

# **Title 34 DEPARTMENT OF PLANNING**

## **Subtitle 04 HISTORICAL AND CULTURAL PROGRAMS**

### **Chapter 07 Heritage Structure Rehabilitation Tax Credit Certifications**

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

#### **.01 Scope.**

This chapter establishes procedures for certification of heritage structure rehabilitations by the Director of the Maryland Historical Trust. Certification of a heritage structure rehabilitation is an eligibility requirement for a taxpayer to claim a heritage structure rehabilitation tax credit.

*34.04.07.02*

#### **.02 Definitions.**

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

B. Terms Defined.

(1) “Act” means State Finance and Procurement Article, §5A-303, Annotated Code of Maryland.

(2) “Business entity” means:

(a) A person, as defined in State Finance and Procurement Article, §1-101(d), Annotated Code of Maryland, who conducts or operates a trade or business in the State that is:

(i) Registered to do business and in good standing with the Maryland State Department of Assessments and Taxation; and

(ii) Subject to State income tax as defined in Tax-General Article, §10-101(n), Annotated Code of Maryland; or

(b) An organization conducting or operating a business in the State that is:

(i) Registered to do business and in good standing with the Maryland State Department of Assessments and Taxation; and

(ii) Exempt from taxation under §501(c)(3) of the federal Internal Revenue Code.

(3) “Certified historic structure” means a structure that is:

(a) Located in the State;

(b) Not owned by the State, a political subdivision of the State, or the federal government; and

(c) One of the following:

- (i) Listed on the National Register of Historic Places;
  - (ii) Designated as a historic property under local law and determined by the Director to be eligible for listing on the National Register of Historic Places;
  - (iii) Located in a historic district listed on the National Register of Historic Places or in a local historic district that the Director determines is eligible for listing on the National Register of Historic Places, and certified by the Director as contributing to the significance of the district; or
  - (iv) Located in an area established as a certified heritage area under Financial Institutions Article, §13-1101, Annotated Code of Maryland, and certified by the Maryland Heritage Areas Authority as contributing to the significance of the certified heritage area.
- (4) “Certified rehabilitation” means a completed rehabilitation of a certified historic structure that the Director determines was completed in conformance with the Standards for Certified Historic Structure Rehabilitation.
- (5) “Criteria for Listing” means the Secretary of the Interior’s Criteria for Listing in the National Register of Historic Places, 36 CFR §§60.3 and 60.4, as amended, or successor criteria.
- (6) “Director” means the Director of the Maryland Historical Trust.
- (7) Disposition.
- (a) “Disposition” means the transfer of legal title in real property or, in the case of a leasehold, the transfer of a leasehold interest in the property, or any portions thereof, and includes, without limitation, a sale-and-leaseback transaction, a transfer on the foreclosure of a security interest, or a transfer by gift.
- (b) “Disposition” does not include a transfer of title or of a leasehold interest to a creditor on creation of a security interest lien, mortgage, or deed of trust.
- (8) “Disqualifying work” means work performed at any time prior to the expiration of the recapture period for a certified rehabilitation that, if performed during the rehabilitation would have made the rehabilitation ineligible for certification as a certified rehabilitation.
- (9) “High performance building” means a building that:
- (a) Meets or exceeds the current version of the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) green building rating system gold rating; or
  - (b) Achieves at least a comparable rating according to a nationally recognized, accepted, and appropriate numeric sustainable development rating system, guideline, or standard approved by the Secretaries of Budget and Management and General Services.
- (10) Historic Property.
- (a) “Historic property” means a district, site, building, structure, monument, or object significant to:
- (i) The prehistory or history of the State; or
  - (ii) The terrestrial or underwater archeology, architecture, engineering, or culture of the State.
- (b) “Historic property” includes related artifacts, records, and remains.

(11) “Local historic district” means a district that has been designated by a county or municipal corporation, or the Mayor and City Council of Baltimore, as historic in accordance with local authority under Land Use Article, §8-105, Annotated Code of Maryland.

(12) “Political subdivision” means a county or municipal corporation of the State.

(13) “Program” means the Heritage Structure Rehabilitation Tax Credit Program established under Regulation .03 of this chapter and authorized by the Act.

(14) “Qualified rehabilitation expenditure” means any amount that is:

(a) Properly chargeable to a capital account;

(b) Expended to complete a certified rehabilitation:

(i) Of a structure that is certified by the Director as a certified historic structure under Regulation .04 of this chapter (Part 1) no later than the end of the calendar year during which the certified rehabilitation is completed; and

(ii) In compliance with a rehabilitation plan that has been approved by the Director under Regulation .05 of this chapter (Part 2); and

(c) Not funded, financed, or otherwise reimbursed by any:

(i) State or local grant;

(ii) Grant made from the proceeds of tax-exempt bonds issued by either the State or a political subdivision of the State, or any instrumentality thereof;

(iii) State tax credit other than the tax credit provided for under the Act; or

(iv) Other grant, loan, loan guarantee, tax benefit, or insurance made or financed by the State or a State unit, as defined by State Government Article, §11-101, Annotated Code of Maryland, other than a loan that must be repaid at an interest rate that is greater than the interest rate on general obligation bonds issued by the State at the most recent bond sale prior to the time the loan is made.

(15) “Recapture period” means the taxable year in which a rehabilitation is certified by the Director as a certified rehabilitation under Regulation .06 of this chapter (Part 3) and the next 4 taxable years that succeed that taxable year.

(16) “Rehabilitation” means the process of returning a structure to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the structure and its site and environment which make the structure and its site and environment historically, architecturally, or culturally significant, but excludes alteration which is primarily remodeling, landscaping, or interior décor.

(17) “Reserve Fund” means the Heritage Structure Rehabilitation Tax Credit Reserve Fund established under the Act.

(18) “Secretary” means the Secretary of the Maryland Department of Planning.

(19) “Single-family, owner-occupied residence” means:

(a) A structure or a portion of a structure occupied by the owner and the owner's immediate family as a primary or secondary residence; or

(b) A residential unit in a cooperative project owned by or leased to a cooperative housing corporation, as defined in Corporations and Associations Article, §5-6B-01, Annotated Code of Maryland, and leased for exclusive occupancy to, and occupied by, a member of the corporation and the member's immediate family under a proprietary lease.

(20) "Standards for Certified Historic Structure Rehabilitation" means the Secretary of the Interior's Standards for Rehabilitation, 36 CFR §§67.7 and 67.6(b)(1)—(7), as amended, or successor standards.

(21) "Standards for Evaluating Significance" means the Secretary of the Interior's Standards for Evaluating Significance within Registered Historic Districts, 36 CFR §67.5, as amended, or successor standards.

(22) "State" means the State of Maryland.

(23) "Trust" means the Maryland Historical Trust.

*34.04.07.03*

### **.03 The Heritage Structure Rehabilitation Tax Credit Program.**

A. There is a Heritage Structure Rehabilitation Tax Credit Program in the Trust that includes three separate tax credits for certified rehabilitations known as:

- (1) The Homeowner Tax Credit;
- (2) The Small Commercial Tax Credit; and
- (3) The Competitive Commercial Tax Credit.

B. To claim a Heritage Structure Rehabilitation Tax Credit, a business entity or individual shall:

- (1) Own or have site control of a certified historic structure as determined by the Part 1 application process under Regulation .04 of this chapter;
- (2) Have an approved Part 2 application under Regulation .05 of this chapter for the rehabilitation of the certified historic structure; and
- (3) Have the completed rehabilitation approved as a certified rehabilitation by the Part 3 application process under Regulation .06 of this chapter.

C. The Homeowner Tax Credit.

- (1) A rehabilitation will qualify as a certified rehabilitation eligible for the Homeowner Tax Credit if:
  - (a) The rehabilitation is of a certified historic structure that is a single-family, owner-occupied residence;
  - (b) The rehabilitation includes only qualified rehabilitation expenditures; and
  - (c) During a continuous 24-month period selected by the applicant that ends during the taxable year in which the applicant claims the tax credit, the qualified rehabilitation expenditures exceed \$5,000.

(2) The Homeowner Tax Credit shall equal the lesser of:

(a) 20 percent of the qualified rehabilitation expenditures incurred during the continuous 24-month period selected by the applicant; or

(b) \$50,000.

(3) The Homeowner Tax Credit may be claimed only for the taxable year during which the certified rehabilitation was completed.

#### D. The Small Commercial Tax Credit.

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

(a) The rehabilitation is of a certified historic structure;

(b) The rehabilitation includes only qualified rehabilitation expenditures;

(c) The qualified rehabilitation expenditures do not exceed \$500,000;

(d) Upon completion of the rehabilitation, the structure:

(i) Is not solely a principal residence;

(ii) Is primarily used for income-producing purposes; and

(iii) Has no greater than 75 percent of its habitable interior square footage used or configured for rental residential purposes; and

(e) During a continuous 24-month period selected by the applicant that ends during the taxable year in which the applicant claims the tax credit, the qualified rehabilitation expenditures exceed \$5,000.

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

(a) 20 percent of the qualified rehabilitation expenditures incurred during the continuous 24-month period selected by the applicant; or

(b) \$50,000.

(3) The Small Commercial Tax Credit may be claimed only for the taxable year during which the certified rehabilitation was completed.

#### E. The Competitive Commercial Tax Credit.

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

(a) The rehabilitation is to a certified historic structure;

(b) The rehabilitation includes only qualified rehabilitation expenditures;

(c) The plans for rehabilitation are ranked competitively and qualify for an award of available tax credits as determined by the Director under Regulation .05 of this chapter;

(d) During a continuous 24-month period selected by the applicant that ends during the taxable year in which the applicant claims the tax credit, the qualified rehabilitation expenditures exceed the lesser of:

(i) The adjusted basis of the certified historic structure, as determined under the provisions of Tax-General Article, Annotated Code of Maryland; or

(ii) \$25,000; and

(e) A sign or marker is located on the property either external or internal to the certified historic structure that identifies the certified historic structure as having been rehabilitated with funds provided by the Program.

(2) The Commercial Tax Credit:

(a) Shall equal the sum of:

(i) 20 percent of the qualified rehabilitation expenditures incurred during the continuous 24-month period selected by the applicant; and

(ii) If applied for in the Part 2 application, an additional 5 percent of those qualified rehabilitation expenditures if the certified rehabilitation results in a high performance building; and

(b) May not exceed \$3,000,000.

*34.04.07.04*

#### **.04 Certification of Structures as Certified Historic Structures (Part 1).**

A. A business entity or individual may request that a structure be certified by the Director as a certified historic structure by filing a Part 1 application with the Director on the standard application forms available on the Trust's website.

B. The Director may not accept or review a Part 1 application until the Trust receives all information required by the application form.

C. Upon receipt of a complete Part 1 application, the Director shall:

(1) Determine whether the structure meets either the Criteria for Listing or the Standards for Evaluating Significance;

(2) Approve the application if the structure meets the Criteria for Listing or Standards for Evaluating Significance;

(3) Deny the application if the structure does not meet the Criteria for Listing or Standards for Evaluating Significance; and

(4) Promptly send the applicant written notice that the application has been either approved or denied.

*34.04.07.05*

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

### **A. Part 2 Application Process.**

(1) A business entity or individual may file a Part 2 application with the Director requesting the Director to determine that a proposed rehabilitation of a certified historic structure, if completed in accordance with the requirements of the Program, shall qualify as a certified rehabilitation.

(2) The Trust shall post and maintain on its website separate and distinct Part 2 applications forms for the Homeowner Tax Credit, Small Commercial Tax Credit, and Competitive Commercial Tax Credit, and all Part 2 applications shall be filed on the forms that correspond to the tax credit sought by the applicant.

(3) A Part 2 application shall be deemed incomplete, and may not be accepted or reviewed by the Trust, if the application does not:

(a) Include all information required by the application form;

(b) For an application for either the Small Commercial Tax Credit or the Competitive Commercial Tax Credit, state the maximum amount of the tax credit for which the rehabilitation may qualify;

(c) Include a nonrefundable administrative fee payable to the Trust of:

(i) \$10 for either a Homeowner Tax Credit or a Small Commercial Tax Credit; or

(ii) \$250 for a Competitive Commercial Tax Credit; or

(d) Otherwise comply with a requirement of this regulation.

(4) An incomplete application received by the Trust shall be returned to the applicant if all required information or the administrative fee is not received by the Trust within a reasonable time as determined by the Director.

(5) At any time before completion of the rehabilitation, an applicant may propose to the Director an amendment to a Part 2 application which the Director may approve or deny at the Director's discretion.

### **B. Homeowner Tax Credit.**

(1) Upon receipt of a complete Part 2 application for the Homeowner Tax Credit, the Director shall review the application and determine whether:

(a) The proposed rehabilitation is of a certified historic structure;

(b) The plan for the rehabilitation as described in the application meets the Standards for Certified Historic Structure Rehabilitation;

(c) The anticipated qualified rehabilitation expenditures will exceed \$5,000; and

(d) No substantial part of the rehabilitation had begun at the time that the Trust received the application.

(2) The Director shall approve the Part 2 application and promptly send written notice of the approval to the applicant if the Director determines that each of the criteria set forth in §B(1) of this regulation is satisfied.

(3) The Director shall deny the Part 2 application and promptly send written notice of the denial to the applicant if the Director determines that any of the criteria set forth in §B(1) of this regulation is not satisfied.

#### C. Small Commercial Tax Credit.

(1) Upon receipt of a complete Part 2 application for the Small Commercial Tax Credit, the Director shall review the application and determine whether:

(a) The proposed rehabilitation is of a certified historic structure;

(b) The plan for the rehabilitation as described in the application meets the Standards for Certified Historic Structure Rehabilitation;

(c) The anticipated qualified rehabilitation expenditures will exceed \$5,000 but not exceed \$500,000; and

(d) No substantial part of the rehabilitation had begun at the time that the Trust received the application.

(2) If the Director determines that each of the criteria set forth in §C(1) of this regulation is satisfied, the Director shall:

(a) Approve the Part 2 application;

(b) Issue an initial credit certificate to the applicant in an amount equal to 20 percent of the anticipated qualified rehabilitation expenditures, which shall be the maximum amount of tax credit approvable under Regulation .06 of this chapter; and

(c) Promptly send written notice of the approval and the initial credit certificate to the applicant.

(3) If the Director determines that any of the criteria set forth in §C(1) of this regulation is not satisfied, the Director shall deny the Part 2 application and promptly send written notice of the denial to the applicant.

(4) The Director may not approve any Part 2 application and may not issue any initial credit certificates for a Small Commercial Tax Credit after the aggregate amount of initial credit certificates for the Small Commercial Tax Credit issued by the Director on or after January 1, 2015, totals \$4,000,000.

#### D. Competitive Commercial Tax Credit.

(1) For every State fiscal year that funds are available in the Reserve Fund, the Director shall establish and publish on the Trust's website a date by which Part 2 applications for the Competitive Commercial Tax Credit shall be received by the Trust.

(2) Information required by the Trust as part of a Part 2 application for the Competitive Commercial Tax Credit shall include:

(a) Documentation that establishes that the applicant has received letters of intent for all rehabilitation project funding not included in the amount of the tax credit for which the rehabilitation may qualify;

(b) If the applicant is not at the time of the application the fee-simple owner of the property proposed for rehabilitation:

(i) A written statement from the fee-simple owner that the owner is aware of the application and has no objection to the application or to the proposed rehabilitation; and



(ii) Documentation or evidence satisfactory to the Director that the applicant will have ownership or site control of the property within 18 months of the approval of the Part 2 application;

(c) A statement from the applicant that:

(i) No substantial part of the rehabilitation has begun, unless the rehabilitation was previously approved under the federal historic tax credit; and

(ii) Upon completion of the rehabilitation, a sign or marker will be located on the property either external or internal to the rehabilitated structure identifying the structure as having been rehabilitated with funds provided by the Program; and

(d) A request that the rehabilitation be eligible for the additional 5 percent tax credit available under Regulation .03E(2)(a)(ii) of this chapter if the applicant intends for the rehabilitation to result in a high performance building.

(3) The Director shall reject a Part 2 application received from an applicant who in the same fiscal year submitted three or more other Part 2 applications for the Competitive Commercial Tax Credit that, together, exceed \$500,000 in anticipated qualified rehabilitation expenditures.

(4) The Director shall review and consider only those complete Part 2 applications received by the Trust by the date established under §D(1) of this regulation.

(5) The Director shall competitively rank all complete Part 2 applications received annually by the date established under §D(1) of this regulation based on the following criteria:

(a) The extent to which the certified historic structure is:

(i) A rare example of an architectural style; or

(ii) A structure designed by a noted architect;

(b) Whether the certified historic structure is:

(i) Protected by a historic preservation easement held by the Trust; or

(ii) Subject to preservation conditions or restrictions through a Memorandum of Understanding or Programmatic Agreement with the Trust or some other instrument acceptable in form and substance to the Trust;

(c) Whether the certified historic structure is located in an area:

(i) Where the political subdivision has implemented regulatory streamlining or other development incentives that foster redevelopment and revitalization in priority funding areas, as defined in State Finance and Procurement Article, Title 5, Subtitle 7B, Annotated Code of Maryland, and has certified those regulatory streamlining or other development incentives to the Smart Growth Subcabinet established under State Government Article, Title 9, Subtitle 14, Annotated Code of Maryland; or

(ii) Targeted by the State for additional revitalization and economic development opportunities due to the focusing of State resources and incentives;

(d) Whether the rehabilitation project will include affordable and workforce housing options;

(e) Whether the rehabilitation is consistent with and advances current growth and development policies and programs of the State, as identified by the Director in consultation with the Secretary;

(f) The extent to which the rehabilitation:

(i) Sustains the existing form, integrity, and material of the certified historic structure; or

(ii) Accurately recovers the form and details of the certified historic structure as it appeared during the structure's period of historic significance;

(g) The extent to which the qualified rehabilitation expenditures for the rehabilitation will exceed the assessed value of the certified historic structure;

(h) The extent to which the need for rehabilitation of the certified historic structure is of an urgent or emergency nature;

(i) The amount of private investment that will be leveraged by the rehabilitation project; and

(j) Such other criteria as the Trust may determine from time to time.

(6) Based on the competitive ranking under §D(5) of this regulation, the Director shall:

(a) Select those rehabilitation projects that will be awarded an initial credit certificate for the Competitive Commercial Tax Credit and the maximum amounts of each award;

(b) Promptly notify each applicant selected for an award that the application was selected and of the maximum amount of the award;

(c) Promptly notify each applicant not selected for an award that the application was not selected; and

(d) Not later than 60 days following the selections, post on the Trust's website information regarding each competitive commercial rehabilitation project selected.

(7) The maximum amount of an award of an initial credit certificate for a rehabilitation under §D(6) of this regulation may not exceed the lesser of the maximum amount of qualified rehabilitation expenditures specified in the Part 2 application or \$3,000,000.

(8) For purposes of calculating the limitation on qualified rehabilitation expenditure under §D(7) of this regulation, a rehabilitation project shall include:

(a) Phased rehabilitation of a single certified historic structure;

(b) Rehabilitation of multiple certified historic structures located on a single property;

(c) Separate rehabilitations of different components of a single certified historic structure; or

(d) The rehabilitation of multiple certified historic structures that are functionally related to serve an overall purpose.

(9) Following the selection of an award of an initial credit certificate under §D(6)(a) of this regulation, the Director shall:

(a) Charge the applicant an administrative fee in an amount equal to 3 percent of the amount of the award of the initial credit certificate, less \$250;

(b) Send written notice to the applicant of the amount of the administrative fee;

(c) Notify the applicant that within 90 days of the fee notice the Trust must receive from the applicant the administrative fee payable to the Trust; and

(d) Inform the applicant that if the fee is not received by the Trust within the 90 days of notice of the fee the Director will not:

(i) Issue the initial credit certificate for the rehabilitation; or

(ii) Accept a Part 2 application for the Competitive Commercial Tax Credit from the applicant during any of the 3 fiscal years that immediately follow the fiscal year in which the fee is not received.

(10) Promptly after receiving the administrative fee charged under §D(9) of this regulation from an applicant, the Director shall issue to the applicant an initial credit certificate for the rehabilitation project in the amount awarded for the rehabilitation under §D(6) of this regulation.

(11) An initial credit certificate issued under §D(10) of this regulation shall expire, and the Director may not certify the rehabilitation project as a certified rehabilitation under Regulation .06 of this chapter, if:

(a) For an applicant who was not the fee-simple owner of the property at the time the Part 2 application was submitted, the applicant fails within 18 months after the Director issues the initial credit certificate to provide to the Trust documentation or evidence satisfactory to the Director that the applicant is the fee-simple owner or has site control of the property;

(b) Within the 18 months after the Director issues the initial credit certificate, the applicant fails to notify the Trust, in writing, that the rehabilitation has commenced;

(c) The rehabilitation is not completed within 30 months after the Director issues the initial credit certificate; or

(d) The applicant does not submit to the Trust, in accordance with Regulation .06 of this chapter, a Part 3 application for the rehabilitation within 12 months after the 30-month expiration date under §D(11)(c) of this regulation.

(12) The Director may extend to a later specified date the 30-month expiration date under §D(11)(c) of this regulation if:

(a) The applicant requests an extension in writing which is received by the Director prior to the expiration; and

(b) The Director finds reasonable cause in the written request for the extension.

(13) The Director may extend to a later specified date the deadline for submitting the Part 3 application established under §D(11)(d) of this regulation if:

(a) The applicant requests an extension in writing;

(b) The rehabilitation was completed prior to the 30-month expiration date under §D(11)(c) of this regulation or as extended by the Director under §D(12) of this regulation; and

(c) The Director finds reasonable cause in the written request for the extension.

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

A. Following completion of a rehabilitation approved by the Director under Regulation .05 of this chapter (Part 2) or for which the Director issued an initial credit certificate under Part 2, the Part 2 applicant may file a Part 3 application with the Director requesting that the Director determine that the completed rehabilitation is a certified rehabilitation.

B. A Part 3 application shall be filed:

(1) For either the Homeowner Tax Credit or the Small Commercial Tax Credit, not later than the end of the calendar year that follows the calendar year during which the rehabilitation was completed; and

(2) For the Competitive Commercial Tax Credit, within the time limit set forth in Regulation .05D(11)(d) of this chapter as may have been extended by the Director under Regulation .05D(13) of this chapter.

C. A Part 3 application shall:

(1) Be filed on the standard application forms available on the Trust's website;

(2) Include a statement made under oath by the applicant that the amount of the qualified rehabilitation expenditures as stated in the Part 3 application is true and correct; and

(3) For either the Homeowner Tax Credit or the Small Commercial Tax Credit, include an administrative fee in an amount that is equal to 3 percent of either the maximum amount stated in the Part 2 application in accordance with Regulation .05A(3)(b) of this chapter or the amount of the qualified rehabilitation expenditures stated in the Part 3 application, whichever is greater, less \$10 paid with the Part 2 application.

D. The Director may not accept or review a Part 3 application until the Trust receives all information required by the application form and the administrative fee.

E. Upon receipt of a timely filed and complete Part 3 application, the Director:

(1) May inspect the completed rehabilitation; and

(2) Shall:

(a) Determine whether the rehabilitation as completed is a certified rehabilitation;

(b) As may be appropriate for a competitive commercial rehabilitation, determine whether the rehabilitation resulted in a high performance building;

(c) Determine the tax credit amount, if any, based upon the applicant's accurately reported qualified rehabilitation expenditures; and

(d) Promptly send written notice to the applicant of the Director's determinations.

F. An applicant that has completed a competitive commercial rehabilitation approved under Part 2 may file a second Part 3 application for a determination by the Director of the applicant's qualification for the additional 5 percent tax credit available under Regulation .03E(2)(a)(ii) of this chapter if:

- (1) The Director previously determined under §F(2)(a) of this regulation that the rehabilitation project is a certified rehabilitation;
- (2) The additional 5 percent tax credit was not included within the tax credit amount determined by the Director under §F(2)(c) of this regulation; and
- (3) The second Part 3 application is received by the Trust within 18 months following the completion of the rehabilitation.

34.04.07.07

## **.07 Administrative Review.**

A. An applicant may request that the Director reconsider any written determination made by the Director under Regulation .04, .05, or .06 of this chapter. A request under this section shall be in writing and received by the Trust within 30 days after the Director's written determination was sent to the applicant.

B. Within 60 days of the Trust's receipt of a request for reconsideration made pursuant to §A of this regulation, the Director shall:

- (1) Review the request;
- (2) Determine whether the standards and requirements set forth in this chapter or otherwise applicable to the request warrant either a denial of the request or a modification of the Director's determination; and
- (3) Send written notification to the applicant of the Director's determination on the request.

C. An applicant whose request for reconsideration has been denied in whole or part by the Director under §B of this regulation may file a request that the Board of Trustees of the Trust reconsider the Director's denial. A request made under this section shall be in writing and received by the Trust within 30 days after the written notice of the Director's denial is sent to the applicant.

D. The Board of Trustees of the Trust shall, within 60 days of the Trust's receipt of the request made pursuant to §C of this regulation or at the next regularly conducted meeting of the Board following the Trust's receipt of the request, whichever is later:

- (1) Review the request;
- (2) Determine whether the standards and requirements set forth in this chapter or otherwise applicable to the request warrant either a denial of the request or a modification of the Director's determination;
- (3) If the Board determines that the Director's determination shall be modified, articulate the applicable standard and factual basis that warrant the modification; and
- (4) Notify the applicant in writing of the Board's determination.

E. The Board of Trustees of the Trust may establish from time to time guidelines or procedures for processing and reviewing requests for reconsideration made under §C of this regulation.

F. Actions or determinations taken or made by the Board of Trustees under §D of this regulation shall be in accordance with the bylaws of the Board of Trustees of the Trust.

G. A determination of the Board of Trustees of the Trust made under §D of this regulation shall be final and is not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

*34.04.07.08*

## **.08 Determining Disqualifying Work; Recapture of Tax Credits.**

A. Upon the request of the Comptroller or on the Director's own initiative, the Director shall determine whether any disqualifying work has occurred during a certified rehabilitation or during the recapture period that would make the rehabilitation ineligible for a tax credit under the Program, and shall promptly notify the Comptroller of the Director's determination.

B. A tax credit awarded and claimed through the Program shall be recaptured if during either the rehabilitation or the recapture period:

(1) Any disqualifying work is performed on the structure that was the object of the certified rehabilitation; or

(2) For a certified rehabilitation awarded either a Small Commercial Tax Credit or a Competitive Commercial Tax Credit, there is a disposition of the structure that was the object of the certified rehabilitation.

C. A tax credit shall be recaptured as follows:

(1) If disqualifying work or disposition occurs during the taxable year in which the certified rehabilitation was completed, 100 percent of the tax credit shall be recaptured;

(2) If disqualifying work or disposition occurs during the first full year after the taxable year in which the certified rehabilitation was completed, 80 percent of the credit shall be recaptured;

(3) If disqualifying work or disposition occurs during the second full year after the taxable year in which the certified rehabilitation was completed, 60 percent of the credit shall be recaptured;

(4) If disqualifying work or disposition occurs during the third full year after the taxable year in which the certified rehabilitation was completed, 40 percent of the credit shall be recaptured; or

(5) If disqualifying work or disposition occurs during the fourth full year after the taxable year in which the certified rehabilitation was completed, 20 percent of the credit shall be recaptured.

D. The business entity that claimed the tax credit shall pay the recaptured amount of the tax credit as taxes payable to the State for the taxable year in which the disqualifying work or disposition occurred.

*34.04.07.09*

## **.09 General Provisions.**

A. Program Administration.

(1) Any action, determination, decision, or certification to be taken or permitted by the Director under the Act or this chapter may be delegated by the Director to a designee and any delegated action, determination, decision, or

certification taken by the Director's designee shall be considered an action, determination, decision, or certification of the Director.

(2) The Director may establish operational handbooks or manuals governing matters relating to administration of this chapter including descriptive statements of procedures which do not directly affect the rights of the public or procedures otherwise available to the public.

(3) The Program may adopt a handbook containing internal guidelines or policies related to the administration of the Program or establishing other requirements relating to the Program. The handbook shall be available for public examination at the Trust or on the Trust's website.

(4) An applicant shall retain all records concerning a certified rehabilitation for a period of 7 years from completion of the rehabilitation or for 2 years from the date the recapture period ends, whichever is shorter.

(5) The Trust makes no representation and accepts no responsibility as to any tax or other consequences to an entity, a person, an individual, or any other party arising out of the approval or certification, or allocation of credits for a project.

B. Waiver. The Secretary may waive or vary a provision of this chapter if:

(1) The waiver or variance is not inconsistent with the Act or otherwise unlawful;

(2) The Secretary determines in writing that application of the provision in a specific case or in an emergency situation would be inequitable or contrary to the purposes of the Act; and

(3) The Office of the Attorney General approves the waiver for form and legal sufficiency.

C. False Statements.

(1) Any action, determination, decision, or certification made by the Director or the Secretary under the Act or this chapter that was based in whole or part in reliance upon a false statement knowingly made or caused to be made by the applicant is subject to revocation by the Director or the Secretary.

(2) The Director or the Secretary may revoke an action, determination, decision, or certification §C(1) of this regulation even if the action, determination, decision, or certification could have been made absent reliance upon the false statement.

*34.04.07.9999*

### **Administrative History**

**Effective date: January 14, 1999 (26:1 Md. R. 23)**

Regulation .01 amended as an emergency provision effective January 3, 2005 (32:4 Md. R. 404); amended permanently effective April 11, 2005 (32:7 Md. R. 676)

Regulation .02B amended as an emergency provision effective June 1, 2004 (31:16 Md. R. 1249); emergency status expired December 1, 2004

Regulation .02B amended as an emergency provision effective January 3, 2005 (32:4 Md. R. 404); amended permanently effective April 11, 2005 (32:7 Md. R. 676)

Regulation .04 amended as an emergency provision effective November 24, 2003 (30:25 Md. R. 1841); emergency status expired May 22, 2004

Regulation .04 amended as an emergency provision effective June 1, 2004 (31:17 Md. R. 1249); emergency status expired December 1, 2004

Regulation .04 amended as an emergency provision effective January 3, 2005 (32:4 Md. R. 404); amended permanently effective April 11, 2005 (32:7 Md. R. 676)

Regulation .04E amended as an emergency provision effective June 29, 2005 (32:15 Md. R. 1313); amended permanently effective October 10, 2005 (32:20 Md. R. 1655)

Regulation .05 amended as an emergency provision effective January 3, 2005 (32:4 Md. R. 404); amended permanently effective April 11, 2005 (32:7 Md. R. 676)

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Chapter recodified from COMAR 05.08.08 to COMAR 34.04.07

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Chapter revised as an emergency provision effective August 4, 2010 (37:18 Md. R. 1212); revised permanently effective October 4, 2010 (37:20 Md. R. 1396)

Regulation .04E amended as an emergency provision effective October 5, 2011 (38:23 Md. R. 1418); amended permanently effective November 28, 2011 (38:24 Md. R. 1504)

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Regulations .01—.07 repealed and new Regulations .01—.08 adopted as an emergency provision effective January 1, 2015 (42:1 Md. R. 16); adopted permanently effective February 16, 2015 (42:3 Md. R. 318)

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Regulations .01—.08 repealed and new Regulations .01—.09 adopted effective September 12, 2016 (43:18 Md. R. 1019)