Unified Certification Manual

Updated July 2026

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SECTION 1. DEFINITIONS

1.1 UCP

"UCP" means this document, the West Virginia Unified Certification Program. This document is incorporated into the Unified Certification Agreement

1.2 Committee

"Committee" means the Committee created by this document to administer and implement the Unified Certification Program.

1.3 Contract

"Contract" means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

1.4 Contractor

"Contractor" means one who participates, through a contract or subcontract (at any tier), in a USDOT-assisted highway, transit, or airport program.

1.5 Disadvantaged Business Enterprise or DBE

"Disadvantaged Business Enterprise" and "DBE" mean a for-profit small business concern:

A. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and

B. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and

C. That meets all certification criteria under 49 CFR, Part 26, and has been certified by the UCP.

1.6 Immediate Family Member

"Immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in- law, sister-in-law, brother-in-law, domestic partner, and civil unions recognized under WV State law.

1.7 Indians, NHOs, and ANCs

"Indian tribe" means any federally or State-recognized Tribe, band, nation, or other organized group of Indians (Native Americans), or an ANC. A "tribally owned concern" is that which is at least 51 percent owned by an Indian tribe as defined in this section.

1.8 Joint Venture

"Joint venture" means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

- *Notice of decision* or *NOD* means a determination that denies a firm's application or decertifies a DBE.
- *Notice of intent* or *NOI* means a recipient's letter informing a DBE of a suspension or proposed decertification.

1.9 Operating Administration

"Operating administration" means the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), or Federal Transit Administration (FTA).

1.10 Personal Net Worth

"Personal net worth" means the net value of an individual's reportable assets and liabilities, as calculated under 49 C.F.R. 26.68. Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

1.11 Primary Industry Classification

"Primary Industry Classification" means the six-digit North American Industrial Classification System (NAICS) code designation that best describes the primary business of a firm. Hard copies of the North American Industry Classification System (NAICS) are available from the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA 22262). NAICS information may also be obtained online at: https://www.census.gov/naics/

1.12 Principal Place of Business

“Principal Place of Business” means the business location where the individuals who manage the firm’s day-to-day operations spend the majority of their working hours. If the offices from which management is directed and where the business records are kept are in different locations, the WVDOT will determine the principal place of business for DBE program purposes.

1.13 Recipient

"Recipient" means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

1.14 Regulation

"Regulation" means 49 CFR, Part 26, and any revisions, additions, deletions, or replacements.

1.15 Socially and Economically Disadvantaged Individual

"Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, all applicants shall qualify as socially and economically disadvantaged if they can meet the relevant criteria described in § 26.67. Being born in a particular country does not, standing alone, mean that a person is necessarily socially and economically disadvantaged.

Non-presumptive Disadvantage. All applicants must demonstrate social and economic disadvantage (SED) affirmatively based on their own experiences and circumstances within American society, and without regard to race or sex.

(1) To satisfy the SED requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier a Personal Narrative (PN) that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons.

(2) The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of the type and magnitude, and must establish that the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

(3) The owner must attach to the PN a current PNW statement and any other financial information considered relevant.

1.16 Spouse

“Spouse” means a married person, including a person in a domestic partnership or a civil union recognized under West Virginia law.

1.17 State

"State” means the State of West Virginia.

1.18 Unified Certification Program or UCP

"Unified Certification Program" and "UCP" mean the program created by this document.

1.19 USDOT

"USDOT" means the United States Department of Transportation.

1.20 USDOT Secretary

"USDOT Secretary" means the Secretary of the United States Department of Transportation.

1.21 WVDOT

"WVDOT" refers to the West Virginia Department of Transportation.

1.22 "WVDOT CRC or CRC"

"WVDOT CRC or CRC" means the Civil Rights Compliance Division

SECTION 2. ADMINISTRATION

2.1 West Virginia Unified Certification Program

The West Virginia Unified Certification Program ("the UCP") is established in accordance with 49 CFR §26.81 to implement USDOT directives and guidance concerning all certification matters. The WVDOT CRC Division coordinates the activities of the West Virginia Unified Certification Program on behalf of all USDOT recipients.

2.2 West Virginia Unified Certification Committee

A. UCP Committee Established

The West Virginia Unified Certification Program Committee ("the UCP Committee") is established to certify all DBEs on WVDOT-assisted projects in West Virginia. The membership of the UCP Committee will consist of the following persons, or their designees:

1. Director of the Civil Rights Compliance Division or designee (Committee chairperson)
2. Director of Contract Administration or designee (Committee Co-Chairperson)
3. Director of the Public Transit Division or designee
4. Director of the Engineering Division or designee
5. Director of the Finance Division or designee
6. CRC attorney (non-voting legal counsel).

B. UCP Committee Authority and Duties

1. The Committee will make certification decisions on behalf of all agencies that receive USDOT funds in the State, with respect to participation in the USDOT DBE Program:
   a. Certification decisions by the UCP Committee will be binding on all agencies within the State that receive USDOT funds.
   b. The UCP Committee will provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all agencies within the State that receive USDOT funds.

c. The UCP Committee will carry out all obligations related to certification and nondiscrimination that are established for agencies that receive USDOT funds.

2. Ensure that only firms that are eligible DBEs under 49 CFR 26 participate as DBEs in each agency's program; the Committee will accomplish this by strictly applying the eligibility standards of 49 CFR 26 to all eligibility determinations (this does not require the UCP Committee to monitor the agencies that receive USDOT funds);

3. Maintain a Unified DBE directory containing all firms certified by the UCP Committee; in the listing for each firm, include its address, phone number, and the types of work the firm has been certified to perform as a DBE. The UCP Committee will also:

   a. Make the directory available to the public electronically; and

      i. The WVDOT CRC Division will maintain the electronic directory on its website for public viewing.

      ii. The electronic directory will be updated monthly by the WVDOT CRC Division.

   b. Make updated information available to contractors and the public on request.

4. Cooperate fully with oversight, review, and monitoring activities of the USDOT and its operating administrations.

5. Implement USDOT directives and guidance concerning certification matters; and

6. Make all decisions administering and implementing the UCP.

D. <u>All Certifications by the UCP Committee will be Pre-Certifications</u>

I.E., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

E. <u>Certification of Out-of-State Firms</u>

The UCP Committee will not process an application for certification from a firm having its principal place of business outside the State if the firm is not certified by the UCP in the state in which it maintains its principal place of business. As the "home state" or jurisdiction of the original certification (“JOC”), the Committee will share its information and documents regarding the firm with other state UCPs considering the firm's application under 49 CFR 26.

F. <u>WVDOT’s Commitment</u>

The WVDOT will ensure that the UCP Committee has sufficient resources and expertise to carry out the requirements of this document.

2.3 Nonapplicable Contracts

A. If the WVDOT is letting a contract and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this agreement does not apply to the contract.

B. If the WVDOT is letting a contract in which no USDOT is participating, this agreement does not apply to the contract; however, the provisions of Title VI and the Civil Rights Restoration Act of 1987 are still applicable to all contracts and all aspects of the WVDOT's operations.

SECTION 3. PROCEDURES

3.1 Policy for Processing Applications

A. The UCP Committee will process applications for certification as a Disadvantaged Business Enterprise for firms that are:

  1. Organized for profit and whose principal place of business is located within West Virginia, OR
  2. Organized for profit with a principal place of business outside West Virginia AND certified by the state in which that principal place of business is located (the firm's "home state")

B. Firms determined as ineligible to participate in the DBE program and have been denied certification based on 49 CFR, Parts 26 will not reapply for certification for twelve (12) months from the date of denial, unless the UCP determines a shorter waiting period at the time of the denial.

3.2 Application and Decision

A. Application – To become a DBE, a firm must submit an application to the UCP:

WV DBE Program	Telephone: 304-558-3931
WVDOT CRC Division, Bldg. 5,	Facsimile: 304-558-4236
Charleston, WV 25305	

  1. *West Virginia Firms*: West Virginia firms will submit the application form available online at: https://transportation.wv.gov/crc/DBE/Pages/default.aspx. Hard copies may be obtained from the WV DBE Program at the address shown above. The West Virginia UCP will utilize the form provided in 49 CFR without change or revision.
  2. *Out-of-State Firms*: Out-of-state firms must submit a cover letter that specifies that the DBE is applying for interstate certification, identifies all the UCPs in which the DBE is certified (including the UCP that originally certified it), an electronic image

of the UCP directory of the original UCP that shows DBE certification, and a new DOE (Declaration of Eligibility).

3. *CRC Review*: Within 10 business days of receiving the documents required under this section, the WV UCP will confirm the certification of the DBE, preferably by reference to the UCP directory of the JOC.

B. Onsite Reviews

1. *West Virginia Firms:* For firms with a principal place of business located in West Virginia, an onsite review will be conducted by the WVDOT CRC Division, virtually or in person; the reviewer will:

    a. Interview the principal officers of the firm and review their resumes and/or work histories, maintain a complete audio recording; and

    b. Perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in the local area.

2. *Out-of-State Firms:* The UCP Committee must accept the DBE's certification from its jurisdiction of original certification (JOC). The JOC is the State in which the firm maintains its principal place of business at the time of application, unless and until the firm loses certification in that jurisdiction.

C. Committee Meetings

1. The WVDOT CRC will report its findings to the UCP Committee.
2. The UCP Committee will meet monthly, either in person, by phone, electronically, or any combination thereof, to review and determine certification eligibility.
3. Three (3) UCP Committee members, or designee(s), will constitute a quorum, and the approval of the quorum regarding certification decisions will be binding on the entire UCP Committee.
4. The Committee may require a West Virginia applicant firm to appear in person at a Committee meeting as part of the application process.

D. Certification Decisions

1. The UCP Committee will take all the following steps in determining whether a DBE firm meets the standards of Section 3 of this document:

    a. Review the Uniform Certification Application and supporting documents submitted by the firm,

    b. Review the onsite report completed by the WVDOT CRC Division, or, in the case of an out-of-state applicant, by the home state certifying authority,

    c. Make a decision regarding certification based upon the record as a whole.

E. Timeline for Decisions

1. *West Virginia Firms*: The UCP Committee will make decisions on certification applications from West Virginia firms within 90 days of receiving from the applicant firm all information required under 49 CFR 26. The UCP Committee may extend this time period once, for no more than an additional 30 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.
2. *Out-of-State Firms*: The UCP Committee will make decisions on certification applications from out-of-state firms within 10 business days of receipt of all information required from the firm under 49 CFR 26.
3. *All Firms*: The UCP Committee's failure to make a decision by the applicable deadline under this section is deemed a constructive denial of the application. Such constructive denial will serve as a basis for the applicant firm to appeal to USDOT under section 3.3 of this agreement.

F. Records

1. The WVDOT CRC Division will maintain the files of processed DBE applications.
2. When any agency that receives USDOT funds makes a written request for certification information in connection with its consideration of the eligibility of a firm (e.g., including application materials or the report of a site visit, if the WVDOT has made one to the firm), the WVDOT CRC Division will promptly make the information available to the USDOT-recipient agency.
3. Once the UCP Committee has certified a DBE, the DBE will remain certified unless and until its certification has been removed through the procedures of subsection 3.4 of this document.

G. Monitoring of Continuing Eligibility of Certified Firms

1. *Affidavit of Change – Within 30 Days*: Every DBE certified by the UCP Committee will inform the WVDOT CRC Division in writing of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this document or any material change in the information provided in the UCP Committee's application form.
   a. Changes in management responsibility among members of a limited liability company are covered by this requirement.
   b. The DBE will attach supporting documentation describing in detail the nature of such changes.
   c. The notification of changes will take the form of an affidavit sworn to by the owners of the firm before a person who is authorized by State law to administer oaths executed under penalty of perjury of the laws of the United States.
   d. The DBE will provide the written notification within 30 days of the occurrence of the change.

e. If the DBE fails to make timely notification of such a change, it will be deemed to have failed to cooperate in accordance with section 26.83(1)(3) of the Regulation. It will be subject to decertification in accordance with the procedures outlined in § 3.4 of this document.

2. _Declaration of Eligibility (DOE) – Annually_: Every DBE will provide to the UCP Committee via the WVDOT CRC Division, on the anniversary of the date of the DBE's original certification, a new DOE along with the following. For out-of-state firms, the anniversary date is the date certified by the JOC.

   a. Documentation affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR 26 or any material changes in the information provided in its application form, except for changes about which the DBE has notified the UCP Committee under paragraph (1) of this section, above.

   b. The DOE form can be found at https://www.transportation.gov/DOE

3. _Failure to Comply_: If a DBE firm fails to provide either the DOE or supporting documentation promptly, it will be deemed to have failed to cooperate and will be subject to decertification under section 3.4 of this document.

3.3 Denials

A. When the UCP Committee denies a request by a firm to be certified as a DBE, the WVDOT CRC Division will provide the firm a NOD (Notice of Decision) of the UCP Committee's reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant upon request.

B. When a firm is denied certification, a time period of twelve months will elapse before the firm may reapply through the WVDOT CRC Division for certification. The reapplication period begins on the date after the denial letter is emailed, as required by paragraph (A).

C. A firm may request that a denial be evaluated by a WVDOT Review Committee, composed of knowledgeable individuals who did not participate in the original evaluation of the application.

D. When the UCP Committee makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the USDOT under section 3.5 of this agreement.

3.4 Removals

A. Basis for Decertification Proceeding

1. *Ineligibility Complaints*: Any person may file a written complaint with the UCP Committee alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The UCP Committee does not accept general allegations that a firm is ineligible, nor does it accept anonymous complaints. Confidentiality of complainant identities will be protected as provided in section 49 CFR 26.109(b).

   a. The UCP Committee will refer the complaint to the WVDOT CRC Division, which will review its records concerning the firm, any material provided by the firm and the complainant, and other available information and present its results and recommendations to the UCP Committee. The UCP Committee may request additional information from the firm or cause any other investigation to be conducted that it deems necessary.

   b. If the UCP Committee determines, based on its review, that there is reasonable cause to believe that the firm is ineligible, it will provide a NOI (Notice of Intent) by email to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the UCP Committee determines that reasonable cause does not exist, it will notify the complainant and the firm by email of this determination and the reasons. All findings on the issue of reasonable cause will specifically reference the evidence in the record on which each finding is based.

2. *UCP Committee-Initiated Proceedings*: The UCP Committee may determine that a currently certified DBE firm may not be eligible for DBE certification. This determination may be based on notification by the firm of a change in its circumstances or other information that comes to the attention of the UCP Committee. If this occurs, the UCP will request that the WVDOT CRC Division conduct a review and inform the UCP Committee of the results. If the UCP Committee finds by a preponderance of the evidence that the DBE firm is no longer eligible, the Committee will provide email notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. All findings will specifically reference the evidence in the record on which each finding is based.

3. *USDOT-Directed Action*: If the USDOT determines that information in WVDOT certification records, or other available information, provides reasonable cause to believe that a DBE-certified firm does not meet the eligibility criteria, the USDOT may direct the WVDOT to initiate a proceeding to remove the firm's certification. When this occurs, the WVDOT will provide notice to the firm and begin a decertification proceeding.

B. Hearing

When a firm is notified that there is reasonable cause to remove its eligibility as provided in paragraphs A.1, A.2, or A.3 of this section, the firm will be given an opportunity for an informal hearing, at which the firm may respond in person to the specific findings supporting the recommendation to remove its eligibility. The firm may provide information and arguments supporting its continued certification. When a Notice of Intent (NOI) to remove eligibility is issued, the hearing must be scheduled on a date **no fewer than 30 days and no more than 45 days** from the date of the NOI. The DBE must email the certifier stating they want a hearing within **10 days** of receiving the NOI, or they waive their right to a hearing.

1. In such a proceeding, the decision maker bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of 49 CFR 26.
2. The UCP Committee will maintain a complete record of the hearing and will retain the original record of the hearing at the offices of the WVDOT. The UCP Committee may charge the firm for the cost of copying the record.
3. The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, the decision maker bears the same burden of proving that the firm does not meet the certification standards; proof must still be by a preponderance of the evidence, as it would if a hearing were held.

C. *Separation of Functions*: The UCP Committee will ensure that the decision in a proceeding to remove a firm's eligibility is made by neutral personnel. No office or personnel who sought the removal of eligibility will participate in the eligibility decision. Further, the UCP Committee will ensure that any office or personnel involved in making a removal decision are not subject to direction from the office or personnel proposing the removal. Decision makers will be knowledgeable about the certification requirements of the DBE program and this document.

D. *Grounds for Decision*: The UCP Committee will base decisions to remove a firm's eligibility only on one or more of the following:

1. Changes in the firm's circumstances since the certification of the firm by the Committee that render the firm unable to meet the eligibility standards of 49 CFR 26,
2. Information or evidence not available to the UCP Committee at the time the firm was certified,
3. Information relevant to eligibility that has been concealed or misrepresented by the firm,

4. A change in the certification standards or requirements of the USDOT since the UCP Committee certified the firm,
5. The decision to certify the firm was clearly erroneous,
6. Failure by the firm to cooperate with the UCP requirements,
7. The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program, OR
8. The firm has been suspended or debarred for conduct related to the DBE program. (A decision to remove a firm for this reason is not subject to the hearing procedures)

E. Notice of Decision

1. Firms will be provided written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason.
2. The notice will inform the firm of the consequences of the decision and of the availability of an appeal to the USDOT.
3. Copies of the notice will be sent to the complainant in an ineligibility complaint or the USDOT operating administration that directed the initiation of the proceeding.
4. Notices sent to complainants, other than USDOT operating administrations, will not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

F. Status of Firm During Proceeding

1. A firm remains an eligible DBE during the pendency of the internal proceeding to remove its eligibility.
2. The firm does not become ineligible until the issuance of the notice provided for in paragraph E of this section, above.

G. Effects of Removal of Eligibility

1. When the UCP Committee removes a firm's eligibility, it will take the following action:

   a. When a prime contractor has made a commitment to using the ineligible firm, or the WVDOT or other agency has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before the UCP Committee issues the decertification notice provided for in paragraph (A) of this section, the ineligible firm does not count toward the project goal or overall goal. The prime contractor must meet the contract goal with an eligible DBE firm or demonstrate a good-faith effort to do so.

   b. If a prime contractor has executed a subcontract with the firm before the UCP Committee has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the project and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where the WVDOT or other agency has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance on the project remaining after the UCP Committee issued the notice of its ineligibility will not count toward the WVDOT's or other agency's overall goal but may count toward the project goal.

c. If a prime contractor is permitted to continue using a decertified firm on an existing contract, the prime contractor **may not extend or add work** to that contract without prior written consent from the recipient agency

d. DBE credit **cannot be counted toward any goal** if the firm was decertified because it was purchased by or merged with a non-DBE firm.

2. *Exception*: If the DBE's ineligibility is caused solely by its having exceeded the size standard during its performance on the project, participation on that project is counted toward overall and project goals.

3.5 Summary Suspension of Certification

A. Summary suspension is an extraordinary remedy for lapses in compliance that cannot reasonably or adequately be resolved in a timely manner by other means.

1. *Mandatory*: The certifier must summarily suspend a DBE's certification when:
   a. The certifier has clear and credible evidence of the DBE's or its socially and economically disadvantaged owner's ("SEDO") involvement in fraud or other serious criminal activity.
   b. The OA, with oversight, so directs.

2. *Elective*: The certifier must summarily suspend a DBE certification when:
   a. The certifier has the discretion to suspend summarily if it has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity.
   b. An owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation as required every year.

B. The UCP will take action as directed by USDOT.

C. When a firm is suspended, the UCP will notify the firm, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN must explain the action, the reason for it, the consequences, and the evidence on which the certifier relies.

D. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding to determine whether the DBE is eligible to participate in the program and, consequently, should be removed. The hearing date must be a business day that is at least 15 but not more than 25 days after the date of the notice. The DBE may respond in writing in lieu of or in addition to attending the hearing; however, it will have waived its right to a hearing if it does not confirm its attendance within 10 days of the notice and will have forfeited its certification if it does not acknowledge the notice within 15 days.

E. The show-cause hearing will be conducted as a video conference on a standard commercial platform that the DBE may readily access at no cost.

F. The suspension takes effect when the DBE receives, or is deemed to have received, the SSN.

G. While suspended, the DBE will not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension will not be counted toward the overall goal. The DBE may continue to perform under an existing contract executed before the DBE received an SSN and will be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

H. Following receipt of the SSN, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the UCP will either lift the suspension and reinstate certification or commence a decertification action. If the UCP commences a decertification proceeding, the suspension remains in effect for 30 days.

I. The decision to immediately suspend a DBE is appealable to the USDOT. Failure to either lift the suspension and reinstate the firm or commence a decertification proceeding is appealable to the USDOT as a constructive decertification.

3.6 Procedure for USDOT Appeal

Parties wishing to appeal UCP decisions must email the appeal to the USDOT within 45 days of the UCP Committee's final decision. The appeal will include information and arguments supporting the reversal of the UCP Committee's decision.

The letter will be addressed to:

U.S. Department of Transportation
Office of Civil Rights
1200 New Jersey Avenue, SE
Washington, D.C. 20590

S33AppealsManagementRecords@dot.gov

Pending the USDOT's decision on an appeal, the UCP Committee's decision remains in effect. Neither the WVDOT nor the USDOT stay the effect of the UCP Committee's decision while it is considering an appeal.

3.7 Result of Review or Appeal

A. The decision on a review or appeal under section 3.5 of this document is binding on the UCP Committee whose decision was appealed.

B. The WVDOT shall take the action directed by a WVDOT Hearing Committee or USDOT decision immediately upon receiving written notice of it.

C. Where the USDOT has upheld the denial of certification or removal of eligibility from a firm by another agency recipient of USDOT funds, or by another UCP, or directed the removal of a firm's eligibility, the UCP Committee may commence a proceeding to remove the firm's eligibility, as provided in section 3.3 of this document. The UCP Committee will not remove the firm's eligibility absent such a proceeding. Where USDOT has reversed a denial of certification to or removal of eligibility from a firm, the UCP Committee will take the USDOT action into account in any certification action involving the firm. However, the UCP Committee will not be required to certify the firm based on the USDOT decision.

SECTION 4. STANDARDS

4.1 Generally

A. In determining whether to certify a firm as eligible to participate as a DBE, the UCP Committee will apply the standards of this section.

B. The UCP Committee will evaluate the eligibility of a firm on the basis of present circumstances. The UCP Committee will not refuse to certify a firm solely on historical information indicating a lack of ownership or control by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of 49 CFR 26. The UCP Committee will not refuse to certify a firm solely because it is newly formed.

C. DBE firms and firms seeking DBE certification will cooperate fully with the UCP Committee's requests for information relevant to the certification process. Failure or refusal to provide such information is grounds for denial or removal of certification.

D. Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

E. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

F. The UCP Committee will not require a DBE firm to be prequalified as a condition for certification.

4.2 Burdens of Proof

A. The firm seeking certification has the burden of demonstrating to the UCP Committee, by a preponderance of the evidence, that it meets the requirements of this section concerning economic disadvantage, business size, ownership, and control.

B. Determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and economic disadvantage will be made by considering all the facts in the record, viewed as a whole.

4.3 (Reserved)

4.4 Business Size

A. To be an eligible DBE, a firm (including its affiliates) will be an existing small business, as defined by Small Business Administration (SBA) standards. The UCP Committee will apply the current SBA business size standard(s) found in 13 CFR part 121, as appropriate, to the type(s) of work the firm seeks to perform under DOT-assisted contracts.

B. Even if it meets the requirements of paragraph (A) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts as defined by SBA regulations (see 13 CFR 121.402), in excess of $32.82 million over the firm’s previous three fiscal years. (USDOT may adjust this number annually)

4.5 Eligibility

A. <u>Standards</u>

1. The UCP Committee will require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for certification to certify that they have a personal net worth that does not exceed **$2.047 million.** Each individual who obtains this certification must support it with a signed, notarized statement of personal net worth and appropriate supporting documentation. The USDOT personal net worth form must be used without change or revision. To accurately determine an individual’s personal net worth, additional financial information may be required on a case-by-case basis, including

information concerning assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company.

2. When determining an individual's personal net worth, the UCP will,
   a. The owner excludes her ownership interest in the applicant or DBE,
   b. The owner excludes her share of the equity in her primary residence. There is no exclusion when the SEDO does not own the home,
   c. The owner includes the full value of the contents of her primary residence unless she cohabits with a spouse or domestic partner, in which case she excludes only 50 percent of those assets,
   d. The owner includes the value of all motor vehicles, including watercraft and ATVs, titled in her name or of which she is the principal operator,
   e. The owner excludes the liabilities of any other party and those contingent on a future event or of undetermined value as of the date of the PNW Statement,
   f. The owner includes her proportional share of the balance of a debt on which she shares joint and severable liability with other primary debtors,
   g. The owner includes assets transferred to relatives or related entities within the two years preceding any UCA or DOE, when the assets so transferred during the period have an aggregate value of more than $20,000. Relatives include the owner's spouse or domestic partner, children (whether biological, adopted, or stepchildren), siblings (including stepsiblings and those of the spouse or domestic partner), and parents (including stepparents and those of the spouse or domestic partner). Related entities include for-profit privately held companies of which any relative is an owner, officer, director, or equivalent; and family or other trusts of which the owner or any relative is grantor, trustee, or beneficiary, except when the transfer is irrevocable,
   h. The owner excludes direct payments, on behalf of immediate family members or their children, to unrelated providers of healthcare, education, or legal services,
   i. The owner excludes direct payments to providers of goods and services directly related to a celebration of an immediate family member's or that family member's child's significant, normally non-recurring life event,
   j. The owner excludes from net worth all assets in qualified retirement accounts but must report those accounts, the value of the assets in them, and any significant terms and restrictions on the assets' use to the certifier.
   k. The UCP must not attempt to rebut presumed economic disadvantage as a matter of course, and it must avoid imposing unnecessary burdens on individual owners.
   l. If the Committee has a reasonable basis to believe that an individual is not, in fact, socially and/or economically disadvantaged, the UCP Committee must

initiate a decertification proceeding, regardless of the firm's DBE status. The proceeding will follow the review and appeal procedures.

m. When an individual's economic disadvantage has been rebutted, their ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until they make an individual showing of economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds the standard outlined in the regulation, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as their personal net worth remains above that amount.

B. *Transfers within Two Years*:

The UCP will attribute to an individual claiming economic disadvantage any assets which that individual has transferred to an immediate family member, to a trust, a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years before applying for participation in the DBE program or within two years of a review of the firm's annual affidavit, 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. Additionally, assets transferred to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements, will not be attributed to the individual claiming disadvantaged status.

1. *Individual Determinations of Economic Disadvantage*. An individual whose personal net worth exceeds $2.047 million is not deemed to be economically disadvantaged. The UCP Committee will require that applicants provide sufficient information to permit appropriate determinations.

2. *Confidentiality.* Notwithstanding any provision of Federal or State law, the UCP will not release an individual's PNW statement nor any documents about it to any third party without the written consent of the submitter. This section does not apply to information transmitted to USDOT in any certification appeal proceeding under § 26.89 or to any other State to which the individual's firm has applied for certification under § 26.85.

4.6 Ownership

A. A SEDO must own at least 51 percent of each class of ownership of the firm. Each SEDO whose ownership is necessary to the firm's eligibility must demonstrate that its ownership satisfies the requirements of this section. If not, the firm is ineligible.

B. A SEDO's acquisition and maintenance of an ownership interest meets the requirements of this section only if the SEDO demonstrates the following:

1. *Acquisition*: The SEDO acquires ownership at fair value and by one or more "investments," as defined in paragraph (c) of this section.

2. *Proportion*: No owner derives benefits or bears burdens that are clearly disproportionate to their ownership shares.
3. *Maintenance*: This section's requirements continue to apply after the SEDO's acquisition and the firm's certification. That is, the SEDO must maintain its investment and its proportion relative to those of other owners.
   a. The SEDO may not withdraw or revoke her investment.
   b. When an existing co-owner contributes significant, additional, post-acquisition cash or property to the firm, the SEDO must increase her own investment to a level not clearly
   c. An organic increase in the value of the business does not affect maintenance because the value of the owners' investments remains proportional. In Example 2 above, the SEDO and the non-SEDO own the new asset at 60 percent and 40 percent of its net value of $60,000.

C. A SEDO 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.
   1. Investments are unconditional and at full risk of loss.
   2. Investments include a significant outlay of the SEDO's own money.
   3. 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.
      a. The person who has title to the asset owns it in proportion to her share of title.
      b. However, the title rule is deemed not to apply when it produces a certification result that is manifestly unjust.
   4. If the SEDO jointly (50/50) owns an investment of cash or property, the SEDO may claim at least a 51 percent ownership interest only if the other joint owner formally transfers to the SEDO enough of his ownership in the invested asset(s) to bring the SEDO's investment to at least 51 percent of all investments in the firm. Such transfers may be gifts described in paragraph E of this section.

D. *Purchases and Capital Contributions*
   1. A purchase of an ownership interest is an investment when the consideration is entirely monetary and not a trade of property or services.
   2. Capital that the SEDO 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.

3. Contributions of time, labor, services, and the like are not investments or components of investments.
4. Loans are not investments. The proceeds of loans may be investments to the extent that they finance the SEDO's qualifying purchase or capital contribution.
5. Debt-financed purchases or capital contributions are investments when they comply with the rules in this section.
6. Guarantees are not investments.
7. The firm's purchases or sales of property, including ownership in itself or other companies, are not the SEDO's investments.
8. Other persons' or entities' purchases or capital contributions are not the SEDO's investments.

E. A gift to the SEDO 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 SEDO invests. The following requirements apply to gifts on which the SEDO relies for her investment.

1. 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,
2. The transferor does not derive undue benefit, AND
3. A writing documents the gift. When the SEDO cannot reasonably produce better evidence, a receipt, cancelled check, or transfer confirmation suffices, if the writing identifies transferor, transferee, amount or value, and date.

F. *Curative Measures*

1. The rules of this section do not prohibit transactions that further the objectives of, and compliance with, the provisions of this part. A SEDO 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.
   a. 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.
   b. 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.
   c. The certifier may provide general assistance and guidance, but not professional (legal, accounting, valuation, etc.) advice or opinions.

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

e. The certifier must deny or remove certification when the firm's efforts or submissions violate the rules in paragraph G of this section.

G. *Anti-Abuse Rules*

1. The substance and not the form of transactions drives the eligibility determination.
2. The certifier must deny applications based on sham transactions or false representations, and it must decertify DBEs that engage in or make them. Transactions or representations designed to evade or materially mislead are subject to the same consequences.
3. Fraud renders the firm ineligible and subjects it to sanctions, suspension, debarment, criminal prosecution, civil litigation, and any other consequence or recourse not proscribed in this part.

H. Subject to the other provisions of this subpart, a SEDO may borrow money to *finance* an investment entirely or partially if the SEDO has paid, on a net basis, at least 15 percent of the total value of the investment by the time the firm applies for certification.

1. The SEDO pays the net 15 percent portion of the investment to the Seller or Applicant (as the case may be) from her own, not borrowed, money.
2. Money that the SEDO receives as a gift is her own money.
3. The firm, whether Applicant or DBE, does not finance any part of the investment, directly or indirectly.

I. The loan is real, enforceable, not in default, not offset by another agreement, and on standard commercial, arm's length terms. The following conditions also apply.

1. The SEDO is the sole debtor.
2. The firm is not party to the loan in any capacity, including as a guarantor.
3. The SEDO 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 its investment.
4. The loan agreement requires level, regularly recurring payments of principal and interest, according to a standard amortization schedule, at least until the SEDO satisfies requirements in paragraph H of this section.
5. The loan agreement permits prepayments, including by refinancing.

J. If the creditor forgives or cancels all or part of the debt, or the SEDO defaults, the entire debt-financed portion of the SEDO's purchase or capital contribution is no longer an investment.

K. Paragraph J of the section does not prohibit refinancing with debt that meets the requirements of this section or preclude prompt curation under paragraph F.

4.7 Control

One or more SEDOs of the firm must control it. Control determinations must consider all pertinent facts, viewed together and in context. A firm must have operations in the business for which it seeks certification at the time it applies. Certifiers do not certify plans or intentions, nor do they issue contingent or conditional certifications.

A SEDO must be the ultimate decision maker, in fact, regardless of operational, policy, or delegation arrangements.

A. *Governance*: Governance provisions may not require that any SEDO obtain concurrence or consent from a non-SEDO to transact business on behalf of the firm.

B. *Highest Officer Position*: A SEDO must hold the highest officer position in the company (*e.g.,* chief executive officer or president).

C. *Board of Directors*: Except as detailed in paragraph (c)(4) of this section, a SEDO must have present control of the firm's board of directors, or other governing body, through the number of eligible votes.

D. *Quorum Requirements*: Provisions for the establishment of a quorum must not block the SEDO from calling a meeting to vote and transact business on behalf of the firm.

E. *Shareholder Actions*: A SEDO's authority to change the firm's composition via shareholder action does not prove control within the meaning of paragraph (c) of this section.

F. *Partnerships*: In a partnership, at least one SEDO must serve as a general partner, with control over all partnership decisions.

G. *Exception*: Bylaws or other governing provisions that require non-SEDO consent for extraordinary actions generally do not contravene the rules in paragraph (c) of this section. Non-exclusive examples include a sale of the company or substantially all of its assets, mergers, and a sudden, wholesale change in the type of business.

H. *Expertise*: At least one SEDO must have an overall understanding of the business and its essential operations sufficient to make sound managerial decisions not primarily of an administrative nature. The requirements of this paragraph (d) vary with the type of business, degree of technological complexity, and scale.

I. *SEDO Decisions*: The firm must show that the SEDO critically analyzes information provided by non-SEDOs and uses that analysis to make independent decisions.

J. *Delegation*: A SEDO may delegate administrative activities or operational oversight to a non-SED individual as long as at least one SEDO 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.

1. No non-SED participant may have power equal to or greater than that of a SEDO, considering all the circumstances. Aggregate magnitude and significance govern; a numerical tally does not.
2. Non-SED participants may not make non-routine purchases or disbursements, enter into substantial contracts, or make decisions that affect company viability without the SEDO's consent.
3. Written provisions or policies that specify the terms under which non-SED participants may sign or act on the SEDO's behalf with respect to recurring matters generally do not violate this paragraph (f), as long as they are consistent with the SEDO having ultimate responsibility for the action.

K. *Independent Business*

1. If the firm receives from or shares personnel, facilities, equipment, financial support, or other essential resources with another business (whether a DBE or non-DBE firm) or individual on other than commercially reasonable terms, the firm must prove that it would be viable as a going concern without the arrangement.
2. The firm must not regularly use another firm's business-critical vehicles, equipment, machinery, or facilities to provide a product or service under contract to the same firm or one in a substantially similar business.
   a. ***Exception 1*** - Paragraphs (g)(1) and (2) of this section do not preclude the firm from providing services to a single customer or to a small number of them, provided that the firm is not merely a conduit, captive, or unnecessary third party acting on behalf of another firm or individual. Similarly, providing a volume discount to such a customer does not impair viability unless the firm repeatedly provides the service at a significant and unsustainable loss.
   b. ***Exception 2*** - A firm may share essential resources and deal exclusively with another firm that a SEDO controls and of which the SEDO owns at least 51 percent ownership.

L. *Franchise and License Agreements*

1. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licenser 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.

a. A certifier must grant certification to a firm only for specific types of work that the SEDO controls. To become certified in an additional type of work, the firm must demonstrate to the certifier only that its SEDO controls the firm with respect to that type of work. The certifier must not require that the firm be recertified or submit a new application for certification, but must verify the SEDO's control of the firm in the additional type of work.

b. A correct NAICS code is the one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification.

c. If there is not a NAICS code that fully, clearly, or sufficiently narrowly describes the type(s) of work for which the firm seeks certification, the certifier must supplement or limit the assigned NAICS code(s) with a clear, specific, and concise narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is insufficient.

d. Firms and certifiers must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work that the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information that the certifying agency needs to make an appropriate NAICS code designation.

e. A certifier may change a certification classification or description if there is a factual basis in the record, in which case it must notify the firm 30 days before making the change. Certifiers may not apply such changes retroactively.

f. In addition to applying the appropriate NAICS code, the certifier may apply a descriptor from a classification scheme of equivalent detail and specificity. Such a descriptor (*e.g.,* a "work code") does not supersede or limit the types of work for which a DBE is eligible under an appropriate NAICS code.

SECTION 5. AVAILABILITY AND CONFIDENTIALITY OF RECORDS

5.1 Availability of Records

A. In responding to requests for information concerning any aspect of the DBE program, the WVDOT complies with provisions of the Federal Freedom of Information (5 U.S.C.

552) and Privacy Acts (5 U.S.C. 552a). The West Virginia Department of Transportation may make available to the public any information concerning the DBE program, the release of which is not prohibited by State or Federal law.

B. Notwithstanding any provision of Federal or state law, the UCP will not release any information that may reasonably be considered as confidential business information, to any third party without written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, the UCP will transmit this information to the USDOT in any certification appeal proceeding or to any other state to which the individual's firm has applied for certification.

5.2 Confidentiality of Information on Complainants

Notwithstanding the provisions of subsection 5.1, the identity of complainants will be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding, or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised of the option to waive the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. The FAA follows the procedures in 14 CFR Part 16 regarding the confidentiality of information in complaints.

SECTION 6. COOPERATION AND INTIMIDATION

6.1 Cooperation

All participants in the WVDOT's DBE program (including, but not limited to, sub-recipients, the Committee, DBE firms, and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with WVDOT and/or UCP Committee compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so will be a ground for appropriate action against the party involved (e.g., a finding of noncompliance for a project or program; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

6.2 Intimidation and Retaliation

The UCP Committee, sub-recipients, contractors, or any other participant in the program, will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. Violators will be deemed noncompliant.

APPENDIX A

Economic Disadvantage

A) General: Economically disadvantaged individuals are individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business.

B) Submission of narrative and financial information.

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

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

C) Factors to be considered. In considering diminished capital and credit opportunities, the UCP 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 UCP Committee 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 the UCP Committee will compare include total assets, net sales, pre-tax profit, sales-to-working-capital ratio, and net worth.

D) Transfers within two years.

1) Except as outlined in paragraph (D)(2) of this appendix, the UCP Committee 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, an aggregate value of more than $20,000, within two years prior to a concern's application for participation in the DBE 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.

2) The UCP Committee 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.

3) In determining an individual's access to capital and credit, the UCP Committee may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).