

DYNAVAX TECHNOLOGIES CORP

Form 8-K

November 01, 2013

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Form 8-K**

**Current Report**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): 10/28/2013**

**Dynavax Technologies Corporation**

**(Exact name of registrant as specified in its charter)**

**Commission File Number: 001-34207**

**Delaware**  
**(State or other jurisdiction**

**of incorporation)**

**33-0728374**  
**(IRS Employer**

**Identification No.)**

**2929 Seventh Street, Suite 100**

**Berkeley, CA 94710-2753**

**(Address of principal executive offices, including zip code)**

**(510) 848-5100**

**(Registrant's telephone number, including area code)**

**(Former name or former address, if changed since last report)**

**Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:**

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)**
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)**
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))**
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))**

**Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On October 28, 2013, pursuant to the Series B Convertible Preferred Stock Underwriting Agreement (the, Underwriting Agreement ) with Cowen and Company LLC ( Cowen ) as representative of the underwriters named therein (the Underwriters ), dated October 25, 2013, Dynavax Technologies Corporation (the Company ) designated 43,430 shares of its authorized and unissued preferred stock as Series B Convertible Preferred Stock (the Series B Preferred ) and filed a Certificate of Designation of Series B Convertible Preferred Stock with the Delaware Secretary of State. The Certificate of Designation classifies and designates the rights, preferences and privileges of the Series B Preferred (the Certificate of Designation ), which is attached as Exhibit 3.1. Each share of Series B Preferred is convertible into 1,000 shares of the Company s common stock at any time at the holder s option. However, the holder will be prohibited from converting Series B Preferred into shares of common stock if, as a result of such conversion, the holder, together with its affiliates, would own more than 9.98% of the total number of shares of the Company s common stock then issued and outstanding. In the event of the Company s liquidation, dissolution, or winding up, holders of Series B Preferred will receive a payment equal to \$0.001 per share of Series B Preferred before any proceeds are distributed to the holders of common stock. Shares of Series B Preferred will generally have no voting rights, except as required by law and except that the consent of holders of a majority of the outstanding Series B Preferred will be required to amend the terms of the Series B Preferred. Shares of Series B Preferred will not be entitled to receive any dividends, unless and until specifically declared by the Company s board of directors, and will rank:

senior to all common stock;

senior to any class or series of capital stock hereafter created specifically ranking by its terms junior to the Series B Preferred;

on parity with the Company s Series A Junior Participating Preferred Stock and any class or series of capital stock hereafter created specifically ranking by its terms on parity with the Series B Preferred; and

junior to any class or series of capital stock hereafter created specifically ranking by its terms senior to the Series B Preferred;

in each case, as to distributions of assets upon the Company s liquidation, dissolution or winding up whether voluntarily or involuntarily.

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**DYNAVAX TECHNOLOGIES CORPORATION**

Date: November 1, 2013

By: /s/ Michael Ostrach  
Michael S. Ostrach

Vice President

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
3.1	Certificate of Designation of Series B Convertible Preferred Stock.
4.1	Form of Specimen Preferred Stock Certificate.