

Chapter 815: DIRIGO BUSINESS INCENTIVES PROGRAM

Summary: The Dirigo Business Incentives Program is established by the Legislature in PL 2023, Chapter 412, Part J. The Department of Economic and Community Development and the Bureau of Revenue Services administer the program. This rule establishes criteria to determine eligibility for the Dirigo Business Incentives program and the process used by businesses to apply for certification as a Dirigo Business Incentives business.

§ 1 – Definitions

Terms used in this rule have the same meaning as defined in 36 M.R.S. §5219-AAA. This section also adds additional clarification to certain terms.

As used in this rule, the following terms have the following meanings:

1. "Commissioner" means the Commissioner of Economic and Community Development.
2. "Department" means the Department of Economic and Community Development.
3. "Eligible sector" means any one of the following industries identified and described by the corresponding code (in parentheses below) contained in the 2022 North American Industry Classification System (NAICS) issued by the United States Office of Management and Budget:
 - (1) Agriculture, forestry and fishing (1111 through 1141; 1151 through 1153);
 - (2) Manufacturing (31-33);
 - (3) Long-distance freight transportation (481112, 481212, 482, 483111, 483113, 483211, 48412, 48423, 48819, 4882, 4883, 4885);
 - (4) Software publishing (5132), data processing (518) and computer design services (5415); or
 - (5) Engineering (5413), architecture (5413) and scientific research and development services (5417).

Construction versus manufacturing. In general, on-site construction and assembly of an asset is considered part of the construction industry and is not an eligible sector, while the off-site production of an asset may be considered manufacturing and is an eligible sector. For example, the on-site construction of "stick-built" residential housing is not an eligible sector, but the production of manufactured housing at a central facility is an eligible sector. Similarly, the on-site construction of a power generation structure would be classified as construction while the off-site assembly and preparation of the structure components may be classified as manufacturing. For example, the assembly and preparation of an offshore wind turbine at an onshore facility would be classified as manufacturing while the final installation

and ongoing operation activities would be classified as construction and electric power generation, respectively.

Local and long-distance trucking. NAICS defines “long-distance” trucking transportation establishments as those that carry goods between metropolitan areas. Local trucking establishments are those that primarily carry goods within a single metropolitan area and its adjacent nonurban areas and are not considered an eligible sector for Dirigo Business Incentives.

4. “Qualified business activity” means a business activity carried on primarily in an eligible sector. When determining whether an activity is carried on primarily in an eligible sector, the Department will refer to the production or service description for the relevant industry code contained in the 2022 NAICS. For example, a qualified business activity for a logging operation (NAICS code 113310) would relate to “one or more of the following: (1) cutting timber; (2) cutting and transporting timber; and (3) producing wood chips in the field.” The qualified business activity described in the letter of certification may be more specific or limited, such as “cutting timber,” or combined with other qualified business activities, such as “cutting and transporting timber and operating a sawmill.”

The entirety of spaces, property, and functions of the business will be considered in determining whether the business is engaged in one or more qualified business activities. Supporting activities that on their own would not be considered qualified business activities would nonetheless be considered as such if conducted exclusively in direct support of the business’s core qualified business activity. For example, the activities of a life sciences research operation that might be considered supporting components of a qualified business activity include those associated with lab and production areas, warehouses that receive raw material, administrative offices, quality control labs, cafeterias for employees, warehouses that hold products prior to shipment, and employee gyms and locker rooms.

A business may seek a new or revised letter of certification for any additional qualified business activity not included in the original or previous application for certification. For example, a business that receives a letter of certification establishing a qualified business activity as a precision machining operation may not claim a credit for purchasing forestry equipment, as that property is not related to the qualified business activity described in the original letter of certification issued to the business. However, the business may request that the Department amend the letter of certification to include the additional qualified business activity.

§ 2 – Certification of Qualified Dirigo Businesses

1. Eligibility

To be certified as a qualified business, a business must be a for-profit business in this State engaged in an eligible sector, or in the case of a new business to the State, will be engaged in an eligible sector when their business activity begins. The business must intend to place eligible business property into service or begin training as part of a qualified worker training program within two years of filing their application for certification. Capital investment or worker training begun prior to the issuance of a letter of certification from the Commissioner will not be eligible for the credit under 36 M.R.S. §5219-AAA(4).

2. Application requirements

A business seeking certification shall electronically submit for the Commissioner’s review one original, signed application containing the following information:

- A. Information on the business's activity:
 - a. A description of the qualified business activity in which the business will be engaged.
 - b. The addresses of business operations in Maine, including planned new locations, that will be the site of qualified business activities for the Dirigo program. If the business has identified a new location but not yet closed the sale or finalized a lease for the property at the time of application, they may choose to list only the municipality or county instead of the full address of that location.
 - c. The eligible sector or sectors within which the business will perform its qualified business activity.
- B. Information on the business's investment, training, and overall expansion plans:
 - a. The timeframe of the project(s) the business is undertaking for which it is applying for certification.
 - b. The dollar amount, per year and in total, planned to be expended on the project that is expected to constitute eligible capital investment, as well as any additional project investment that is not expected to be eligible for the credit allowed under 36 M.R.S. §5219-AAA(4);
 - c. Confirmation that the business has reviewed and understands the limitations on eligible business property as described in 36 M.R.S. §5219-AAA.
 - d. A list of any planned qualified training programs, including:
 - i. The number of workers per year planned to be trained by the qualified training program;
 - ii. A description of the type(s) of training provided, including the number of training hours per worker; and
 - iii. A list of the training provider(s) the business intends to use. This may be the specific organization if known at the time of application and/or the category of qualified program as listed in 36 M.R.S. §5219-AAA(1)(P).
- C. Confirmation that the business meets all eligibility criteria, including that the business:
 - a. Is a for profit business operating or planning to begin operations in Maine;
 - b. Is not a public utility as defined by 35-A M.R.S. §102(13);
 - c. Is not currently certified under the Pine Tree Development Zone or Employment Tax Increment Financing programs;
 - d. Is not currently certified to receive one of the tax credits allowed under 36 M.R.S. §§ 5219-RR or 5219-YY; and
 - e. Has not undergone a layoff in the past two tax years as defined in 36 M.R.S. §§ 5219-AAA(1)(I). The Department may request the business to provide documentation to support this requirement, including, but not limited to, employment numbers as submitted on Line 1 of state quarterly wage reports (Form ME UC-1 or equivalent).
- D. General information about the business, including:
 - a. Preferred contact information;

- b. Information to correctly identify the taxpayer entity, including taxpayer identification number and business structure (e.g., LLC, C-Corp, S-Corp, sole proprietorship);
 - c. Number of employees in Maine at the time of application;
 - d. The name, relationship, and shared ownership percentage of any affiliated businesses operating in Maine.
- E. Any other information the Department may reasonably require.

The information contained in a business's application is confidential to the extent provided by 36 M.R.S. §191(2)(SSS).

Applications may be submitted beginning July 1, 2024.

3. Letter of Certification

The Commissioner will review and act upon submitted applications for Dirigo Business Incentive certification. Before issuing a letter of certification for a business, the Commissioner will determine that the application is complete, the applicant meets the criteria to be a qualified business engaged in (or will be engaged in) a qualified business activity, and the applicant will engage in eligible capital investment or a qualified worker training program in service of the qualified business activity.

If all criteria have been met, the Commissioner will issue a letter of certification to the qualified business stating:

- A. The name of the certified entity, including any affiliated businesses that will be engaged in the qualified business activity.
- B. The qualified business activity, including:
 - a. A written description of the qualified business activity;
 - b. The eligible sectors within which the business will perform its qualified business activity; and
 - c. The planned location(s) of the qualified business activity.
- C. The effective date and expiration date of the letter of certification.
- D. The eligibility requirements for remaining a qualified business and receiving any tax benefits allowed under section 36 M.R.S. §5219-AAA.

The letter of certification will be valid for five years beginning with the date it is issued. For example, a letter of certification issued on February 1, 2025, will be valid until February 1, 2030. Letters of certification issued between July 1, 2024, and December 31, 2024, will have an effective start date of January 1, 2025, and an end date of January 1, 2030.

If an application does not meet the criteria to receive a letter of certification, the Commissioner will issue a provisional denial to the applicant with an explanation of the criteria not met. A business may file an appeal with the Department within 30 days of receiving the provisional denial if they believe the denial was issued in error. The appeal must include a response to the explanation included in the provisional denial. The Commissioner will review the appeal and original application and issue either a letter of certification or a final denial.

STATUTORY AUTHORITY:

36 M.R.S. §§ 112 & 5219-AAA

EFFECTIVE DATE:

March 20, 2024 – filing 2024-072