was issued.

(2) The Department may make written inquiry, including a request for the production, inspection, or copying of documents specified in the inquiry, of any company that makes an application to the Department for certification as a qualified Maryland biotechnology company, or that the Department has already determined to be a qualified Maryland biotechnology company, as to the facts and circumstances that affect the company's eligibility or continued eligibility for certification as a qualified Maryland biotechnology company. This inquiry may include, but may not be limited to the company's:

- (a) Ownership;
- (b) Location;
- (c) Finances;
- (d) Capital structure;
- (e) Facilities;
- (f) Equipment;
- (g) Contracts,
- (h) Biotechnology research activities;
- (i) Biotechnology development activities;
- (j) Biotechnology production and manufacturing activities;
- (k) Intellectual property; and
- (l) Whether the company has or continues to have its headquarters and base of operations in the State.

(3) An applicant or company to which a written inquiry from the Department is directed under §B(1) or (2) of this regulation shall submit a full and complete written response, with copies of all requested documents, within 45 days of the date of the inquiry. The response shall be verified as true and correct by oath or affirmation made under penalty of perjury by an individual or by an individual officer, partner, or member of the applicant or company.

.09 Rescission of Initial Tax Credit Certificate.

A. Rescission of Initial Certificate. The Secretary shall rescind an initial certificate if the applicant does not file the required notice and proof of the making of the investment within 40 calendar days after the date on which the Department issues an initial certificate. The Department shall notify the applicant and the Comptroller of the rescission.

B. Rescission Notice. The rescission notice shall:

- (1) Identify the applicant;
- (2) State the applicant's federal taxpayer identification number;
- (3) Identify the initial certificate that is rescinded;
- (4) State the reason for the rescission; and
- (5) State the date on which the rescission is effective.

C. Delivery of Rescission Notice. The Department shall send:

- (1) By regular mail, the rescission notice to the applicant at the address stated in the application;
- (2) By regular mail, a copy of the rescission notice to the QMBC at the address stated in the application; and
- (3) A copy of the rescission notice to the Comptroller.

D. Effect of Rescission. The credit amount allocated to the rescinded certificate shall revert to the Reserve Fund and shall be available in the applicable fiscal year for allocation by the Department to other initial certificates in accordance with the Act and this chapter.

.10 Revocation of Tax Credit Certificate.

A. The Department may revoke an initial or final certificate if the Department determines that any representation in connection with the application for the certificate was false when made. The revocation may be in full or in part as the Department may determine.

B. The Department shall notify the applicant of the revocation. The revocation notice shall:

- (1) Identify the applicant;
- (2) State the applicant's federal taxpayer identification number;
- (3) Identify the certificate that is revoked;
- (4) State the reason for the revocation;
- (5) State that the certificate is revoked;
- (6) State whether the revocation is in whole or in part;
- (7) If the revocation is in part, state what part of the credit amount has been revoked; and
- (8) State the date on which the revocation is effective.

C. The Department shall send:

- (1) By regular mail, the revocation notice to the applicant at the address stated in the application;
- (2) By regular mail, a copy of the revocation notice to the QMBC at the address stated in the application; and
- (3) A copy of the revocation notice to the Comptroller, after the expiration of any applicable period to file an appeal or for the resolution of any appeal under §E of this regulation.

D. After receiving a copy of the revocation notice under §C(2) of this regulation, the Comptroller shall make an assessment against the applicant to recapture.

E. Appeal.

- (1) The applicant may appeal a revocation to the Department under COMAR 24.01.04.
- (2) The applicant shall initiate a contested case by filing a notice of appeal with the Secretary within 30 days of the date of the revocation notice.
- (3) The applicant's notice of appeal shall state the facts on which its appeal is grounded and state the relief sought by the applicant.
- (4) Within 10 days of the receipt of a timely notice of appeal, the Secretary shall issue a notice of hearing pursuant to COMAR 24.01.04.03.

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

24.05.03.11

.11 Claiming the Tax Credit.

- A. Only the applicant is eligible to claim the tax credit, or so much of the tax credit as is allocable to the permitted taxpayer.
- B. The applicant may not claim the tax credit until the date of the issuance of the final certificate issued to the applicant.
- C. The applicant shall claim the tax credit on the income tax return for the taxable year in which the applicant makes the investment in the qualified Maryland biotechnology company.
- D. The date the applicant makes the investment in the qualified Maryland biotechnology company is the exact date of the investment as provided in the final certificate issued to the applicant.
- E. The applicant shall claim the tax credit against the State income tax for the amount of the credit as provided in the final certificate issued to the applicant. If the amount of the credit exceeds the total tax otherwise payable for that taxable year, the applicant may claim a refund in the amount of the excess.
- F. The applicant shall claim the tax credit by filing the required income tax return, with the following attachments:
 - (1) A copy of the final certificate issued to the applicant;
 - (2) An affidavit, in a form approved by the Comptroller, of the applicant or its principals, as provided in §G of this regulation; and
 - (3) If applicable, a Schedule K-1 or other similar schedule filed with the applicant's federal income tax return showing the items of income, deduction, and credit allocated by the applicant to the owners of interests in the equity of the applicant.
- G. An affidavit under §F(2) of this regulation shall state that, if within 2 years after the close of the taxable year in which a final certificate is issued to the applicant, the applicant sells, transfers, or disposes of the ownership interest in the qualified Maryland biotechnology company for which the tax credit was approved, the applicant shall give notice to the Comptroller on a form approved by the Comptroller.
- H. If the applicant is subject to recapture, the applicant shall report the applicable amount on its Maryland income tax return for the taxable year in which the event causing the recapture occurred.

.12 Monitoring Continued Eligibility.

- A. At any time before the expiration 4 years after the close of the taxable year for which a tax credit is certified under this chapter, the Department may require an applicant or holder of a certificate to produce and deliver to the Department for inspection any information specified in a written directive from the Department, for the purpose of determining the initial or continuing eligibility of the holder or applicant for tax credits.
- B. At any time before the expiration of 4 years after the close of any taxable year for which a tax credit is approved with respect to an investment in a qualified Maryland biotechnology company, the Department may require the biotechnology company to produce and deliver to the Department for inspection any information for the purpose of determining the company's initial or continuing eligibility for certification as a qualified Maryland biotechnology company.

.13 Procedures for Certification of Qualified Maryland Biotechnology Companies.

- A. To be certified by the Department as a qualified Maryland biotechnology company, a biotechnology company shall file with the Department a verified application for certification as a qualified Maryland biotechnology company made under oath or affirmation subject to penalty of perjury. An application may be filed at any time.
- B. Application.
 - (1) The application shall be in a form approved from time to time by Department.
 - (2) The biotechnology company's application shall be complete and shall provide the information and documents required by this chapter and the application form, and in the instructions to the application form.
- C. Information and Documents to be Provided. The biotechnology company shall provide the information and documents required, requested, described, or listed in the application form and in the instructions to the application form, including but not limited to:
 - (1) The full legal name of the company;
 - (2) The street address of the principal place of business of the company, the mailing addresses of the officers, principals, or managing members of the company, and the company's web page URL, email address, and telephone number;

(3) The mailing address, email address, and telephone number of an individual with authority to act on behalf of the company;

(4) The company's federal employer identification number;

(5) The company's Maryland State Department of Assessments and Taxation entity identification number;

(6) The company's Maryland Unemployment Insurance account number assigned by the Department of Labor, Licensing and Regulation;

(7) The company's most recent annual, quarterly, and monthly financial statements prepared in accordance with generally accepted accounting principles showing:

(a) Contributed owners' equity of at least \$100,000; or

(b) Noncurrent debt consisting of non-demand, non-callable loans, with terms of not less than 3 years, aggregating at least \$100,000;

(c) Noncurrent debt in the form of notes or other instruments with terms of not less than 3 years, convertible to equity securities of the QMBC, aggregating at least \$100,000;

(d) A capital structure including a combination of any of contributed owners' equity, noncurrent debt consisting of non-demand, non-callable loans, with terms of not less than 3 years, or noncurrent debt in the form of notes or other instruments with terms of not less than 3 years, convertible to equity securities of the QMBC, the total of all types of capital aggregating at least \$100,000; or

(e) Evidence of an award of non-dilutive grants (including SBIRs, STTRs or other grants) of \$100,000 or more;

(8) If the company will rely to any extent on noncurrent debt or noncurrent convertible debt to establish that its capital structure meets the requirements set forth in §C of this regulation, a statement of an independent certified public accountant certifying that under generally accepted accounting principles the company's debt so relied upon is correctly classified as noncurrent liabilities and has terms of not less than 3 years;

(9) If the applicant is a corporation or a limited liability company:

(a) Its full legal name and the street and mailing addresses of its principal place of business;

(b) A certified copy of its articles of incorporation, articles of organization, or other organic organizational document, with all amendments through the date of the application;

(c) A certificate of good standing from the Maryland State Department of Assessments and Taxation dated not more than 90 days before the date on which the application is filed;

(d) If the applicant is a foreign entity, a certificate, translated if necessary into standard English, of the appropriate official of the jurisdiction under the laws of which it is organized attesting that it is duly organized, existing, and in good standing under the laws of that jurisdiction, dated within 90 days of the date on which the application is filed;

(e) The names and business addresses of all of its officers and directors or managing members; and

(f) The names and addresses of each of its shareholders or members who own or hold, directly or indirectly, shares or ownership interests of any class representing 5 percent or more of the aggregate equity capital of the applicant;

(10) If the applicant is a partnership, limited partnership, limited liability partnership, or similar entity:

(a) A copy of its partnership agreement, and all amendments to it, certified as to completeness and accuracy by a general partner;

(b) If applicable, a certified copy of its certificate of limited partnership or other similar publicly filed organizational document and all amendments or supplements to it;

(c) The names and business addresses of its general partners or managing members;

(d) If applicable, a certificate of good standing from the Maryland State Department of Assessments and Taxation dated not more than 90 days before the date on which the application is filed; and

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

24.05.03.13

(e) If the applicant is a foreign limited partnership, limited liability partnership, or similar entity, a certificate, translated if necessary into standard English, from the appropriate official of the jurisdiction under the laws of which it is organized, attesting that it is duly organized, existing, and in good standing under the laws of that jurisdiction, dated not more than 90 days before the date on which the application is filed;

(11) Copies of any shareholder agreement, subscription agreement, investor agreement, operating agreement, voting trust agreement, private placement memorandum, Regulation D disclosure document, or other instrument concerning or affecting the offer, issuance, or ownership of equity interests in the company which has been or will be delivered to investors or to which investors in the company are or will be parties;

(12) The company's business plan, which shall contain:

(a) A description of the company in sufficient detail to establish that the company is actually and actively engaged in activities constituting biotechnology as defined in Regulation 14C of this chapter and that it meets the criteria for a qualified Maryland biotechnology company stated in this chapter;

(b) A factual narrative describing the company from its inception through the date of the application in sufficient detail to establish that it is organized, is actively engaged in the conduct of a biotechnology business in the State, and in fact operates as a biotechnology company in the State as of the date of the filing of the application, and that it will continue to do so in the future; and

(c) Statements or descriptions of the company's

(i) Strategy;

(ii) Product descriptions and highlights;

(iii) Management;

(iv) Board of directors or equivalent management;

(v) Financing plans including potential exit strategies;

(vi) Intellectual property assets;

(vii) Plans for the predictable progression of its innovative product as research;

(viii) Development, and production milestones;

(ix) Contingency provisions for experimental or clinical failure;

(x) Commercialization plans;

(xi) Contracts for the performance of biotechnology activities on behalf of the company by third persons; and

(xii) Full-time and part-time employees employed in the State and outside of the State and the numbers of such employees;

(13) Copies of any private placement memorandum, prospectus, or similar disclosure and information documents, and any filings with securities regulatory agencies, prepared or made by the qualified Maryland biotechnology company as issuer in connection with the investment;

(14) A description of the uses and purposes to which the investment will be applied by the qualified Maryland biotechnology company;

(15) A signed statement of the applicant made under penalty of perjury that the contents of the application are true to the best of the knowledge, information, and belief of the applicant and of its officer or other duly authorized representative making the statement on behalf of the applicant, and attesting that the applicant is:

(a) In good standing and authorized to do business in the State;

(b) Current in the payment of all tax obligations to the State or to any unit or subdivision of the State; and

(c) Not in default under the terms of any contract with, indebtedness to, or grant from the State, or any unit or subdivision of the State;

(16) Affirmative evidence by certification in a form prescribed and approved by the Department and made under oath or affirmation subject to penalty of perjury by an officer or other person duly authorized to make statements on behalf of the biotechnology company attesting that the biotechnology company is:

- (a) In good standing and authorized to do business in the State;
- (b) Current in the payment of all tax obligations to the State or to any unit or subdivision of the State; and
- (c) Not in default under the terms of any contract with, indebtedness to, or grant from the State, or any unit or subdivision of the State; and

(17) A statement by an officer or duly authorized representative of the qualified Maryland biotechnology company describing the qualified Maryland biotechnology company's intended use or application of the investment.

D. Other Documents and Information. The following documents are not required at the time of submission of the QMBC application but may be requested by the Department to substantiate or expand upon information provided in the QMBC application:

(1) Descriptions of the biotechnology intellectual property owned by or assigned to the company or in which the company has rights under license or other agreements listed as invention disclosures or patents by title with dates of application and expiration;

(2) Copies of patents, intellectual property license and use agreements, and new product clinical testing studies, reports, and related governmental approval proceedings to which the company is a party may be requested by the Department on an as needed basis;

(3) A description of the sites, buildings, and facilities owned, leased, used, or occupied by the company in the State and outside of the State, including:

- (a) The street address of each site, building, or facility;
- (b) A tax parcel map for each site, building, or facility identifying the location of each site, building, or facility;
- (c) A copy of the most recent real property tax assessment and property tax bill for each parcel of real property that the company occupies as owner of the property;
- (d) A copy of any lease with respect to each site, building, or facility that the company occupies under a lease of the real property;
- (e) Copies of contracts for the performance of biotechnology activities on behalf of the company by third parties;
- (f) The number of full-time and part-time employees of the applicant employed in the State as well as those outside of the State shall be stated in the business plan;
- (g) A statement of the number of employees at each site, building, or facility and the titles, job descriptions, and duties of each employee; and
- (h) A detailed description of the company's biotechnology research, development, or production activities and the company's business, financial, and administrative operations carried on at each site, building, or facility;

(4) A full physical description of the company's headquarters site, building, or facility;

(5) A full physical description, including installed machinery and equipment for biotechnology activities, of the sites, buildings, and facilities constituting the company's base of operations; and

(6) A description of the company's plans or intentions to purchase, lease, or otherwise acquire sites, buildings, or facilities at any time and in any location with 36 months of the date on which the application is filed.

E. Issuance or Denial of Certificate.

(1) Based on the information set forth in the company's application, the Department may issue:

- (a) A certificate that a company is a qualified Maryland biotechnology company; or
- (b) A written determination that a company is not a qualified Maryland biotechnology company.

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

24.05.03.14

(2) The issuance of a certificate that a company is a qualified Maryland biotechnology company is subject to the Department's determination that:

- (a) The information in the application and other documents submitted by the company is accurate;
- (b) The company maintains its headquarters and base of biotechnology operations in the State as required by the Act and this chapter; and
- (c) The company is eligible for certification as a qualified Maryland biotechnology company under the Act and this chapter.

(3) The Department's decision to issue or not to issue a certificate that a company is a qualified Maryland biotechnology company is final and not subject to further administrative review. The Department may revoke a certificate upon a determination by the Department that the company has become ineligible for certification.

.14 Criteria for Certification of Qualified Maryland Biotechnology Companies.

A. The Department shall assess the merits of a company's application for certification as a qualified Maryland Biotechnology company according to:

- (1) The criteria set forth in this chapter;
- (2) The definition of biotechnology stated in §C of this regulation; and
- (3) Other metrics and measures that the Secretary may adopt for uniform application under this chapter.

B. The Department shall apply a facts and circumstances analysis on a case by case basis to determine whether a company meets the criteria of this chapter.

C. Biotechnology.

(1) Definition.

(a) "Biotechnology" means innovative and proprietary technology that comprises, interacts with, or analyzes biological material including biomolecules (DNA, RNA, or protein), cells, tissues, or organs and includes the application of scientific and technical advances to develop commercial products.

(b) "Biotechnology" includes the following:

(i) DNA/RNA: Genomics, pharmacogenomics, gene probes, genetic engineering, DNA/RNA sequencing/synthesis/amplification, gene expression profiling, and use of antisense technology;

(ii) Proteins and other biomolecules including sugars, lipids, vitamins and metabolics; sequencing, synthesis, or engineering of molecules; improved delivery methods for drugs; isolation; purification, and identification of cell receptors;

(iii) Cell and tissue culture and engineering: Cell/tissue culture, tissue engineering (including tissue scaffolds and biomedical engineering), cellular fusion, vaccine/immune stimulants, embryo manipulation;

(iv) Process biotechnology techniques: fermentation using bioreactors, bioprocessing, bioleaching, biopulping, bioleaching, biodesulphurisation, bioremediation, biofiltration, and phytoremediation;

(v) Gene and RNA vectors: gene therapy, viral vectors;

(vi) Bioinformatics: construction of databases on genomes, protein sequences; modeling complex biological processes, including systems biology and mechanism of actions of drugs; and

(vii) Nanobiotechnology: Applies the tools and processes of nano/microfabrication to build devices for studying biosystems and applications in drug delivery, diagnostics, and other applications.

(2) Single Definition.

(a) Section C(1)(a) of this regulation is referred to in this chapter as "the single definition". The single definition is deliberately broad, general, and provisional. The single definition applies to the word "biotechnology" as used in the term "biotechnology company" stated in Tax-General Article, §10-725(a)(2), Annotated Code of Maryland.

(b) The single definition connotes the manipulation of living organisms or their components to produce useful commercial products and the innovative and proprietary technologies of biological science used in this manipulation.

(3) List-Based Definition. The list-based definition is based on the list of biotechnology techniques in §C(1)(b) of this regulation and will function for the Department as an interpretative guideline to the single definition. The list is indicative rather than exhaustive and is expected to change over time as biotechnology techniques evolve.

(4) The single definition covers all modern biotechnology but also many traditional or borderline activities. In application by the Department under this chapter, the single definition will always be accompanied by the list-based definition stated in §C(1)(b) of this regulation when the Department applies the single definition to particular facts and circumstances for the purposes of this chapter. The single definition and the list definition will be applied in conjunction under this chapter to take account of and to consider biotechnology techniques that fit the single definition but may not fit the list-based definition, with a view to constantly updating the list-based definition.

D. Criteria for a Biotechnology Company.

(1) A biotechnology company is a company primarily dedicated to turning the biological sciences into a commercial product and to commercialize the results. The Department shall apply the single definition and the list definition to determine whether a company's activities or products constitute biotechnology for the purposes of the Act and this chapter.

(2) The scientific biotechnological basis of the company's activities and plans is defining, but not conclusive.

(3) The company shall demonstrate that the investment it will attract by reason of the tax credit available under the Act and this chapter will be likely to:

- (a) Materially advance and support the business viability of the company; and
- (b) Result in the production of a biotechnology product that will contribute to economic development and employment growth in the State.

(4) Stage of Development. The company shall:

- (a) Have begun active activities and operations and fairly be characterized as actively engaged in a biotechnology business;
- (b) Be fully legally organized under the laws of the jurisdiction in which it was organized;
- (c) Have competent management;
- (d) Own or have immediately available and useable rights in biotechnology-related intellectual property; and
- (e) Be actively engaged in research, development, or production of a commercially oriented, innovative, and patent protectable biotechnology product.

(5) Eligibility: "Active Business".

(a) Except as provided in §C(5)(b) of this regulation, a company is eligible for certification as a qualified Maryland biotechnology company if it has been in active business not longer than 10 years.

(b) A company that has been in active business for up to 12 years may be eligible for certification as a QMBC if the Department determines that the company requires additional time to complete the process of regulatory approval of a biotechnology product.

(c) "Active business" means that the Department can reasonably determine and establish the nature of the Company's commercial biotechnology research, development or production operations. The mere legal organization, appointment or election of officers or managers, initial capitalization, and establishment of business offices of a company, alone or in combination, are not sufficient to establish that the company is engaged in active business for the purposes of this chapter and the Act.

(d) The Department shall apply a facts and circumstances analysis on a case by case basis to determine whether a company has been engaged in active business and for what period of time.

(6) Commercialization of an Identifiable Biotechnology Product.

- (a) The company shall have a developed, focused plan for:
 - (i) Research and development of an identifiable biotechnology product; and
 - (ii) The company's growth.

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

24.05.03.15

(b) A biotechnology product will generally be:

(i) Used for human health, as in a therapeutic or diagnostic setting (for example, to treat, detect, or prevent diseases or to improve treatment outcomes);

(ii) Used on domesticated or farm animals, as in a therapeutic or diagnostic setting (for example, to improve animal health); or plants (for example to increase agricultural production); or

(iii) An application originally derived from use of a living organism, as in production of alternative energy (e.g., biofuels) or engineering or chemistry derived from nature to improve properties of products (for example, re-engineering of attachment molecules used by mollusks for the next SuperGlue®).

(c) In general, companies will not be certified that provide a service (e.g., analytical services or consulting services, etc.) or develop software, or develop or manufacture products or technology that do not involve use or application of biotechnology.

(d) A device may constitute eligible biotechnology if:

(i) It delivers a direct therapeutic effect through biological interaction; or

(ii) It performs a diagnosis through analyzing biological material.

(7) Innovative Biotechnology Projects and Products. The company shall provide evidence with its application that its existing or proposed biotechnology product is innovative and has the potential for commercial sale. The company must generally own the intellectual property or have exclusive rights to the use of the intellectual property.

(8) Maryland Location.

(a) The company shall demonstrate that its headquarters and the base of its biotechnology operations are entirely located in the State.

(b) The company shall provide with its application evidence that it will maintain its headquarters, the base of its biotechnology operations, and the sites, buildings, and facilities in which its headquarters and biotechnology operations are or will be conducted, in the State for a period of not less than 48 months after the date on which its application for certification as a qualified Maryland biotechnology company is submitted to the Department.

.15 Ownership Attribution.

A. General.

(1) Members of Family.

(a) In General. An individual shall be considered as owning the stock, partnership interest, membership interest, or other equity interest in a company owned, directly or indirectly, by or for the individual's:

(i) Spouse (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance); and

(ii) Children, grandchildren, and parents.

(b) Effect of Adoption. For purposes of §A(1)(a)(ii) of this regulation, a legally adopted child of an individual is treated as a child of that individual by blood.

(2) Attribution from Partnerships, Estates, Trusts, and Corporations.

(a) From Partnerships and Estates. Stock, partnership interests, membership interests, or other equity interests in a company owned, directly or indirectly, by or for a partnership or estate is considered as owned proportionately by its partners or beneficiaries.

(b) From Trusts.

(i) Stock, partnership interests, membership interests, or other equity interests in a company owned, directly or indirectly, by or for a trust (other than an employees' trust described in section 401(a) of the Internal Revenue Code which is exempt from tax under section 501(a) of the Internal Revenue Code) is considered as owned by its beneficiaries in proportion to the actuarial interest of the beneficiaries in the trust.

(ii) Stock, partnership interests, membership interests, or other equity interests in a company owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under Subpart E of Part I of Subchapter J of the Internal Revenue Code (relating to grantors and others treated as substantial owners) is considered as owned by that person.

(c) From Corporations. If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, that person is considered as owning the stock, partnership interests, membership interests, or other equity interests in a company owned, directly or indirectly, by or for the corporation, in that proportion which the value of the stock which the person so owns bears to the value of all the stock in the corporation.

(3) Attribution to Partnerships, Estates, Trusts, and Corporations.

(a) To Partnerships and Estates. Stock, partnership interests, membership interests, or other equity interests in a company owned, directly or indirectly, by or for a partner or a beneficiary of an estate is considered as owned by the partnership or estate.

(b) To Trusts.

(i) Stock, partnership interests, membership interests, or other equity interests in a company owned, directly or indirectly, by or for a beneficiary of a trust (other than an employees' trust described in section 401(a) of the Internal Revenue Code which is exempt from tax under section 501(a) of the Internal Revenue Code is considered as owned by the trust.

(ii) Stock, partnership interests, membership interests, or other equity interests in a company owned, directly or indirectly, by or for a person who is considered the owner of any portion of a trust under Subpart E of Part I of Subchapter J of the Internal Revenue Code (relating to grantors and others treated as substantial owners), is considered as owned by the trust.

(c) To Corporations. If 50 percent or more in value of the stock in a corporation is owned, directly or indirectly, by or for any person, that corporation shall be considered as owning the stock, partnership interests, membership interests, or other equity interests in a company owned, directly or indirectly, by or for the person.

(4) Options. If a person has an option to acquire stock, that stock is considered as owned by that person. An option to acquire an option, and each one of a series of these options, is considered as an option to acquire the stock.

B. Operating Rules.

(1) In General. Except as provided in §B(2) and (3) of this regulation, stock, partnership interests, membership interests, or other equity interests in a company constructively owned by a person by reason of the application of §A(1), (2), or (3) of this regulation is, for purposes of applying §A(1), (2), and (3) of this regulation, considered as actually owned by the person.

(2) Members of Family. Stock, partnership interests, membership interests, or other equity interests in a company constructively owned by an individual by reason of the application of §A(1) of this regulation is not considered as owned by the individual for purposes of again applying §A(1) of this regulation in order to make another the constructive owner of the stock.

(3) Partnerships, Estates, Trusts, and Corporations. Stock, partnership interests, membership interests, or other equity interests in a company constructively owned by a partnership, estate, trust, or corporation by reason of the application of §A(3) of this regulation is not considered as owned by it for purposes of applying §A(3) of this regulation in order to make another the constructive owner of the stock.

(4) S Corporation treated as Partnership. For purposes of this section:

(a) An S corporation is treated as a partnership; and

(b) Any shareholder of the S corporation is treated as a partner of the partnership, except that this does not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

Administrative History

Effective date December 7, 2006 (33:24 Md. R. 1907)

Regulations .01— 11 repealed and new Regulations .01— 15 adopted effective September 17, 2012 (39 18 Md. R. 1197)

Regulation .02B amended effective May 23, 2016 (43 6 Md. R. 589)

Regulation .06C amended effective May 23, 2016 (43 6 Md. R. 589)