

Notice of Proposed Rule Changes

The Office of Minority and Women’s Business Enterprises (OMWBE) is proposing changes to rules regarding state certification.

The OMWBE offers state and federal certification. The changes do not affect federal “DBE” certification.

We welcome your input.

Summary of Proposed Changes

Below are highlights of the proposed rule changes. Please see attached for more information and the text of the proposed rule changes.

- Eliminate the requirement that the original application and renewal forms are notarized. The notary requirement would be replaced by a signed declaration. The purpose of this change is to save applicants time and money.
- Add the same personal net worth limit as federal certification, which is that the primary owner’s personal net worth may not exceed \$1.32 million. The purpose of this requirement is to verify the applicant is an economically disadvantaged individual as required by state rule.
- Require an applicant to wait 12 months before reapplying for certification if he or she has been denied certification. This intent of this requirement is to prevent businesses from restructuring ownership and control for the sole purpose of certification. This does not prevent persons from reapplying earlier if they withdraw their application.

How to provide input

In writing	<p>Please send by April 26, 2017 to:</p> <p>Mark Kifowit, Assistant Director of Policy</p> <p>e-mail: markk@omwbe.wa.gov</p> <p>mail: OMWBE PO Box 41160 Olympia, WA 98501</p>
Attend public hearing	<p>April 26, 2017 at 10:00 a.m.</p> <p>Office of Minority and Women’s Business Enterprises 1110 Capitol Way South, Olympia Capital Plaza Building, Suite 135</p> <p>Click here for directions and parking information</p>

**Join public hearing
by webinar**

April 26, 2017 at 10:00 a.m.

To join the public hearing via webinar, go to this website at the date and time of the hearing:

<https://global.gotowebinar.com/join/2349124566138983171/355712203>

Webinar ID: 634-755-779

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Sign on into the webinar using your computer. Select "Use Telephone" and call in using the numbers below:

914-614-3221

Access Code: 156-724-603

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Questions?

Questions about logistics of the public hearing or to receive this information in an alternate format? Please contact Mark Kifowit, Assistant Director of Policy, at 360-664-9764 or markk@omwbe.wa.gov

Questions about the proposed rule changes? Please contact Teresa Berntsen, Director, at 360-664-9757 or teresab@omwbe.wa.gov



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Office of Minority and Women's Business Enterprises

- Preproposal Statement of Inquiry was filed as WSR 14-03-048 ; or**
 Expedited Rule Making--Proposed notice was filed as WSR _____ ; or
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice**
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information:

The agency is proposing to amend the following rules:

- WAC 326-20-048 Presumption of disadvantage
- WAC 326-20-160 Burden of proof
- WAC 326-20-170 Decision
- WAC 326-20-185 Recertification
- WAC 326-20-190 Directory of certified businesses
- WAC 326-20-220 Resubmission of applications

The agency is proposing a new rule, WAC 326-20-049 Personal net worth.

The agency is proposing to repeal a rule, WAC 326-20-120 Submittal of forms.

Hearing location(s): See attachment

Date: April 26, 2017 Time: 10:00 a.m.

Date of intended adoption: April 27, 2017
(Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Mark Kifowit
Address: 1110 Capitol Way South, #150
Olympia, WA 98501
e-mail: markk@omwbe.wa.gov
fax: (360) 586-7079 by April 26, 2017

Assistance for persons with disabilities: Contact Mark Kifowit by April 14, 2017

Phone: 360-664-9764 Email: markk@omwbe.wa.gov

Purpose of the proposal and its anticipated effects, including any changes in existing rules: See attachment

Reasons supporting proposal: The OMWBE is proposing these changes in order to:

- Eliminate unnecessary requirements in order to save small businesses time and money.
- Align the personal net worth limit for state certification with federal DBE certification.
- Clarify existing rules and make technical changes.

Statutory authority for adoption: RCW 39.19.030 and RCW 39.19.120

Statute being implemented: RCW 39.19.120 and RCW 39.19.030

Is rule necessary because of a:

- Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No
 If yes, CITATION:

DATE
3/21/2007

NAME (type or print)
Mark Kifowit

SIGNATURE

TITLE
Assistant Director of Policy

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 21, 2017

TIME: 9:23 AM

WSR 17-07-102

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) The Office of Minority and Women's Business Enterprises

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Mark Kifowit	1110 Capitol Way South, #150, Olympia, WA 98501	(360) 664-9764
Implementation... Sarah Erdmann	1110 Capitol Way South, #150, Olympia, WA 98501	(360) 664-9771
Enforcement.....Teresa Berntsen	1110 Capitol Way South, #150, Olympia, WA 98501	(360) 664-9757

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:
Address:
phone
fax
e-mail

No. Explain why no statement was prepared.

OMWBE asked a sampling of small businesses certified by the agency to estimate the cost of the proposed rules changes. This sampling indicated the proposed rules do not impose more than minor costs on a business.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:

phone () _____
fax () _____
e-mail _____

No: Please explain: The benefits outweigh the costs as the proposed rule change saves applicants time and money by eliminating notary fees and the amount of records submitted. This complies with Executive Order 16-01, mandating State agencies not to collect more information than necessary to perform duties. Finally, the rule does not impose more stringent performance requirements for businesses and are not significant rules as defined by RCW 34.05.328.

ATTACHMENT

Hearing Location:

Capitol Court
1110 Capitol Way South
Room 135
Olympia, WA 98501

Live Webinar:

<https://global.gotowebinar.com/join/2349124566138983171/355712203>

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United States: +1 (914) 614-3221

Access Code: 156-724-603

Audio PIN: Shown after joining the webinar

Date: April 26, 2017 Time: 10:00 a.m.

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Office of Minority and Women's Business Enterprises (OMWBE) proposes the following changes to rules regarding certifying small minority-, woman-, and other socially and economically disadvantaged person-owned businesses. The OMWBE has a state and a federal certification program. The proposed rule changes affect the state program:

- Revise WAC 326-20-185 to eliminate the requirement that the original application and recertification forms are notarized. The notary requirement would be replaced by a signed declaration. The purpose of this proposed change is to save applicants time and money.
- The agency is proposing a new rule, WAC 326-20-049, to add the same personal net worth limit as federal certification, which is that the primary owner's personal net worth may not exceed \$1.32 million. The purpose of this requirement is to ensure the applicant is economically disadvantaged as required by state and federal law and rule. The form to verify an applicant's personal net worth would be a simplified version of the current federal form.
- Revise WAC 326-20-048 to update a Socially and Economically Disadvantaged Business Enterprise applicants' personal net worth limit from \$750,000 to \$1.32 million, to reflect an update in federal rule.
- Revise WAC 326-20-220 to require an applicant to wait 12 months before reapplying if an application for certification was denied, consistent with federal rule. This is to prevent businesses from restructuring ownership and control for the sole purpose of certification. This change would not prevent person from reapplying earlier if they withdraw their application.
- Repeal WAC 326-20-120, which outlines where to submit an application for certification and contains an outdated mailing address. The current address is on the application forms.
- Revise WAC 326-20-160 to clarify that an applicant has the burden of showing by a preponderance of the evidence that he or she is eligible for certification. The current rule says the applicant must show eligibility "to the satisfaction of the office."
- Revise WAC 326-20-170 to allow the agency to email certification decision letters.
- Revise WAC 326-20-190 to reflect that the agency's directory of certified businesses is now online.

WAC 326-20-048 Presumption of disadvantage. (1) The office presumes that citizens of the United States or lawfully admitted permanent residents who are women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the program, are socially and economically disadvantaged individuals. Applicants are required to submit a signed (~~(, notarized certification)~~) declaration that each disadvantaged owner is, in fact, socially and economically disadvantaged.

~~(2)(a) ((The office requires each individual nonpresumptive socially and economically disadvantaged owner of a firm applying to participate as a SEDBE whose ownership and control are relied upon for SEDBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation.~~

~~(b) In determining net worth, the office excludes an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). A contingent liability does not reduce an individual's net worth.~~

~~(i))~~ Each owner of a firm applying for state certification must sign a declaration that he or she has a personal net worth that does not exceed 1.32 million dollars, per WAC 326-20-049.

(b) Rebuttal of economic disadvantage. If the statement of personal net worth that an individual submits under this section shows that the individual's personal net worth exceeds (~~(seven hundred fifty thousand)~~) 1.32 million dollars or shows that a person has been able to accumulate substantial wealth, the individual's economic disadvantage is rebutted, and the individual is not deemed to be economically disadvantaged. Such an individual is no longer eligible to participate in the program and cannot regain eligibility by making an individual showing of disadvantage. The office is not required to have a proceeding under this section in order to rebut the presumption of economic disadvantage in this case.

~~((ii) When an individual's social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of SEDBE eligibility under this section unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting a determination that the individual's personal net worth exceeds seven hundred fifty thousand dollars, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.))~~

(3) Individual determinations of social and economic disadvantage. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for SEDBE certification. The office makes a case-by-case determination of whether each individual whose ownership and control are relied upon for SEDBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to the office, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds (~~(seven hundred fifty thou-~~

~~sand~~) 1.32 million dollars shall not be deemed to be economically disadvantaged. In making these determinations, the office uses the guidance found in 49 C.F.R. Part 26, Appendix E. The office requires that applicants provide sufficient information to permit determinations under the guidance of 49 C.F.R. Part 26, Appendix E.

NEW SECTION

WAC 326-20-049 Personal net worth. (1) Each individual owner of a firm applying for state certification, whose ownership and control are relied on for certification, must fill out a personal net worth statement and sign a declaration that his or her personal net worth does not exceed 1.32 million dollars. If any individual's personal net worth exceeds 1.32 million dollars, the individual's presumption of economic disadvantage is rebutted and the individual does not meet the criteria for certification.

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

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

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

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

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

(d) With respect to assets held in vested pension plans, individual retirement accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time;

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

(i) An immediate family member;

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

or

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

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

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

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

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

(4) If an individual's personal net worth does not exceed 1.32 million dollars as described in this section, the office may rebut an individual's presumption of economic disadvantage if the statement of personal net worth and supporting documentation demonstrates that the individual is able to accumulate substantial wealth. In making this determination, the office may consider factors that include, but are not limited to:

(a) Whether the average adjusted gross income of the owner over the most recent three year period exceeds three hundred fifty thousand dollars;

(b) Whether the income was unusual and not likely to occur in the future;

(c) Whether the earnings were offset by losses;

(d) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;

(e) Other evidence that income is not indicative of lack of economic disadvantage; and

(f) Whether the total fair market value of the owner's assets exceed six million dollars.

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

WAC 326-20-160 Burden of proof. The applicant ~~((shall have))~~ has the burden of proving ~~((to the satisfaction of the office))~~ by a preponderance of the evidence that ((it)) the applicant is eligible for certification or ((recertification)) renewal of certification.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

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

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

WAC 326-20-185 ~~((Recertification.))~~ Renewal. ~~((The office may require any certified business to submit annual notarized statements regarding changes in the information provided during the initial cer-~~

tification process.)) (1) State certification is valid for three years, unless:

(a) The office decertifies the firm; or

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

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

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

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

(5) Each certified business must submit a ((statement of present status)) declaration of continued eligibility prior to ((expiration)) the date of its three-year certification. The ((statement)) declaration form will be provided to the certified business at least sixty days before ((expiration)) the date of its three-year certification. Failure to return the completed form within thirty days may lead to ((decertification by expiration)) nonrenewal of certification.

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

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

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

WAC 326-20-190 Directory of certified businesses. ((The office will maintain a directory of certified businesses as follows:

~~(1)) The office will maintain a directory of businesses certified by the office for state projects and for federally funded projects.~~

~~((2) The office will update and compile the directory into a form suitable for distribution annually and may issue supplements on a more frequent basis.~~

~~(3) The directory will be available for purchase from the office at a reasonable cost. One copy will be made available to each state agency and educational institution at no charge. Copies will be provided to the state library.~~

~~(4) Information concerning the status of a business may be obtained by contacting the office during designated working hours.))~~

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

WAC 326-20-220 Resubmission of applications. (1) A business which withdraws its application (~~(, is denied certification, or has been decertified,)~~) and subsequently reapplies for certification within a year may be required to submit a new application (~~((or to submit))~~) and additional documentation (~~((if there has been a substantial change in ownership, control, or organization of the business. However, no))~~) at the discretion of the office. A business may not file more than two applications in any calendar year.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 326-20-120 Submittal of forms.