

Chapter 326-20 WAC CERTIFICATION

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

326-20-020	Federally funded projects. [Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-020, filed 10/28/83.] Repealed by WSR 92-11-007, filed 5/11/92, effective 6/11/92. Statutory Authority: RCW 39.19.030(7).
326-20-030	Proof of minority status. [Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-030, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-030, filed 10/28/83.] Repealed by WSR 19-13-014, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030 and 39.19.120.
326-20-040	Proof of woman's status. [Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-040, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-040, filed 10/28/83.] Repealed by WSR 19-13-014, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030 and 39.19.120.
326-20-090	Size and length of time in business. [Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-090, filed 10/28/83.] Repealed by WSR 88-06-030 (Order 88-2), filed 2/26/88. Statutory Authority: Chapter 39.19 RCW.
326-20-091	Size standards—Purpose. [Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-091, filed 4/18/88.] Repealed by WSR 92-11-007, filed 5/11/92, effective 6/11/92. Statutory Authority: RCW 39.19.030(7).
326-20-092	Small business concern requirement. [Statutory Authority: RCW 39.19.030. WSR 04-08-075, § 326-20-092, filed 4/5/04, effective 5/6/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-092, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-092, filed 4/18/88.] Repealed by WSR 19-13-014, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030 and 39.19.120.
326-20-093	Definitions. [Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-093, filed 4/18/88.] Repealed by WSR 92-11-007, filed 5/11/92, effective 6/11/92. Statutory Authority: RCW 39.19.030(7).
326-20-095	Determination of firm size. [Statutory Authority: RCW 39.19.030. WSR 04-08-075, § 326-20-095, filed 4/5/04, effective 5/6/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-095, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-095, filed 4/18/88.] Repealed by WSR 19-13-014, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030 and 39.19.120.
326-20-096	Size standard. [Statutory Authority: RCW 39.19.030. WSR 04-08-075, § 326-20-096, filed 4/5/04, effective 5/6/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-096, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-096, filed 4/18/88.] Repealed by WSR 19-13-014, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030 and 39.19.120.
326-20-097	Change in firm size. [Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-097, filed 4/18/88.] Repealed by WSR 92-11-007, filed 5/11/92, effective 6/11/92. Statutory Authority: RCW 39.19.030(7).

326-20-115 Signatures of applicant business owners. [Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-115, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 85-20-058 (Order 85-9), § 326-20-115, filed 9/26/85.] Repealed by WSR 19-13-014, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030 and 39.19.120.

326-20-120 Submittal of forms. [Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-20-120, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-120, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030. WSR 94-11-114, § 326-20-120, filed 5/18/94, effective 6/18/94. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-120, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 85-14-101 (Order 85-6), § 326-20-120, filed 7/2/85. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-120, filed 10/28/83.] Repealed by WSR 17-13-020, filed 6/12/17, effective 8/1/17. Statutory Authority: RCW 39.19.030.

326-20-200 Complaints. [Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-200, filed 10/28/83.] Repealed by WSR 92-11-007, filed 5/11/92, effective 6/11/92. Statutory Authority: RCW 39.19.030(7).

326-20-210 Reconsideration of decision. [Statutory Authority: Chapter 39.19 RCW. WSR 84-09-002 (Order 84-5), § 326-20-210, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-210, filed 10/28/83.] Repealed by WSR 85-07-006 (Order 85-2), filed 3/8/85. Statutory Authority: Chapter 39.19 RCW.

WAC 326-20-010 In general. (1) Any business which meets the definition of a minority business enterprise, a women's business enterprise, a minority woman's business enterprise, a combination minority and women's business enterprise, socially and economically disadvantaged business enterprise, corporate-sponsored dealership as set forth in this title, or public works small business enterprise is eligible to be certified by the state of Washington.

(2) It is not the intent of the program to encourage the participation of businesses owned and controlled by minorities, and/or women, and/or socially and economically disadvantaged individuals, who have not encountered practices which prohibited or limited their access to contract opportunities, markets, financing, and other resources, based on their race, ethnic origin, or sex, or disability.

(3) Notwithstanding the provisions in subsection (1) of this section, to be eligible for certification, any business applying for certification shall have obtained all licenses necessary to lawfully conduct business in the state of Washington.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, § 326-20-010, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-010, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-010, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 87-18-030 (Order 87-6), § 326-20-010, filed 8/27/87. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-010, filed 10/28/83.]

WAC 326-20-035 Presumptive group membership. (1) After reviewing an applicant's sworn declaration of membership in a presumptively disadvantaged group, the agency may ask the applicant to present additional evidence that the person is a member of the identified group, if the agency has a well-founded reason to question the applicant's claim of group membership.

(2) The agency will provide the applicant an explanation of the reason(s) for questioning the applicant's group membership. The agency will consider whether the person has held themselves out as a member of the group for an extended period of time prior to application for certification, and whether the relevant community regards the person

as a member of that group. The agency may require the applicant to produce appropriate documentation of group membership.

(3) The agency will not impose a disproportionate burden on members of any particular designated group in violation of Title VI of the Civil Rights Act of 1964.

(4) If the agency determines an individual claiming membership of a presumed disadvantaged group is not a member, the individual must demonstrate social and economic disadvantage on an individual basis under WAC 326-20-045.

(5) The decisions concerning membership in a designated group are subject to the certification appeals process outlined in WAC 326-20-171.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-035, filed 6/7/19, effective 7/8/19.]

WAC 326-20-045 Proof of socially and economically disadvantaged status. The following guidance is adapted, with minor modifications, from the United States Small Business Administration's regulations concerning social and economic disadvantage determinations (see 13 C.F.R. 124.103(c) and 124.104) and 49 C.F.R. Part 26. Each nonpresumptive socially and economically disadvantaged owner of a business applying for certification shall submit with the application form the statement of personal net worth and social and economic disadvantage forms with documents which show that the owner is a socially and economically disadvantaged individual. The final determination will be in the sole discretion of the office.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-045, filed 4/6/04, effective 5/7/04.]

WAC 326-20-046 Proof of social disadvantage. (1) Evidence of individual social disadvantage must include the following elements:

(a) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(b) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(c) Negative impact on entry into or advancement in the business world because of the disadvantage. The office will consider any relevant evidence in assessing this element. In every case, however, the office will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(i) Education. The office will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(ii) Employment. The office will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of

employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into nonprofessional or nonbusiness fields.

(iii) Business history. The office will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

(2) With respect to subsection (1) of this section, the office notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

(3) Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, the office shall look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this section. Subject to Title II of the ADA, the office must also ensure its SEDBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to SEDBEs and applicants.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-046, filed 4/6/04, effective 5/7/04.]

WAC 326-20-047 Proof of economic disadvantage. Evidence of individual social disadvantage and/or individual economic disadvantage must include the following elements:

(1) Submission of narrative and financial information.

(a) Each individual claiming economic disadvantage must describe the conditions, which are the basis for the claim in a narrative statement, and must submit personal financial information.

(b) When married, an individual claiming economic disadvantage also must submit separate financial information for their spouse, unless the individual and the spouse are legally separated.

(2) Factors to be considered. In considering diminished capital and credit opportunities, the office will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. The office will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in

evaluating the individual's access to credit and capital. The financial profiles that the office will compare include total assets, net sales, pretax profit, sales/working capital ratio, and net worth.

(3) Transfers within two years.

(a) Except as set forth in (b) of this subsection, the office will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(b) The office will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(c) In determining an individual's access to capital and credit, the office may consider any assets that the individual transferred within such two-year period described by (a) of this subsection that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-047, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-047, filed 4/6/04, effective 5/7/04.]

WAC 326-20-048 Presumption of disadvantage. (1) Social disadvantage. The agency rebuttably presumes the following persons are socially disadvantaged individuals for the purposes of certification, consistent with 49 C.F.R. Section 26.67: Women; persons who are black/African American, Hispanic/Latino, Native American, Asian, Pacific Islander, native Hawaiian, and Alaska native; and other minorities found disadvantaged by the small business association.

(2) Each presumptively socially disadvantaged applicant must submit a signed declaration of eligibility (DOE), as provided by the office, that they are socially and economically disadvantaged.

(3)(a) Economic disadvantage. Each owner of a firm applying for state certification must sign a declaration that they have a personal net worth that does not exceed \$2,047,000, per WAC 326-20-049. The office will adjust the personal net worth cap routinely.

(b) Rebuttal of economic disadvantage. If the statement of personal net worth that an individual submits under this section shows that the individual's personal net worth exceeds \$2,047,000 or a reasonable person would not consider the person economically disadvantaged, the individual's economic disadvantage is rebutted, and the individual is not deemed to be economically disadvantaged. Such an individual is no longer eligible to participate in the program and cannot regain eligibility by making an individual showing of disadvantage. The office is not required to have a proceeding under this section to rebut the presumption of economic disadvantage in this case.

(4) Individual determinations of social and economic disadvantage. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for Socially and

Economically Disadvantaged Business Enterprise (SEDBE) certification. The office makes a case-by-case determination of whether each individual whose ownership and control are relied upon for SEDBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to the office, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$2,047,000 shall not be deemed to be economically disadvantaged. In making these determinations, the office uses WAC 326-20-046 and 326-20-047. The office requires that applicants provide sufficient information to permit determinations under WAC 326-20-046 and 326-20-047.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-048, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-048, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030. WSR 17-13-020, § 326-20-048, filed 6/12/17, effective 8/1/17. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-048, filed 4/6/04, effective 5/7/04.]

WAC 326-20-049 Personal net worth. (1) Each individual owner of a firm applying for state certification, whose ownership and control are relied on for certification, must fill out a personal net worth statement and sign a declaration of eligibility that their personal net worth does not exceed \$2,047,000. If any individual's personal net worth exceeds \$2,047,000, the individual's presumption of economic disadvantage is rebutted and the individual does not meet the criteria for certification.

(2) The office may require additional financial information where necessary to accurately determine an individual's personal net worth.

(3) In determining an individual's personal net worth, the office will use the following criteria:

(a) Exclude the individual's ownership interest in the applicant firm;

(b) Exclude the individual's equity in his or her primary residence. The equity is the market value of the residence less any mortgages and home equity loan balances;

(c) Not use a contingent liability to reduce the individual's net worth;

(d) Exclude retirement assets in full;

(e) Include any assets the individual has transferred within two years prior to the application or certification update to:

(i) An immediate family member;

(ii) A trust where the beneficiary is an immediate family member;

or

(iii) The applicant firm for less than fair market value.

(f) The assets described in (e) of this subsection will not be counted toward an individual's personal net worth if:

(i) The applicant demonstrates that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(ii) The transfer is consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(g) For the purposes of this section, "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under state law.

(4) If an individual's personal net worth does not exceed \$2,047,000 as described in this section, the office may rebut an individual's presumption of economic disadvantage if the statement of personal net worth and supporting documentation demonstrates that a reasonable person would not consider the individual to be economically disadvantaged even though the individual's personal net worth (PNW) did not exceed the limitation cap. Among the evidence the office can consider are ready access to wealth, income or assets of a type or magnitude inconsistent with economic disadvantage, a lavish lifestyle, community property, or other circumstances that economically disadvantaged people typically do not enjoy. Liabilities and the kind of asset exclusions used in PNW calculations would not be taken into account as part of this determination.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-049, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030. WSR 17-13-020, § 326-20-049, filed 6/12/17, effective 8/1/17.]

WAC 326-20-050 Proof of ownership of business. (1) General rule: A socially and economically disadvantaged owner must own at least 51 percent of each class of ownership of the firm. Each socially and economically disadvantaged owner whose ownership is necessary to the firm's eligibility must demonstrate that their ownership satisfies the requirements of this section. If not, the firm is ineligible.

(2) Overall requirements. A socially and economically disadvantaged owner's acquisition and maintenance of an ownership interest meets the requirements of this section only if the owner demonstrates the following:

(a) Acquisition. The socially and economically disadvantaged owner acquires ownership at fair value and by one or more "investments" as defined in subsection (3) of this section.

(b) Proportion. No owner derives benefits or bears burdens that are clearly disproportionate to their ownership shares.

(c) Maintenance. This section's requirements continue to apply after the socially and economically disadvantaged owner's acquisition and the firm's certification. The socially and economically disadvantaged owner must maintain their investment and its proportion relative to those of other owners such that eligible individuals retain at least 51 percent ownership.

(i) The socially and economically disadvantaged owner may not withdraw or revoke their investment.

(ii) When an existing co-owner contributes significant, additional, post-acquisition cash or property to the firm, the socially and economically disadvantaged owner must increase their own investment to a level not clearly disproportionate to the nondisadvantaged owner's investment.

(iii) An organic increase in the value of the business does not affect maintenance because the value of the owners' investments remains proportional.

(3) Investments. A socially and economically disadvantaged owner may acquire ownership by purchase, capital contribution, or gift. Subject to the other requirements of this section, each is considered an "investment" in the firm, as are additional purchases, contributions, and qualifying gifts.

(a) Investments are unconditional and at full risk of loss.

(b) Investments include a significant outlay of the socially and economically disadvantaged owner's own money.

(c) For purposes of this part, title determines ownership of assets used for investments and of ownership interests themselves. This rule applies regardless of contrary community property, equitable distribution, banking, contract, or similar laws, rules, or principles.

(i) The person who has title to the asset owns it in proportion to their share of title.

(ii) However, the title rule is deemed not to apply when it produces a certification result that is manifestly unjust.

(d) If the socially and economically disadvantaged owner jointly (50/50) owns an investment of cash or property, the socially and economically disadvantaged owner may claim at least a 51 percent ownership interest, only if the other joint owner formally transfers to the socially and economically disadvantaged owner enough of his ownership in the invested asset(s) to bring the socially and economically disadvantaged owner's investment to at least 51 percent of all investments in the firm. Such transfers may be gifts described in subsection (5) of this section.

(4) Purchases and capital contributions.

(a) The following situations qualify as purchase and/or capital contributions:

(i) A purchase of an ownership interest is an investment when the consideration is entirely monetary and not a trade of property or services.

(ii) Capital that the socially and economically disadvantaged owner contributes directly to the company is an investment when the contribution is all cash or a combination of cash and tangible property and/or realty.

(iii) Debt-financed purchases or capital contributions are investments when they comply with the requirements of this section.

(b) The following situations do not qualify as purchase and/or capital contribution:

(i) Contributions of time, labor, services, and the like are not investments or components of investments.

(ii) Loans are not investments. The proceeds of loans may be investments to the extent that they finance the socially and economically disadvantaged owner's qualifying purchase or capital contribution.

(iii) Guarantees are not investments.

(iv) The firm's purchases or sales of property, including ownership in itself or other companies, are not the socially and economically disadvantaged owner's investments.

(v) Other persons' or entities' purchases or capital contributions are not the socially and economically disadvantaged owner's investments.

(5) Gifts. A gift to the socially and economically disadvantaged owner is an investment when it meets the requirements of this section. The gift rules apply to partial gifts, bequests, inheritances, trust distributions, and transfers for inadequate consideration. They apply to gifts of ownership interests and to gifts of cash or property that the socially and economically disadvantaged owner invests. The follow-

ing requirements apply to gifts on which the socially and economically disadvantaged owner relies for their investment:

(a) The transferor/donor is or immediately becomes uninvolved with the firm in any capacity and in any other business that contracts with the firm other than as a lessor or provider of standard support services;

(b) The transferor does not derive undue benefit; and

(c) A writing documents the gift. When the socially and economically disadvantaged owner cannot reasonably produce better evidence, a receipt, canceled check, or transfer confirmation suffices, if the writing identifies transferor, transferee, amount or value, and date.

(d) Curative measures. The rules of this section do not prohibit transactions that further the objectives of, and compliance with, the provisions of this part. A socially and economically disadvantaged owner or firm may enter into legitimate transactions, alter the terms of ownership, make additional investments, or bolster underlying documentation in a good faith effort to remove, surmount, or correct defects in eligibility, as long as the actions are consistent with this part.

(i) The certifier may notify the firm of eligibility concerns and give the firm time, if the firm wishes, to attempt to remedy impediments to certification.

(ii) The firm may, of its own volition, take curative action up to the time of the certifier's decision. However, it must present evidence of curation before the certifier's decision.

(iii) The certifier may provide general assistance and guidance but not professional (legal, accounting, valuation, etc.) advice or opinions.

(iv) While the certifier may not affirmatively impede attempts to cure, it may maintain its decision timeline and make its decision based on available evidence.

(v) The certifier must deny or remove certification when the firm's efforts or submissions violate the rules in (e) of this subsection.

(e) Anti-abuse rules.

(i) The substance and not the form of transactions drives the eligibility determination.

(ii) The certifier must deny applications based on sham transactions or false representations, and it must decertify firms that engage in or make them. Transactions or representations designed to evade or materially mislead subject the firm to the same consequences.

(iii) Fraud renders the firm ineligible and subjects it to possible sanctions, suspension, debarment, criminal prosecution, civil litigation, and any other consequence or recourse not proscribed in this part.

(6) Debt-financed investments.

(a) Subject to the other provisions of this subpart, a socially and economically disadvantaged owner may borrow money to finance an investment to acquire ownership if the following requirements are met:

(i) Money that the socially and economically disadvantaged owner receives as a gift is their own money.

(ii) The firm does not finance any part of the investment, directly or indirectly. The socially and economically disadvantaged owner does not rely on the company's credit or other resources to repay any part of the debt or otherwise to finance any part of their investment.

(iii) The loan is real, enforceable, not in default, not offset by another agreement, and on standard commercial, arm's length terms. The loan agreement requires level, regularly recurring payments of principal and interest, according to a standard amortization schedule. The loan agreement must permit prepayments, including by refinancing.

(b) If the creditor forgives or cancels all or part of the debt, or the socially and economically disadvantaged owner defaults, the entire debt-financed portion of the socially and economically disadvantaged owner's purchase or capital contribution is no longer an investment. This does not prohibit refinancing with debt that meets the requirements of this section or preclude prompt cures of ownership issues.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-050, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-050, filed 6/7/19, effective 7/8/19; WSR 04-08-093, § 326-20-050, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-050, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 87-18-030 (Order 87-6), § 326-20-050, filed 8/27/87; WSR 84-09-002 (Order 84-5), § 326-20-050, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-050, filed 10/28/83.]

WAC 326-20-055 Subsidiaries. An eligible firm must be owned by an individual(s) who is socially and economically disadvantaged, rather than owned by another firm, except as provided below:

(1) If a socially and economically disadvantaged individual(s) owns and controls a firm through a parent or holding company that is established for tax, capitalization, or other purposes consistent with industry practice; and the parent or holding company owns and controls the subsidiary.

(2) The agency may certify such a subsidiary if there is cumulatively 51 percent ownership of the subsidiary by a socially and economically disadvantaged individual(s). Examples of such subsidiaries include, but are not limited to:

(a) A socially and economically disadvantaged individual(s) owns 100 percent of a holding company and has a wholly owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

(b) A socially and economically disadvantaged individual(s) owns 100 percent of the holding company and owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

(c) A socially and economically disadvantaged individual(s) owns 80 percent of the holding company and the holding company in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so the agency may certify the subsidiary, if all other requirements are met.

(d) Same as the examples in (b) and (c) of this subsection, but someone other than the socially and economically disadvantaged owner(s) of the parent or holding company control the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, the agency cannot certify it because it fails to meet control requirements.

(e) A socially and economically disadvantaged individual(s) owns 60 percent of the holding company and 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is approximately 31 percent. This is less than 51 percent, so the agency cannot certify the subsidiary.

(f) The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification or the gross receipts cap of WAC 326-20-096. Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(3) Businesses certified by the office are limited to having one level of ownership above an operating company. That is, there could be a "parent" company but not a "grandparent" company.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-055, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-055, filed 6/7/19, effective 7/8/19.]

WAC 326-20-060 Community ownership. (1) When an ownership interest arises in a nonapplicant spouse or registered domestic partner solely because of community property laws, the agency will not disqualify the applicant if both parties certify that:

(a) Only the applicant spouse or registered domestic partner participates in the management of the business; and

(b) The nonparticipating spouse or registered domestic partner relinquishes control over their community interest in the business.

(2) When an ownership interest arising in a nonapplicant spouse or registered domestic partner solely because of community property laws, the agency will not disqualify the applicant because of a provision for the nonapplicant spouse or domestic partner to cosign a financing agreement, contract for the purchase or sale of real or personal property, bank signature card, or other document.

(3) The agency must give particular scrutiny to the ownership and control of a firm to ensure it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual, when the ownership of the firm or its assets is transferred from a spouse or registered domestic partner who is not a socially and economically disadvantaged individual.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-060, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-060, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-060, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 84-09-002 (Order 84-5), § 326-20-060, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-060, filed 10/28/83.]

WAC 326-20-070 Counting ownership held in trust. In determining whether the fifty-one percent ownership requirement is met, no stock or ownership held in trust shall be counted, except in the following cases:

(1) Where both the trustee and the beneficiary are minorities, or both are women, or both are socially and economically disadvantaged individuals, and the trustee meets the control requirement; or

(2) Where the stock or ownership is held in an irrevocable trust for the benefit of a minority, a woman, or a socially and economically disadvantaged individual, and the minority, woman, or socially and economically disadvantaged beneficiary meets the control requirement.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-070, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-070, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-070, filed 10/28/83.]

WAC 326-20-080 Factors considered in determining control. (1)

General rules.

(a) One or more socially and economically disadvantaged owners of the firm must control it.

(b) Control determinations must consider all pertinent facts, viewed together and in context.

(c) A firm must have operations in the business for which it seeks certification at the time it applies.

The office does not certify plans or intentions, or issue contingent or conditional certifications.

(2) Socially and economically disadvantaged owner as final decision maker. A socially and economically disadvantaged owner must be the ultimate decision maker in fact, regardless of operational, policy, or delegation arrangements.

(a) Governance. Governance provisions may not require that any socially and economically disadvantaged owner obtain concurrence or consent from a nonsocially and economically disadvantaged owner to transact business on behalf of the firm.

(i) Highest officer position. A socially and economically disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(ii) Board of directors. A socially and economically disadvantaged owner must have present control of the firm's board of directors, or other governing body, through the number of eligible votes.

(A) Quorum requirements. Provisions for the establishment of a quorum must not block the socially and economically disadvantaged owner from calling a meeting to vote and transact business on behalf of the firm.

(B) Shareholder actions. A socially and economically disadvantaged owner's authority to change the firm's composition via shareholder action does not prove control within the meaning of this section.

(iii) Partnerships. In a partnership, at least one socially and economically disadvantaged owner must serve as a general partner, with control over all partnership decisions.

(iv) Exception. Bylaws or other governing provisions that require nonsocially and economically disadvantaged owner consent for extraordinary actions generally do not contravene the control rules of this section. Nonexclusive examples are a sale of the company or substantially all of its assets, mergers, and a sudden, wholesale change of type of business.

(b) Expertise. At least one socially and economically disadvantaged owner must have an overall understanding of the business and its

essential operations sufficient to make sound managerial decisions not primarily of an administrative nature. These requirements vary with type of business, degree of technological complexity, and scale.

(c) Socially and economically disadvantaged owner decisions. To distinguish control, the firm must show that the socially and economically disadvantaged owner has authority, critically analyzes information, and uses that analysis to make independent decisions. The firm must also demonstrate that the eligible owner makes the business decisions not primarily of an administrative nature.

(d) Delegation. A socially and economically disadvantaged owner may delegate administrative activities or operational oversight to a non-SED individual as long as at least one socially and economically disadvantaged owner retains unilateral power to fire the delegate(s), and the chain of command is evident to all participants in the company and to all persons and entities with whom the firm conducts business.

(i) No non-SED participant may have power equal to or greater than that of a socially and economically disadvantaged owner, considering all the circumstances. Aggregate magnitude and significance govern; a numerical tally does not.

(ii) Non-SED participants may not make nonroutine purchases or disbursements, enter into substantial contracts, or make decisions that affect company viability without the socially and economically disadvantaged owner's consent.

(iii) Written provisions or policies that specify the terms under which non-SED participants may sign or act on the socially and economically disadvantaged owner's behalf with respect to recurring matters generally do not violate this paragraph, as long as they are consistent with the socially and economically disadvantaged owner having ultimate responsibility for the action.

(e) Franchise and license agreements. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the certifier should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, if the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-080, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-080, filed 6/7/19, effective 7/8/19; WSR 04-08-093, § 326-20-080, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-080, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-12-060 (Order 88-5), § 326-20-080, filed 5/31/88; WSR 87-18-030 (Order 87-6), § 326-20-080, filed 8/27/87. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-080, filed 10/28/83.]

WAC 326-20-081 Independence. Only an independent business may be certified. An independent business is one the viability of which does not depend on its relationship with another business or businesses.

(1) In determining whether a potential certified business is an independent business, the office must scrutinize relationships with noncertified businesses in areas such as personnel, facilities, equipment, financial or bonding support, and other resources.

(2) The office must consider whether present or recent employer and employee relationships between the disadvantaged owner(s) of the potential certifiable business and noncertified business or persons associated with noncertified businesses compromise the independence of the potential certifiable business.

(3) The office must examine the business's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings compromises the independence of the potential certifiable business.

(4) In considering factors relating to the independence of a potential certifiable business, the office must consider the consistency of relationships between the potential certifiable business and noncertifiable businesses with normal industry practice.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-081, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-081, filed 5/11/92, effective 6/11/92; WSR 89-24-047, § 326-20-081, filed 12/1/89, effective 1/1/90.]

WAC 326-20-086 Native Americans—Native Hawaiians—Alaska native corporations. (1) A firm owned by a Native American tribe, native Hawaiian organization, or Alaska native corporation, rather than by individuals, may be eligible for certification. Such a firm must meet the size standards of WAC 326-20-096 and be controlled by a socially and economically disadvantaged individual(s) per WAC 326-20-080.

(2) A firm owned by a Native American tribe, native Hawaiian organization, or Alaska native corporation will not be considered affiliated with other businesses owned by the tribe, organization, or corporation if there is a firewall, such as a legally binding mechanism, in place to prevent firms from accessing the resources of the tribe's, organization's, or corporation's other businesses.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-086, filed 6/7/19, effective 7/8/19.]

WAC 326-20-087 Public works small business enterprise. (1) To foster small business participation, a race and gender-neutral certification program is created to eliminate obstacles to small business participation.

(2) Public works small business is a race and gender-neutral certification program that does not require social disadvantage under WAC 326-20-046. Other certification criteria, such as proof of economic disadvantage, ownership, business size, and control are required to be eligible for this program.

(3) Whenever issues arise regarding eligibility based on personal net worth, business size, ownership, and control which cannot be resolved by reference to these regulations, 49 C.F.R. Part 26 shall provide guidance to resolve such issues.

[Statutory Authority: 2023 c 395. WSR 23-21-006, § 326-20-087, filed 10/4/23, effective 11/4/23.]

WAC 326-20-094 Assignment of North American Industry Classification System (NAICS) code. The office must grant certification to a business only for specific types of work the disadvantaged owner(s) have the ability to control. To become certified in an additional type of work, the business needs to demonstrate its owner(s) are able to control the business with respect to that type of work. The office must not require the business to recertify or submit a new certification application but verify the disadvantaged owner(s) control of the business in the additional type of work.

(1) The types of work a business can perform, whether at initial certification or when a new type is added, must be described in terms of the most specific available North American Industry Classification System (NAICS) code for that type of work. In addition to applying the appropriate NAICS code, the office may apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one describing, as specifically as possible, the principal goods or services the business would provide to the state. Multiple NAICS codes may be assigned when appropriate. The office must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a business's certification.

(2) Businesses and recipients must check carefully to make sure the NAICS codes cited in a certification are current and accurately reflect work the office has determined the business owners can control. The business bears the burden of providing detailed company information the office needs to make an appropriate NAICS code designation.

(3) If a business believes there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified, the business may request the office, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the business is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients must not rely on such a description in determining whether a business's participation can be counted toward goals.

(4) The office is not precluded from changing a certification classification or description if there is a factual basis in the record. However, the office must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-094, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-094, filed 6/7/19, effective 7/8/19. Statutory Authority: RCW 39.19.030. WSR 04-08-075, § 326-20-094, filed 4/5/04, effective 5/6/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-094, filed 5/11/92, effective

6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-094, filed 4/18/88.]

WAC 326-20-098 Applicability of federal regulations. Whenever issues arise regarding whether a business qualifies as a small business concern which cannot be resolved by reference to these regulations, 49 C.F.R. Part 26 shall provide guidance to resolve such issues.

[Statutory Authority: RCW 39.19.030. WSR 04-08-075, § 326-20-098, filed 4/5/04, effective 5/6/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-098, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-098, filed 4/18/88.]

WAC 326-20-099 Small business concern requirement and size standards. (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW, a business must qualify as a small business concern for certification eligibility or certification update.

(a) A small business concern is a business that is independently owned and operated, is not dominant in its field of operations, and does not exceed the size limitations as set forth in the current table of North American Industry Classification System (NAICS) codes or corresponding industry size standards as set forth in 49 C.F.R. Part 26 and amendments or inflationary adjustments thereof.

(b) The number of employees or amount of annual receipts listed as the size standard for each NAICS code indicates the maximum allowed for a business, including its affiliates, to qualify as a small business concern.

(c) The office's determination of whether a business qualifies as a small business concern must be, whenever possible, based on criteria consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations, taking into consideration statewide markets.

(2) A business exceeding the small business size limits after certification by the office must be subject to graduation.

(3) At the time of application for certification and recertification, a business must demonstrate to the office that it is a small business concern. The office may verify the business is still a small business concern at any time after certification. In verifying the business's size, the office will review such financial documentation made available to the office, such as annual financial statements, federal income tax returns, state and local excise tax reports, and other relevant information.

(4) Except as otherwise provided in this chapter, affiliation occurs when either directly or indirectly:

(a) One business controls or has power to control the other;

(b) A third party or parties controls or has power to control both; or

(c) An "identity of interest" exists among them so the presumption of affiliation exists.

(5) When reference sets the maximum size standard to "annual receipts," a business exceeding the monetary figure in the standard is not eligible for certification. Annual receipts includes all revenue

received or accrued from sources, such as sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. The term "receipts" excludes proceeds from any of the following:

(a) Sales of capital assets and investments;

(b) Proceeds from transactions between a concern and its domestic and foreign affiliates;

(c) Proceeds from payments of notes receivable, accounts receivable, and amounts collected as an agent for another, such as gross bookings when a commission is earned, in which case only the commission earned constitutes revenue, and taxes collected for remittance to a taxing authority.

(6) The measurement period must comply with the following:

(a) The size of a business with three or more completed fiscal years will be determined by averaging the annual receipts of the business for the most recent three years;

(b) The size of a business with less than three fiscal years will be determined by computing the average of the annual receipts from the time the business formed, calculating total revenues compiled over the period divided by the number of weeks, including fractions of a week, multiplied by 52;

(c) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the office so elects or the business has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as shown on the federal income tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.

(7) Where the size standard is "number of employees," size eligibility requires the concern may not exceed the number of employees in that standard.

(a) "Number of employees" means that average employment of the concern, including domestic and foreign affiliate employees, based upon employment during each of the pay periods for the preceding completed 12 calendar months.

(b) In computing average employment, part-time and temporary employees count as full-time employees for each applicable pay period.

(c) If a concern has not been in business for 12 months, "number of employees" means the average employment of the concern, including its affiliates, during each of the pay periods during which it has been in business.

(8) No business, regardless of its primary NAICS code, is eligible for certification if it exceeds the largest annual revenue limit contained in 49 C.F.R. Part 26 and any amendments or inflationary adjustments thereof.

(9) In determining the business's primary industry, including its affiliates, the office must consider the distribution of receipts, employees, and costs in the differing industry areas the business operated during its most recently completed fiscal year. Other factors, such as patents, contract awards, and assets, may be considered.

(10) If the activities of the business encompass two or more NAICS codes, the first NAICS code listed in the directory is the primary industry classification of the business.

(11) A business exceeding the small business size limits after certification by the office must be subject to graduation.

(12) For purposes of utilization on projects funded by any operating modal of the U.S. Department of Transportation the maximum dollar size standard in 49 C.F.R. Part 26 as may be amended or adjusted for inflation, must apply, even if the size standard would otherwise be set by reference to number of employees. This standard is a maximum. Certified businesses are still subject to applicable lower limits on business size as established by the United States Small Business Administration and these regulations.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-099, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-099, filed 6/7/19, effective 7/8/19.]

WAC 326-20-110 Application process. (1) The office will develop and make available an application form for certification under chapter 39.19 RCW, and WAC 326-20-010. The application form may be modified at any time. The form will solicit enough information to determine whether the applicant is eligible for certification for state-funded projects and may include supplemental questions necessary to determine whether the applicant is eligible for certification for a specific federally funded project. As part of its investigation, the office may require minority, women, and socially and economically disadvantaged owners to provide information in addition to that requested on the application forms.

(2) Where additional information is required from the applicant business to complete the investigation, the office may request the information in writing and may impose a time limit of not more than twenty days in which the applicant must respond. The letter shall include notice to the applicant that, if the applicant fails to provide the information within the time requested, the file will be closed administratively. If all the requested information is not received by the office within the twenty days, the office may administratively close the file. The applicant will be notified in writing that the file has been administratively closed.

(3) Upon timely receipt of a written request for extension of the time to respond to the request for additional information, an extension of time to respond may be granted by the director. A showing of extenuating circumstances may be required, and granting of such request for extension is in the sole discretion of the director.

(4) Administrative closure means that the file is placed in inactive status, and further processing of the application is suspended. An applicant may petition the office for reopening or reactivation of the application file, by written request to the director. Requests to reopen will be granted in the sole discretion of the director. The applicant will be notified in writing of the director's decision to grant or deny the request to reactivate the file. If the request is denied, the applicant may submit a new application: Provided, That an applicant may not file more than one additional application within a year from the date of the closure. If the file is administratively reopened and processing resumed, the application will be processed as if it had been received on the date the request to reopen the file is granted by the director.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-110, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW

39.19.030(7). WSR 92-11-007, § 326-20-110, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 86-17-018 (Order 86-2), § 326-20-110, filed 8/11/86. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-110, filed 10/28/83.]

WAC 326-20-125 Processing fee. The office shall charge a nonrefundable fee for certification or recertification based upon the legal organizational structure of the business, as follows: Fifty dollars for a sole proprietorship, \$75 for a partnership (general or limited), and \$100 for all other legal organizational structures; e.g., corporation or limited liability company: Provided, however, That the office shall only charge a \$25 fee when the application requests DBE-only certification or recertification for all business legal organizational structures. The office shall also charge a nonrefundable \$20 fee for processing annual updates for all business legal organizational structures. The business must submit the fee with the application for certification, recertification, or annual update. The business applying for DBE-only certification may request a waiver of the fee. The request for fee waiver must be submitted to the office in writing. The office will review the request and make a determination in accordance with the Washington state department of transportation (WSDOT) DBE plan. An application is not deemed to be received by the office until the required fee is received by the office or the request of waiver of the fee has been approved by the office. The office may waive processing fees for the purpose of reducing barriers to certification. When the office waives fees, the office will publish notice of the conditions and duration of the waiver prominently on its website.

[Statutory Authority: RCW 39.19.210 and 39.19.030. WSR 23-05-062, § 326-20-125, filed 2/13/23, effective 3/16/23. Statutory Authority: RCW 39.19.210. WSR 04-08-074, § 326-20-125, filed 4/5/04, effective 5/6/04. Statutory Authority: RCW 39.19.030. WSR 94-11-115, § 326-20-125, filed 5/18/94, effective 6/18/94. Statutory Authority: 1993 c 195. WSR 93-16-080, § 326-20-125, filed 8/3/93, effective 9/3/93.]

WAC 326-20-130 Processing applications—Time. The office will process all applications as promptly as its resources permit. The office does not guarantee that any application will be processed within any certain time period and the inability to process an application by a certain time shall not subject the office or the state to liability.

[Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-130, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-130, filed 10/28/83.]

WAC 326-20-140 Duty to cooperate. The owners shall have the duty to cooperate fully in the office's investigation of the application, including promptly submitting any additional information requested by the office. This duty shall continue after the business is certified. In addition to any other penalties provided by law, the submission of false information to the office in connection with an ap-

plication for certification or renewal of certification shall be grounds for denial of certification, or decertification.

[Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-140, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-20-140, filed 10/24/88. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-140, filed 10/28/83.]

WAC 326-20-150 On-site investigations. The office may, whenever it deems necessary, conduct unannounced on-site investigations into the operations of a business. By submitting the certification application form, an applicant agrees that the office may conduct such investigations at any time. On-site reviews may be conducted in-person or virtually.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-150, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-150, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-150, filed 10/28/83.]

WAC 326-20-160 Burden of proof. The applicant has the burden of proving by a preponderance of the evidence that the applicant is eligible for certification or renewal of certification.

[Statutory Authority: RCW 39.19.030. WSR 17-13-020, § 326-20-160, filed 6/12/17, effective 8/1/17. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-160, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-160, filed 5/11/92, effective 6/11/92. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-160, filed 10/28/83.]

WAC 326-20-170 Decision. The office shall notify the applicant business of its decision to grant or deny certification promptly after the decision has been made. The decision shall indicate whether the certification is for the state program, a federal program or both. Where the office has denied the application, the decision shall set forth the bases for denial. Where the office has denied certification because the business did not meet one or more of the eligibility criteria, this shall not preclude the office from later denying the application on additional bases after further review.

[Statutory Authority: RCW 39.19.030. WSR 17-13-020, § 326-20-170, filed 6/12/17, effective 8/1/17. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-170, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 85-07-006 (Order 85-2), § 326-20-170, filed 3/8/85. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-170, filed 10/28/83.]

WAC 326-20-171 Denial of certification—Brief adjudicative proceeding. (1) If the office has reached the conclusion that an application for certification should be denied, the office shall notify the applicant in writing of its denial of certification. Within twenty days of receipt of this notification, the applicant may request a brief adjudicative proceeding under WAC 326-08-012, Application for and conduct of brief adjudicative proceedings. The written request for a review of the decision must contain the information specified in subsection (2) of this section.

(2) A request for brief adjudicative proceeding must set forth in detail the reasons the applicant believes the office's decision to deny certification is in error and include any additional information and documentation the applicant has to offer.

(3) When an applicant requests a brief adjudicative proceeding, the finality of the denial for appeal purposes is stayed until the brief adjudicative proceeding is complete.

(4) Upon receipt of a timely request for a brief adjudicative proceeding the office will review any additional information provided by the applicant, and may conduct further investigation, and/or schedule a meeting with the applicant.

(5) The office will notify the applicant in writing of its decision either to affirm the denial or to grant certification.

[Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-20-171, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-171, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-171, filed 4/18/88; WSR 86-17-018 (Order 86-2), § 326-20-171, filed 8/11/86.]

WAC 326-20-172 Decertification of firms. (1) A business may be decertified at any time the office determines that the business does not meet the current criteria for eligibility. A certified business shall notify the office, in writing, within thirty calendar days of any changes in its size, ownership, control, or operations. Failure to provide such notice in a timely manner may lead to decertification.

(2) When the office has determined that a certified business (a) no longer meets the certification criteria or (b) failed to supply additional information requested by the office in a timely manner, or (c) failed to give timely notice of changes, the office will provide the business with written notice of decertification.

(3) When a certified business notifies the office that it is no longer in business, has sold the business, or no longer wishes to remain certified, or when the certified business fails or refuses to return the renewal of certification form, the office will notify the business in writing of its decertification.

(4) Upon receipt of a notice of decertification letter, the business may request a brief adjudicative proceeding under WAC 326-08-012, Application for and conduct of brief adjudicative proceedings.

The request for brief adjudicative proceeding must be received by the office within twenty calendar days of receipt of the notice of decertification to the firm. The request for a brief adjudicative proceeding must set forth the reasons the business believes the office's decision to decertify is in error and must include any additional information and documentation the business has to offer.

(5) If the office has not received a request for a brief adjudicative proceeding nor any additional written documentation within twenty days of receipt of the notice of decertification letter, the decision to decertify becomes final, with no further rights to contest or appeal the decision.

(6) Upon receipt of the request for a brief adjudicative proceeding, the office will review the request and any additional information provided and may conduct further investigation and/or request that the owner(s) attend the brief adjudicative proceeding. The office will thereafter notify the business in writing of its decision to either affirm or reverse the firm's decertification.

(7) If the decision to decertify is appealed, the business shall remain certified until:

(a) The time provided by WAC 326-08-012 for appeal of the decision to decertify has expired without action by the business; or

(b) The entry of a final decertification order issued by the director pursuant to WAC 326-08-130.

(8) Decertification shall be effective immediately upon the occurrence of (a) or (b) of this subsection, and will not be stayed pending review by any court.

[Statutory Authority: RCW 39.19.030. WSR 11-11-030, § 326-20-172, filed 5/11/11, effective 6/11/11. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-172, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-172, filed 4/18/88; WSR 86-17-018 (Order 86-2), § 326-20-172, filed 8/11/86.]

WAC 326-20-173 Expiration of certification upon death or disability of owner of certified business. (1) Upon death or commencement of long-term disability of the minority, woman, or socially and economically disadvantaged owner of a certified business, the guardian of the disabled owner, the executor of the owner's estate, or other person shall notify the office in writing within thirty days of the death or documented disability. All notifications of long-term disability shall be documented by a statement from a qualified physician.

(2) "Long-term disability," for purposes of this section, shall mean the permanent inability to work, or inability to control the day-to-day operations of the business for a period of three consecutive months (ninety days or more), including both mental or physical incompetence.

(3) The certification of a business shall expire thirty days after receipt by the office of a notice of a death or documented disability of the owner of the business. Upon expiration of certification, the office shall notify the firm, in writing, that it has been decertified. The decertification decision will be considered final for purposes of WAC 326-08-015.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-173, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-173, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-22-017 (Order 88-9), § 326-20-173, filed 10/24/88.]

WAC 326-20-180 Effect of certification. Certification by OMWBE under the state program shall have the following effects:

(1) Certification shall entitle state agencies, educational institutions, and local government jurisdictions to count the business toward meeting their goals under this chapter, local legislation, and that require the participation of disadvantaged business enterprises. Certification shall be effective as of the date the decision is made in writing and will remain in effect for three years; except that the certification of DBEs shall be updated annually.

(2) Certification does not constitute compliance with any other laws or regulations, including contractor registration or prequalification, and does not relieve any business of its obligations under other laws or regulations. Certification does not constitute any determination by the office that the firm is responsible or capable of performing any work.]

(3) Certification as a minority business enterprise (MBE), minority woman [women's] business enterprise (MWBE), women's business enterprise (WBE), or combination business enterprise (CBE) satisfies the threshold requirement for a qualifying loan under RCW 43.86A.060 (2) (c).

[Statutory Authority: RCW 39.19.030, 43.86A.060, and 2007 c 500 §§ 1 and 2. WSR 08-03-116, § 326-20-180, filed 1/22/08, effective 2/22/08. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 04-08-093, § 326-20-180, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-180, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-180, filed 4/18/88; WSR 84-09-002 (Order 84-5), § 326-20-180, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-180, filed 10/28/83.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 326-20-185 Renewal. (1) State certification is valid for three years, unless:

(a) The office decertifies the firm; or

(b) The firm goes out of business or has a material change in ownership, which is considered more than a ten percent change in ownership.

(2) If the applicant submits a declaration of continued eligibility as outlined in subsection (5) of this section, the certification will remain valid during the time the office processes the affidavit and until the office notifies the firm of its decision.

(3) The office will generally renew the certification as long as the business continues to meet the eligibility criteria; the business provides evidence of some level of activity e.g., gross receipts or evidence of continuing efforts to promote the business; and there have been no determinations that the business has violated chapter 39.19 RCW or its implementing rules in Title 326 WAC.

(4) Debarment of a business by the state or one or more federal agencies or local government jurisdictions may be grounds for nonrenewal of certification.

(5) Each certified business must submit a declaration of continued eligibility prior to the date of its three-year certification. The declaration form will be provided to the certified business at least

sixty days before the date of its three-year certification. Failure to return the completed form within thirty days may lead to nonrenewal of certification.

(a) The office may ask for additional information or documentation on a case-by-case basis.

(b) For the first renewal after the enactment of this subsection, each eligible owner must submit a personal financial statement as outlined in WAC 326-20-049.

[Statutory Authority: RCW 39.19.030. WSR 17-13-020, § 326-20-185, filed 6/12/17, effective 8/1/17. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-185, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-09-047 (Order 88-5), § 326-20-185, filed 4/18/88; WSR 85-07-006 (Order 85-2), § 326-20-185, filed 3/8/85.]

WAC 326-20-190 Directory of certified businesses. The office will maintain a directory of businesses certified by the office for state projects and for federally funded projects.

[Statutory Authority: RCW 39.19.030. WSR 17-13-020, § 326-20-190, filed 6/12/17, effective 8/1/17. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-190, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 85-07-006 (Order 85-2), § 326-20-190, filed 3/8/85. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-190, filed 10/28/83.]

WAC 326-20-220 Resubmission of applications. (1) A business which withdraws its application and subsequently reapplies for certification within a year may be required to submit a new application and additional documentation at the discretion of the office. A business may not file more than two applications in any calendar year.

(2) A business which is denied certification, or has been decertified, will be required to submit a new application and may be asked to submit additional documentation. The office may waive the reapplication requirement for good cause.

(3) An applicant must wait one calendar year to reapply if denied certification.

(4) A business which makes a change in ownership, control, or organization of the business after denial or decertification is not entitled to appeal the denial or decertification on the basis of that change.

[Statutory Authority: RCW 39.19.030. WSR 17-13-020, § 326-20-220, filed 6/12/17, effective 8/1/17. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-220, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 86-17-018 (Order 86-2), § 326-20-220, filed 8/11/86. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-220, filed 10/28/83.]

WAC 326-20-230 Factors considered in determining performance of commercially useful function. (1) A business performs a commercially useful function when:

(a) The work to be performed by the business is within the scope of work included in the North American Industrial Classification System code(s) that the business is certified under or applying to be certified under.

(b) The business is or will be responsible for executing a distinct element of work in the performance of a contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved; and

(c) The business is responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (when applicable) and paying for the material itself.

(2) A business does not perform a commercially useful function when:

(a) Its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. The agency will consider similar transactions in which certified firms do not participate to evaluate standard industry practice.

(b) It does not exercise responsibility for at least thirty percent of the total cost of its contract with its own workforce, or it subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

[Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, amended and recodified as § 326-20-230, filed 6/7/19, effective 7/8/19; WSR 04-08-093, § 326-02-045, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-02-045, filed 5/11/92, effective 6/11/92.]