

APPENDIX E

SUBPART D & E CERTIFICATION STANDARDS and CERTIFICATION PROCEDURES

Unified Certification Program (UCP)

Recipients of USDOT federal assistance in the State of Massachusetts have executed a memorandum of understanding for DBE certification services and the establishment of a Massachusetts Unified Certification Program, to thereby further develop and improve the process of DBE certification within the Commonwealth. The participants include the Massachusetts Department of Transportation (MassDOT), The Massachusetts Bay Transportation Authority (The Authority), The Massachusetts Port Authority (Massport), and Regional Transit Authorities (RTA's) (collectively, "MassUCP").

MassUCP has agreed to use the certification standards of Subpart D of 49 CFR Part 26 and the certification procedures of Subpart E of 49 CFR Part 26 to determine the eligibility of firms to participate as DBEs in US DOT-assisted contracts. To be certified as a DBE, a firm must meet all 49 CFR Part 26 certification eligibility standards. The MassUCP will make DBE certification decisions based on the facts as a whole.

To apply for certification, firms must contact:

NAME: MassUCP/DBE Certification Office
ADDRESS: State Transportation Building
10 Park Plaza, Suite 2600-B
Boston, MA 02116
TELEPHONE: (857) 368-8656
WEBSITE: <http://www.mass.gov/sdo>

Certification Procedure

Intake Procedures

The following outline reflects the Intake Procedures that apply upon an initial application for recognition as a DBE:

For All Applicants

Applicants may attend a precertification workshop/session (but are not required to do so) and must submit the Unified Certification Application (UCA) found in Appendix F of 49 CFR 26 to MassUCP with supporting documents. MassUCP will endeavor to make certification decisions within 90 days of a complete application and 60 days for an Interstate Certification Application.

Intake Specialist will review the documents to ensure the application is complete and that the applicant has provided all necessary supporting documents, within 3 to 5 days of receipt of the documentation.

- a. If the application is deemed complete, the Intake Specialist will sort the submitted documentation into the appropriate sections and log the application as “complete”. The applicant firm will then be notified in writing and via email within 3 to 5 days that its application is suitable for evaluation and “ready to assign.”
- b. For all incomplete applications, the Intake Specialist will notify the applicant firm of its specific deficiencies by using the email address provided by the applicant and regular mail. The applicant will receive 30 days to provide the missing information subject to an extension not to exceed an additional 60 days which may be granted under appropriate circumstances, by the UCP Director and with documentation to support the granting of an extension, if warranted by the facts.
 - i. If the applicant provides the requested information, the Intake Specialist will process the application.
 - ii. If the applicant does not respond, the UCP Director will inactivate the application and notify the applicant firm of this action in writing by mail.
- c. If the Intake Specialist finds the application complete, The UCP Director will assign the application to a Certification Specialist who will commence the initial certification process detailed below. The Certification Specialist will then conduct a comprehensive review of the application to ensure that it meets the minimum entrance requirements of: 51% ownership and control by one or more socially and economically disadvantaged individuals; compliance with all state laws governing its industry; and a valid home state certification and site visit, if applicable.

Interstate Certification

This section applies with respect to any firm outside of Massachusetts that is currently certified in its home state.

When an out of state firm that is currently certified in its home state applies to the MassUCP for DBE certification, The MassUCP upon verification that the applicant is currently certified in its home state, accepts the certification and certifies the firm, without further procedures.

The firm’s information along with its certified description is entered into the MassUCP’s database and listed in the DBE directory.

Initial Certification Procedures

The following outline reflects the procedures that MassUCP applies to make certification determinations:

A. Administrative Procedures

1. The UCP Director will assign a Certification Specialist to cases on a weekly basis using a first in, first out methodology to ensure equity in the assignment process.
2. Upon assignment of a case to the Certification Specialist, the UCP Director will notify the applicant in writing of the assignment. The Certification specialist will conduct a desk audit of the application and its accompanying documents to determine the applicant's eligibility.
3. If the Certification Specialist determines that any additional documentation is required or further information as to specific issues pertaining to certification is required, the Certification Specialist will notify the applicant in writing of the specific documents needed and provide it two weeks to respond. The Certification Specialist may grant a one-time extension to an applicant, if requested or necessary, at his/her discretion.
4. The Certification Specialist will ensure the company:
 - a. Has filed required registration and report documents with the Massachusetts Secretary of the Commonwealth's Office or its municipality;
 - b. Has 51% ownership by and is controlled by one or more socially and economically disadvantaged individuals;
 - c. Has obtained all necessary licenses required by the state for its operation;
 - d. Possesses the requisite insurance for its vehicles and personnel; and
 - e. Is in compliance with all state and federal laws governing its industry.
5. In addition, in compliance with 49 CFR 26.83, the Certification Specialist will:
 - a. Analyze documentation related to the firm's legal structure. This includes but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing;
 - b. Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;
 - c. Determine the work history of the firm, including contracts it has received as outlined in the UCA work it has completed and payroll records;
 - d. Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any; and

- e. Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program.
6. If the Certification Specialist determines the desk audit is complete, the Certification Specialist will notify the client and arrange for a mutually convenient time to conduct a site visit. The Certification Specialist will complete a Site Visit Questionnaire that will be included in the file.
7. For Massachusetts companies, the Certification Specialist will perform a site visit.
 - a. Where applicable, the Certification Specialist will visit a job site with the applicant as well as visit its principal place of business.
 - b. The Certification Specialist will interview all principals and any other persons possessing relevant information as to the applicant's operations, including, among possible others, employees, subcontractors, consultants, legal counsel, accountants, and government personnel.
8. The Certification Specialist will record all of his/her communications and interactions with the applicant in the Agency's client database. Information to be recorded includes but is not limited to phone calls, meetings, emails, and letters sent to the company.
9. After conducting the site visit, the Certification Specialist will prepare a detailed forensic report on the applicant recommending to either certify or deny. The report is initially submitted to the Legal Counsel and then forwarded to the UCP Director to either approve or deny the applicant's request for certification. The report will detail how the company either did or did not comply with every regulatory requirement of 49 CFR Part 26, Subpart D. The UCP Director will notify the applicant of the MassUCP's decision.
10. Where an applicant withdraws its request or is nonresponsive, the Certification Specialist will prepare a brief report and close the file. Any firm that withdraws its application before the MassUCP has rendered its certification decision may reapply at any time. However, a firm that has established a pattern of withdrawing its application before a certification decision is made may be required to wait up to 11 months. In either case, any firm reapplying that has previously withdrawn its application before a decision has been made will be placed at the "end-of-line".

B. Determination Procedures

The Certification Specialist will make determinations regarding the social and economic disadvantage, ownership, capital contribution and control of the eligible principal(s); and the ongoing and independent nature of the applicant.

1. Social and Economic Disadvantage (49 CFR § 26.67)

- a. In reviewing an applicant for Social and Economic Disadvantage (“SED”), the Certification Specialist will analyze the Personal Financial Statement(s) and Affidavits of Certification for each individual relied upon to establish social and economic disadvantage.
- b. The Certification Specialist will ensure that the individuals relied upon meet the requirements of social disadvantage as defined in 49 CFR §26.5 and further outlined in 49 CFR § 26.63. The Certification Specialist may request additional documentation justifying the individual’s inclusion i.e. birth certificate, driver’s license, passport and permanent resident card.
 - i. While 49 CFR § 26.67 defines the classes presumed to be socially disadvantaged, an individual who is not presumed to be socially and economically disadvantaged may apply for DBE certification, provided s/he can establish a pattern and history of disenfranchisement, including but not limited to decreased access to education, employment, and business opportunities, and, with respect to economic disadvantage, limited access to capital and credit. The Certification Specialist will make a case-by-case determination of whether each individual whose ownership and control is relied upon for DBE certification is socially and economically disadvantaged in accordance with 49 CFR Part 26, Appendix E guidelines. In such a proceeding, the applicant firm bears the burden of demonstrating by a preponderance of the evidence that the individuals who own and control it are socially and economically disadvantaged.
- c. In reviewing any Personal Financial Statements, the Certification Specialist will validate the statements against the individual’s business and personal tax returns. The UCA Supporting Documents Checklist requires submission of three years of individual and business tax returns.
- d. In determining that the individual(s)’s personal net worth does not exceed the threshold established by 49 CFR § 26.67(b)(2), the Certification Specialist will exclude the eligible principal(s)’s share of the equity in his or her primary residence and in the applicant firm, but include the present value of assets, including retirement assets or investment programs.
- e. The Certification Specialist will review any transfers of assets to or from the applicant and/or to or from any of its owners over the past two years, including any marital transfer.

2. Ownership (49 CFR § 26.69)

- a. The Certification Specialist will evaluate ownership and capital contribution percentages for each individual involved in the company to ascertain that the SED principal(s) own the applicant in both substance as well as form.

- b. The Certification Specialist must determine not only that the paper ownership of the company reflects a true and accurate statement of the eligible principal(s)'s ownership, but that the substance of the company reflects 51% or more of an ownership interest, including but not exclusively the salary disparities.
- c. In validating the SED(s)'s substantive ownership, the Certification Specialist will analyze the capital contribution provided the company by each owner, including monetary payments, debt instruments, tangible assets, or services in lieu of payment.
 - i. Where the eligible principal used marital assets to acquire ownership, verify that the assets belonged to the eligible principal or the ineligible spouse legally renounced any right to the assets.
 - ii. Where the SED alleges to have provided services in lieu of payment, The Certification Specialist must determine that the services provided were (a) in a specialized field; (b) of outstanding quality; (c) in areas critical to the firm's operations; (d) indispensable to the firm's potential success; (e) specific to the type of work the firm performs; and (f) documented in the records of the firm, clearly showing the contribution and its value to the firm.
- d. The Certification Specialist must also evaluate the transfer or general acquisition by the eligible principal(s) of any ownership interests from an ineligible individual, especially one who retains ownership or remains involved with the company.
 - i. In analyzing any transfer of assets, the Certification Specialist must pay careful attention to any inter-spousal transfer, even one for value, to ensure the SED spouse owns and controls the firm.
- e. In the case of companies, securities, or any other assets held in trust, the Certification Specialist will collect the entire trust instrument for review by MassUCP's Legal Counsel. Where the ownership is held in trust, the Certification Specialist will request the applicant provide a notarized statement as to the trust's (a) Settlor; (b) current Trustees; and (c) the current and expected beneficiaries.

3. Control

- a. In determining whether socially and economically disadvantaged owners control a firm, the Certification Specialist must consider all the facts in the record, viewed as a whole.
- b. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
- c. To verify that an applicant firm and its eligible principal(s) qualify as an independently-controlled DBE, the Certification Specialist must evaluate the applicant's relationship(s) with non-DBE firms regarding personnel, facilities, and equipment as compared to standard operating procedures within the applicable industry; review, the financial,

bonding support, and resources, of the applicant, as well as its prime- and sub-contractor dealings; and if applicable, determine the binding effect of any franchise agreement on the applicant's operations.

- d. In determining whether the eligible principal(s) control the applicant, the Certification Specialist must evaluate whether s/he has “power to direct or cause the direction of the management and policies of the firm and to make day to day as well as long term decisions on matters of management, policy, and operations.
- e. The eligible principal(s) must have sole discretion to: make any business decision of the firm; hold the highest officer position; and control any board of directors; or be general partner with control over all decisions in a partnership.
 - i. While delegation of some aspects of management, policymaking, or daily operations is permissible, the eligible principal(s) must retain the authority to revoke the delegation and have power to fire the person to whom the delegation is made.
- f. The Certification Specialist must determine that the eligible principal(s) have the technical expertise in the specific areas and directly related to the scope of business the company performs. Technical expertise does not require the principal actually perform the work of the company, rather that s/he has the ability to “intelligently and critically evaluate information presented” by the firm members and be able to “use this information to make independent decisions concerning the firm’s daily operations, management, and policymaking.” However, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- g. The Certification Specialist must ensure that the eligible principal(s) hold any licenses required, by state or local law, to operate the company or perform its work. MassUCP may have to undertake research to determine whether or not state or local ordinances require the company or its employees to be licensed.
- h. The Certification Specialist must evaluate the compensation paid to all officers and employees of the company as well as each individual scope of participation in the company’s operations (i.e., full-time or part-time employment with the applicant). While, the eligible principal(s) need not be the highest paid employees, discrepancies in compensation may indicate that the principal does not share in the risks and profits commensurate with his/her ownership interest.
- i. The participation by non-eligible family members, other non-eligible individuals, or prior owners in the business of the firm must be evaluated under 49 CFR § 26.71(k) (1)-(2), 49 CFR § 26.71(e) and 49 CFR § 26.71(l). The Certification Specialist must pay careful attention to situations where non-eligible family members participate in the business, particularly if they used to own all or part of the business. If MassUCP cannot determine

that the eligible individual controls the business separate and distinct from the non-eligible family members, the business has failed to carry its burden.

- j. The Certification Specialist will determine the applicant's independence and viability by comparing its relationships with other companies or individuals with normal industry practices in the acquisition of personnel, facilities or equipment; financial and bonding support or resources; and whether the business actually exists and performs the functions it claims to perform based on interviews, site visits, and other information in the applicant's file.
 - i. A franchise agreement does not preclude a company's inclusion into the DBE program but the franchise agreement cannot unduly bind the eligible principal's ability to control the applicant's daily and long-term operations.

C. Determination and Assignment of North American Industry Classification System (NAICS) Codes

Once it has been determined that an applicant firm has met all of the requirements to become certified, the Certification Specialist will assign NAICS Codes to the firms certified business description. A certified firm can have more than one NAICS code assigned to its description as long as it is within the size standard.

Initial Certification Denial and Appeal Process

1. Once the Certification Specialist has determined whether the applicant carried its burden as to affirmatively establishing that it meets the regulatory requirements of 49 CFR Part 26, Subpart D, a recommendation will be made to the UCP Director and UCP Attorney (The Certification Review Team). If the Certification Review Team determines that an applicant's request for certification lacks merit, the UCP Manager will notify the company in writing, specifically listing the regulatory criteria the applicant failed to establish.
2. Applicant firms may be denied certification based on a failure to meet any legal requirement pertinent to conducting business in the Commonwealth of Massachusetts. Notwithstanding, all applications will be evaluated without delay in accordance with the regulatory requirements of 49 CFR Part 26, except where the applicant firm cannot produce evidence that it has complied with state laws, such as those related to licensing requirements, necessary to establish ownership and control.
3. For denials, MassUCP's Legal Counsel will prepare a letter to the applicant, based on the report, explaining the reasons for the denial with specific references to the documentation on file.
4. An initial denial affords the applicant the opportunity to appeal MassUCP's decision to the United States Department of Transportation (USDOT). The UCP Director notifies the company, by certified mail, of MassUCP's determination, and the reasons for the denial

including in keeping with 49 CFR 26.86, the specific evidence in the record that supports the decision to deny. All documents or other evidence upon which the denial is based must be made available to the denied firm upon request. The letter must also include notice of the firm's right to appeal, the address at USDOT where appeals should be sent and the fact that the firm has 90 days from the date of notice of denial.

5. If a firm's application is denied, it may reapply to MassUCP not sooner than eleven (11) months from the date of the final decision. Additionally, the MassUCP's Electronic Data Processor (EDP) Analyst shall make an entry in the USDOT Office of Civil Rights' Ineligibility Determination Online Database, listing the applicant firm's name, name(s) of owner(s), type and date of action, and the reason for the action.

Post-Certification: Annual Update

The UCP Director will perform an annual update of every company that has been certified. This process will include obtaining updated financial data, including income tax information (both personal and corporate). The owner of the DBE shall be required to file a "no change" affidavit, attesting to the fact that there has been no change affecting its ability to meet the size, disadvantaged status, ownership, changes in management responsibility or control requirements of 49 CFR Part 26.

1. The UCP Director will renew each company's certification on an annual basis, requiring the company provide updated: financial statements, personal and corporate taxes (if necessary and for each individual claiming social and economic disadvantaged status), no change affidavits, and if applicable, a copy of the most recent home state certification letter.
 - (a) While failure to maintain home state certification in itself does not prevent renewal, it shall result in a review of the facts and circumstances to determine reasonable cause to initiate an ineligibility proceeding under 49 CFR § 26.87.
2. The UCP Director will provide the company written notification of all the documents required 30 days prior to its certification anniversary. The UCP Director will review all the documents submitted to ensure the company and its SED principals remain eligible.
 - (a) In evaluating the company's revenues, averaged over three years, the UCP Director will determine if the company exceeds the MassUCP threshold for a small business. If the company exceeds the amount, UCP Manager will notify the company, in writing and by certified mail that it has graduated from the program.
 - (b) If the company's three year average tax revenue exceeds the threshold, as set by the SBA, for any of the NAICS codes assigned to it, UCP Director will notify the company as to what categories it retains.

If the UCP Director does not receive any or all of the documents by the anniversary date, s/he will notify the company of its deficiency, by certified mail, and give the company 10 business days to show cause as to why it should remain certified or request an appeal to the MassUCP Adjudicatory

Board. Should the company fail to respond to the “show cause” notification, the UCP Director will prepare the final notification recommending decertification under 49 CFR § 26.109, for the signature of the DBELO. Once the notification has been signed by the DBELO, the letter must be sent by certified mail.

Directory of Certified Businesses

The MassUCP shall maintain a directory of all DBE and ACDBE certified businesses, including name and address all NAICS codes assigned and certified business description. The Directory must be updated on a weekly basis to include new certifications and to remove companies that are no longer eligible.

The MassUCP shall provide on a weekly basis a list of all new certifications, decertifications and/or withdrawals which should be posted on the website at <https://www.mass.gov/sdo>.

Regular and Discretionary Review

Every five to seven years, MassUCP will conduct a certification review, including an updated on-site review, of each certified firm. This is not a recertification. This effort is intended only to ensure that when other states seek information from the MassUCP on which to base an interstate certification, MassUCP will be able to respond with an onsite review within the last seven years. MassUCP will make every effort to limit the burdens placed upon firms undergoing review. MassUCP will do the following:

- (a) Verify the firm’s place of business; and
- (b) Obtain current copies of any expired licenses, and vehicle registrations.

When reviewing out-of-state firms, MassUCP will obtain from the home state a report of the most recent on-site review.

The MassUCP reserves the right to require an on-site review or home state certification when there are significant changes to corporate structure, when the primary objective of the business changes, or there is a definitive expansion of the business and/or any other notable differences that would change the basis of the original DBE certification

- (a) The UCP Director or the Certification Specialist will accept, review and process any requests for structure change, or category expansion, provided the company submits a request in writing to the office. The request must detail the specific nature of the change requested and be accompanied by documentation supporting the basis for the change.
- (b) Where a company has changed ownership, such that the individual whose SED status formed the basis for the company’s certification no longer possesses majority ownership, UCP Director will treat such notice as a withdrawal of certification and administratively remove the company. In such a case, MassUCP would not preclude the new owner(s) from immediately applying for certification.

- (c) Should a company relocate, move, or change its contact information, the company has the duty to notify UCP Director within 30 days of the change and the directory updated accordingly to reflect the change.
- (d) Wherever possible, MassUCP will utilize technology to facilitate the process for certified businesses to request changes and make updates to their company profiles.

Procedures Governing Removal of DBE Eligibility

1. Ineligibility Complaints

- (a) Any person may file a written complaint with the MassUCP Board alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible.
- (b) The complaint should include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities shall be protected as provided in Sec. 49 CFR § 26.109(b).
- (c) If an allegation of ineligibility is accepted, the reviewing official, MassUCP legal counsel will review records and other material, and may request further information and conduct any investigation deemed necessary.
- (d) Where reasonable cause is established, the MassUCP will notify the firm in writing that ineligibility proceedings have been initiated.
- (e) Ineligibility complaints should be submitted to the following address:

**The Massachusetts Unified Certification Program/DBE Office
State Transportation Building
10 Park Plaza, Suite 2600-B
Boston, MA 02116**

2. Recipients-Initiated Proceedings

- (a) If, based on information gained by the recipient(s) that implicates a change in its circumstances or other information that gives reasonable cause to believe that a currently certified firm is ineligible, the recipient(s) will direct the MassUCP to conduct a certification review to determine if such cause exists.
- (b) Where reasonable cause is established, the MassUCP will notify the firm in writing, that ineligibility proceedings have been initiated. Such notice will set forth the reasons for the proposed removal and will specifically reference the evidence in the record on which each reason is based.
- (c) The MassUCP may independently, without a directive from MassDOT, the Authority, Massport or the RTA's establish reasonable cause and initiate an ineligibility proceeding.

3. Directive to Initiate Proceeding

- (a) If any US DOT operating administration determines that information in the certification records, or other information available to the relevant operating administration, provides reasonable cause to believe that a certified firm does not meet the eligibility criteria, the concerned operating administration may direct the MassUCP to initiate a proceeding to remove the firm's certification.
- (b) The concerned US DOT operating administration must provide to an official of the MassUCP and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

4. Notification Process

- (a) Any recommendation to remove a company's DBE certification will require The UCP Director to notify the company in writing, of the grounds for the removal, its right to a local hearing, or to submit written arguments within 10 days.
 - i. The UCP Director may only recommend decertification; the company remains certified during the period leading up to any hearing. During this time, the MassUCP reserves the right to continue to collect evidence, and generally investigate the company.
- (b) The UCP Director will maintain a record of the date it notified the DBE of the proposed decertification, process any requests for a local hearing, and promptly notify the MassUCP Adjudicatory Board of any such requests.
- (c) Should the DBE fail to exercise its right to a local hearing or to submit written arguments within ten days of notification, The DBE Liaison Officer (DBELO) shall render a final decision and notify the entity, in writing, of its decertification.
 - i. In such a case, the Mass UCP Legal Counsel will prepare the letter and control sheet for the authorized individual to sign.

5. Local Hearing

- (a) Once a hearing request or written arguments are received, the MassUCP adjudicatory board will arrange for a hearing or will convene within 30 days. The MassUCP Adjudicatory Board will be comprised of the MassDOT Secretary of Transportation (or designee), three members appointed by the Secretary: one each from the Transit Division/MBTA, the Aviation Division (Massport), the Office of Diversity and Civil Rights, and the MassUCP Administrative Law Judge.

- (b) No member of the adjudicatory board may have previously taken part in the actions leading to the removal of the firm's eligibility, and no member may be subject to the direction of any personnel who initiated the proposed action.
- (c) While the right is to a local hearing, the firm may submit its arguments in writing without attending the hearing, and have the Board base its decision on the written documents.
- (d) The hearing will be conducted in accordance with 49 CFR Part 26, Subpart D and Informal Fair Hearing Rules codified at 801 CMR 1.02; and a complete record, including a transcript, of the proceedings will be maintained, and will be made available to MassUCP, if there is an appeal under 49 CFR § 26.89, and to the firm upon request.

6. Final Decisions

- (a) After any final decision rendered by the MassUCP Adjudicatory Board in which a firm is found ineligible and decertified, the MassUCP's EDP Systems Analyst shall make an entry in the US Department of Transportation Office of Civil Rights Ineligibility Database Online.

C. Decertification and Removal Appeals

1. Any firm whose eligibility is removed may submit an administrative appeal to the USDOT, provided that it has exercised its rights to a local hearing, if applicable.
2. Anyone submitting an ineligibility complaint, including a concerned MassUCP operating administration, may appeal to the USDOT if the Adjudicatory Board does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.
3. All administrative appeals must be filed in writing within 90 days of the Adjudicatory Board's final decision to:

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

4. The Adjudicatory Board's final decision shall remain in effect concerning any matter under appeal, pending the USDOT's determination on the matter.

Waiting Period/Notification

1. Waiting Period

- (a) Any company, who is administratively removed or is decertified, may reapply for certification after 11 months. The time will accrue from the date any decision regarding the entity's certification becomes final.

2. MassUCP's EDP System Analyst shall publish its decertification's online. Where a denial or decertification occurs, MassUCP's EDP System Analyst will also publish the report supporting its decision, focused on the regulatory basis for its determination.

Suspension of Certification

- (a) MassUCP, on behalf of the recipients, shall immediately suspend a DBE's certification without adhering to the requirements in 49 CFR § 26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.
- (b) (1) MassUCP, on behalf of the recipients, may immediately suspend a DBE's certification without adhering to the requirements in 49 CFR § 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the MassUCP in writing of any material change in circumstances as required by 49 CFR § 26.83(i) or fails to timely file an affidavit of no change under 49 CFR § 26.83(j).

(2) In determining the adequacy of the evidence to issue a suspension under paragraph (b) (1) of this section, MassUCP, on behalf of the recipient, shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.
- (c) The concerned operating administration may direct the recipient MassUCP/DBE Office to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.
- (d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, MassUCP, on behalf of the recipient, shall within five (5) business days notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.
- (e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR § 26.87 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.
- (f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may 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.

- (g) Following receipt of the Notice of Suspension, 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 to MassUCP, information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, MassUCP on behalf of the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under 49 CFR § 26.87. If MassUCP on behalf of the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.
- (h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of MassUCP to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under 49 CFR § 26.89, as a constructive decertification.

Confidentiality and Cooperation

The MassUCP Certification Office will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. This would include any such information that was relied upon for the certification or renewal of a DBE firm. The MassUCP, however, is required to transmit this information to USDOT in any certification appeal proceeding under 49 CFR § 26.89 or upon request to any other state in which a firm has applied or is currently certified under 49 CFR § 26.85.

MassDOT will provide that to, the extent permissible under relevant law, the MassUCP/DBE Office will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than MassUCP) without the written consent of the submitter.

Mass DOT and MassUCP will keep the identity of complainants confidential at their election. If said confidentiality hinders the investigation, proceeding or hearing or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege.

Retention of Records

The MassUCP, on behalf of the recipients, shall maintain paper records documenting a firm's compliance with eligibility requirements (including but not limited to all correspondences sent and received). MassUCP, on behalf of the recipient, will retain copies of the most recent three (3) years of tax returns. These records will be retained in accordance to the applicable record retention requirements.