

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	08/03/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 9/18/2015**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

24 05 03 02, .06

**3. Name of Promulgating Authority**

Department of Business and Economic Development

**4. Name of Regulations Coordinator Telephone Number**

Anita L Diven 410.767.6451

**Mailing Address**

401 E. Pratt Street, Suite 533

**City State Zip Code**

Baltimore MD 21202

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anita.diven@maryland.gov

**5. Name of Person to Call About this Document Telephone No.**

W. David Rawle 410.767.6381

**Email Address**

david.rawle@maryland.gov

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 6/22/15.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R  
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

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

Yes  No

**8. Incorporation by Reference**

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

**9. Public Body - Open Meeting**

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

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

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

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

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by W. David Rawle, Assistant Attorney General, (telephone #410.767.6381) on July 30, 2015. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

R. Michael Gill

**Title**

Secretary

**Telephone No.**

410.767.6305

**Date**

July 31, 2015

**Title 24**  
**DEPARTMENT OF BUSINESS AND ECONOMIC**  
**DEVELOPMENT**

**Subtitle 05 ECONOMIC DEVELOPMENT**

**24.05.03 Biotechnology Investment Incentive Tax Credit**

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

**Notice of Proposed Action**

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The Secretary of Business and Economic Development proposes to amend Regulations .02 and .06 under COMAR 24.05.03 Biotechnology Investment Incentive Tax Credit.

**Statement of Purpose**

The purpose of this action is to amend the Biotechnology Investment Incentive Tax Credit Regulations to permit certain types of convertible debt to be considered as investments.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**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 Mark Vulcan, Manager, Tax Programs, Department of Business and Economic Development, 401 E. Pratt Street, Suite 1735, Baltimore, MD 21202, or call 410-767-6438, or email to [mark.vulcan@maryland.gov](mailto:mark.vulcan@maryland.gov), or fax to 410-333-6931. Comments will be accepted through October 19, 2015. A public hearing has not been scheduled.

**Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2016

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

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

The amendments will have no additional costs to implement. The Biotechnology Investment Incentive Tax Credit is implemented through special funds available to the Department.

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

The amendments change the type of investment for which a Biotechnology Investment Incentive Tax Credit is available. However, as the total available amount of Biotechnology Investment Incentive Tax Credits is limited, amendments will have no 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.

The amendments change the type of investment for which a Biotechnology Investment Incentive Tax Credit is available. However, as the total available amount of Biotechnology Investment Incentive Tax Credits is limited, amendments will have no economic impact on small businesses.

G. Small Business Worksheet:

Attached Document:

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24.05.03.02 (6/22/15)

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1)—(9) (text unchanged)

(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.*

[(10)] (11)—[(15)] (16)

[(16)] (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 one 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.*

[(17)] (18)—[(33)] (34)

## 24.05.03.06

### **.06 Investment.**

A.—B. (text unchanged)

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)—(b) (text unchanged)

(c) Proof of the receipt of the investment by the qualified Maryland biotechnology company; [and]

(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 cancelled and proof of conversion of the convertible debt into an investment.*

(2) (text unchanged)