

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	05/28/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/6/2020

2. COMAR Codification

Title Subtitle Chapter Regulation

34 04 07 .02 -.03

34 04 07 .05-.06

3. Name of Promulgating Authority

Department of Planning

4. Name of Regulations Coordinator Telephone Number
Margaret H Drake 410-697-9548

Mailing Address

OAG/MDP 100 Community Place, 3rd Floor

City State Zip Code
Crownsville MD 21032-2023

Email
margaret.drake@maryland.gov

5. Name of Person to Call About this Document Telephone No.
Paul Cucuzzella 410-767-1409

Email Address
paul.cucuzzella@maryland.gov

6. Check applicable items:

- New Regulations
- Amendments to Existing Regulations
Date when existing text was downloaded from COMAR online: 03/24/2020.
- 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 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 Paul Cucuzzella, Assistant Attorney General, (telephone #410-767-1409) on April 27, 2020. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Robert McCord

Title

Secretary of Planning

Telephone No.

410-767-4510

Date

May 22, 2020

Title 34
DEPARTMENT OF PLANNING
Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS
34.04.07 Historic Revitalization Tax Credit Certifications
Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS

34.04.07 Historic Revitalization Tax Credit Certifications

Authority: State Finance and Procurement Article, §5A-303, Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of the Department of Planning proposes to amend Regulations .02, .03, .05 and .06 under COMAR 34.04.07, Historic Revitalization Tax Credit Certifications.

Statement of Purpose

The purpose of this action is to amend the regulations that govern Historic Revitalization Tax Credit Certifications to comport with applicable statutory changes made during the 2020 Session of the General Assembly under 2020 Md. Laws, chapters 314 and 633, effective July 1, 2020.

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 Collin Ingraham, Chief, Office of Preservation Services, Maryland Historical Trust, 100 Community Place, 3rd Fl., Crownsville, MD 21032-2023, or call 410-697-9558, or email to collin.ingraham@maryland.gov, or fax to _____ . Comments will be accepted through _____. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2021

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

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used: General funds are available for Historic Revitalization Tax Credit Program; these regulatory changes will not result in any increase in those general funds.

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: As required by statutory changes made during the 2020 Session of the General Assembly, these amendments expand eligibility of the Small Commercial Tax Credit to rehabilitations of condominium building and cooperative housing projects. As such, these amendments may have a positive economic impact for condominium associations and cooperative housing corporations.

As also required by statutory changes made during the 2020 Session of the General Assembly, these amendments permit recipients of the Commercial Tax Credit to transfer portions of the credit not claimed by the recipient to other individuals or business entities. These types of tax credit transfers are often used to help leverage financing for capital projects. As such, these amendments may have a positive economic impact for commercial revitalization projects.

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

G. Small Business Worksheet:

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation? Are these intended beneficiaries primarily households or businesses?

The intended beneficiaries, which are primarily businesses, are those who apply for the Small Commercial Tax Credit or the Competitive Commercial Tax Credit the Maryland Historical Trust's Historic Revitalization Tax Credit.

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

Households will not be affected by the proposed action.

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities. How will businesses

be impacted? Are these Maryland establishments disproportionately small businesses? If so, how will these Maryland small businesses be affected? Can you identify or estimate the present number of small businesses affected? Can you estimate the present total payroll or total employment of small businesses affected?

The business entities impacted by these regulations primarily operate within the commercial and residential development community, many of which are small businesses. We cannot identify or estimate the number of small businesses that will be impacted, nor can we identify total payroll or employment of such small businesses. As required by statutory changes made during the 2020 Session of the General Assembly, these amendments expand eligibility of the Small Commercial Tax Credit to rehabilitations of condominium building and cooperative housing projects. As such, these amendments may have a positive economic impact for condominium associations and cooperative housing corporations.

As also required by statutory changes made during the 2020 Session of the General Assembly, these amendments permit recipients of the Commercial Tax Credit to transfer portions of the credit not claimed by the recipient to other individuals or business entities. These types of tax credit transfers are often used to help leverage financing for capital projects. As such, these amendments may have a positive economic impact for commercial and residential revitalization projects.

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply? Describe how Maryland establishments may be adversely affected. Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete? Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

None.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative? Will Maryland small businesses share proportionately or disproportionately in these gains? Can you estimate the possible number of Maryland small businesses positively affected?

See answer to 1c.

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

The economic impacts, as described in response to 1c, may have long-term beneficial consequences, but these are difficult to estimate or quantify.

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

(1) There is no anticipated effect on the cost of providing goods and services; (2) Any effect on the work force will be modest and likely positive; (3) Any effect of the cost of housing will be modest and likely positive; (4) There is no anticipated effect on efficiency in production and marketing; (5) Any effects on capital investment, taxation, competition, and economic development will be modest and likely positive; and (6) There is no anticipated effect on consumer choice.

Attached Document:

34.04.07.00 03/24/20

Title 34 DEPARTMENT OF PLANNING

Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS

Chapter 07 Historic Revitalization Tax Credit Certifications

Authority: State Finance and Procurement Article, §5A-303, Annotated Code of Maryland

.02 Definitions.

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

B. Terms Defined.

(1)—(3) (text unchanged)

(4) “Business entity” means:

(a)—(b) (text unchanged)

(c) “*Business entity*” includes the governing body of a condominium or cooperative housing corporation.

(5)—(6) (text unchanged)

(7) “Common elements” means:

(a) All of a condominium except for the condominium units within the condominium; or

(b) All of a cooperative project except for the portions of the cooperative project that are leased, or are made available for lease, for exclusive occupancy by a stockholder or member of the cooperative housing corporation under a proprietary lease.

(8) “Condominium” means property subject to the condominium regime established under Real Property Article, Title 11, Annotated Code of Maryland.

(9) Condominium unit.

(a) “Condominium unit” means a three-dimensional space identified as a unit in a declaration and on a condominium plat recorded in accordance with Real Property Article, Title 11, Annotated Code of Maryland, and includes all improvements contained within the space.

(b) Unless otherwise specified in the declaration or plat for the condominium, for a condominium created after July 1, 1981, a “condominium unit” includes:

(i) If walls, floors, or ceiling are designated as boundaries for the unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of the unit;

(ii) If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of the unit, any portion thereof serving only the unit; and

(iii) All spaces, interior partitions, and other fixtures and improvements within the boundaries of the unit.

(10) “Cooperative housing corporation” means a domestic or foreign corporation qualified in the State, either stock or nonstock, having only one class of stock or membership, in which each stockholder or member, by virtue of such ownership or membership, has an interest in a cooperative housing corporation, which interest is coupled with a possessory interest in real or personal property or both and evidenced by a membership certificate.

(11) “Cooperative project” mean all the real and personal property in the State owned or leased by a cooperative housing corporation for the primary purpose of residential use.

[(7)](12) (text unchanged)

(13) “Governing body” means:

(a) With respect to a condominium, the council of unit owners, board of directors, or any committee of the council of unit owners or board of directors of the condominium; or

(b) With respect to a cooperative housing corporation, the board of directors or other entity establish to govern the cooperative housing corporation.

[(8)](14)—[(27)](33) (text unchanged)

.03 The Historic Revitalization Tax Credit Program.

A.—C. (text unchanged)

D. The Small Commercial Tax Credit.

(1) A rehabilitation will qualify as a certified rehabilitation eligible for the Small Commercial Tax Credit if:

(a)—(c) (text unchanged)

(d) The structure:

(i) (text unchanged)

(ii) After completion of the rehabilitation, is a residential unit located within a consecutive series of similar residential units that are arranged side by side in a row and has been sold by a developer who undertook the rehabilitation to an individual or individuals for residential use; [or]

(iii) Is either an agricultural structure or a post-World War II structure; [and] or

(iv) Is a condominium or cooperative project and the rehabilitation impacts only common elements of the condominium or cooperative project; and

(e) (text unchanged)

(2)—(3) (text unchanged)

E. The Competitive Commercial Tax Credit.

(1) (text unchanged)

(2) The Commercial Tax Credit shall equal the sum of:

(a) The lesser of 20 percent of the qualified rehabilitation expenditures either incurred by the applicant [or as] *or as* identified in the Part 2 application for the rehabilitation; and

(b) (text unchanged)

(3) (text unchanged)

.05 Procedures for Application for and Review of Certifications of Eligibility of Certified Historic Structure Rehabilitations (Part 2).

A.—B. (text unchanged)

C. Small Commercial Tax Credit.

(1) For the rehabilitation of a condominium or cooperative housing project, a Part 2 application for the Small Commercial Tax Credit shall be submitted by the governing body of the condominium or cooperative housing project.

[(1)](2) In addition to information required under §A(3) of this regulation, a Part 2 application for the Small Commercial Tax Credit shall include a request that the rehabilitation be eligible for:

(a)—(b) (text unchanged).

[(2)](3) (text unchanged)

[(3)](4) If the Director determines that the criteria set forth in [§C(2)(a) and (b)] §C(3)(a) and (b) of this regulation are satisfied, the Director shall:

(a)—(e) (text unchanged)

[(4)](5) If the Director determines that any of the criteria set forth in [§C(2)(a) and (b)] §C(3)(a) and (b) of this regulation is not satisfied, the Director shall deny the Part 2 application or amendment and promptly send written notice of the denial to the applicant.

[(5)](6) (text unchanged)

D. (text unchanged)

.06 Procedures for Certification of Completed Rehabilitation (Part 3).

A.—F. (text unchanged)

G. Allocation and Transfer of Tax Credit.

(1) The tax credit amount determined under §E of this regulation by the Director upon review of a Part 3 application:

(a) That is filed by a business entity, may be allocated among the partners, members, or shareholders of the entity as may be agreed to by the partners, members, or shareholders; or

(b) For a Competitive Commercial Tax Credit, may be transferred in whole or part by the Part 3 applicant to any one or more individual or business entity as may be agreed to by the applicant and the individual or business entity.

(2) The tax credit amount allocated or transferred under this section to an individual or business entity may be applied against the total tax otherwise payable by the individual or business entity for the taxable year during which the certified rehabilitation was completed.

(3) If the tax credit amount allocated or transferred under this section to an individual or business entity exceeds the total tax payable by the individual or business entity:

(a) The individual or business entity may claim a refund in the amount of the excess; or

(b) As to the transferee of all or a portion of the Competitive Commercial Tax Credit, the transferee may transfer any amount not claimed as a refund to any other individual or business entity.

(4) Any agreement concerning the allocation or transfer of a tax credit amount under this section shall be in writing and executed by all parties to the agreement.