

SECTION 1. Chapter Comm 104 is created to read:

### **Chapter Comm 104**

#### **WOMAN-OWNED BUSINESS CERTIFICATION PROGRAM**

**Comm 104.10 Purpose.** Pursuant to s. 560.035 (1) (c), Stats., this chapter sets forth the criteria and procedures for certification, certification renewal, recertification, and decertification of woman-owned businesses.

**Comm 104.12 Definitions.** In this chapter:

- (1) “Administrator” means the administrator of the division of business development.
- (2) “Affiliate” means a company effectively controlled by another, such as a branch, division, or subsidiary. As prescribed in title 15 USC ch. 2D, subch. I, section 80a-2, an affiliate includes a company in which there is ownership, direct or indirect, by another company, of 5 percent or more of the voting stock.
- (3) “Appeal” means a written request by an applicant to reconsider a determination of a denial of application, certification renewal, recertification or decertification.
- (4) “Applicant” means any business that applies to the department for certification as a woman-owned business enterprise under s. 560.035 (1), Stats., and this chapter, through submission of application forms.
- (5) “Application” means the forms, whether paper or electronic, all documentation requested by the department, and a report of an on-site visit, if one was conducted by the department, upon which the department will base its decision to grant or deny certification, certification renewal or recertification.
- (6) “Assets” means the real and personal property of a business.
- (7) “Authorized shares” means the shares that a corporation is authorized to issue by its articles of incorporation.
- (8) “Beneficial ownership” means ownership of the rights in a business that are the normal incidents of owning a business.
- (9) “Broker” means a person who acts as an intermediary between a buyer or seller, usually charging a commission for value added.
- (10) “Bureau” means the bureau of minority business development, in the department.
- (11) “Business” means a sole proprietorship, general partnership, corporation, limited liability company, limited liability partnership, or joint venture, organized for a profit basis –

except where the context implies that this term is referring instead to buying or selling commodities or services.

(12) “Capital contribution” means the cash or property contributed to a business, and may include a financial investment in the business or the contribution of property, space, patents and copyrights.

(13) “Control” means the power to direct the day-to-day and long-term operation and management of a business.

**Note:** Departmental assessments of operational and managerial control will rest upon the peculiarities of the industry of which the business is a part.

(14) “Conversion rights” means any agreement, option, scheme or documents that will create any rights which, if exercised, would result in less than 51 percent woman ownership of the business, or less than dominant control by woman owners or both.

(15) “Corporation” means a corporation organized for profit, with capital stock.

(16) “Decertification” means the process by which the department determines that a WBE no longer meets the eligibility criteria, and then rescinds the certification status.

(17) “Denial” means the bureau’s reaction to an applicant that does not meet the certification eligibility requirements.

(18) “Department” means the department of commerce.

(19) “Distributor” means one that markets or sells merchandise, such as a wholesaler.

(20) “Expiration” means the specified end of the WBE certification, at the close of the three-year certification period.

(21) “General partner” means a partner who participates fully in the profits, losses and management of a partnership and who is personally liable for its debts.

(22) “Industry standard” means the usual and customary practice in the delivery of products or services within a particular business sector, such as procurement, billing payment and performance.

(23) “Interest” means a right, claim, financial or legal share in a business.

(24) “Issued shares” means the shares of a corporation that have been authorized and actually sold to subscribers. They may include treasury shares.

(25) “Joint venture agreement” means a written agreement signed by each joint venture specifying the terms and conditions of the joint venture.

(26) “Limited liability company” means a company similar in structure to a partnership, but its members are not personally liable for the entity’s debts and liabilities. Its members may participate in the management of the company without risking personal liability.

(27) “Marital-property agreement” means an agreement that complies with s. 766.58, Stats.

(28) “Marital property laws” means ch. 766, Stats.

(29) “Marital-property waiver” means a form provided by the department to document separate control and management of a business under marital property laws.

(30) “Nonprofit organization” means an organization as defined in s. 108.02 (19), Stats.

(31) “Non-Wisconsin business” means a business that neither is incorporated under ch. 180, Stats., nor has its principal place of business in Wisconsin.

(32) “On-site visit” means a visit to an applicant’s physical place of business for the verification of information submitted in the application and accompanying documentation.

(33) “Parent company” means a company that has at least a majority direct-voting control over another company.

(34) “Partnership” means a contract entered into by two or more persons in which each agrees to furnish a part of the capital or labor for a business enterprise, and by which each partner shares in some fixed proportion in profits and losses.

(35) “Partnership agreement” means a written agreement signed by each partner specifying the terms and conditions of the partnership.

(36) “Partnership interest” means a partner’s share of the profits and losses of the partnership and the right to receive distributions of partnership assets.

(37) “Principal place of business” means the physical location at which or from which a business performs, is maintained, or operates the majority of its business.

(38) “Recertification” means the process by which WBE status is reestablished, prior to expiration at the close of the three-year certification period.

(39) “Renewal” means a one-year continuation of a WBE certification, at the end of each of the first two years of the three-year certification period, as subject to a review by the department.

(40) “Retailer” means the seller of goods or commodities directly to consumers at a retail price.

- (41) "Secretary" means the secretary of the department.
- (42) "Securities" means stocks, bonds, notes, convertible debentures, warrants or other documents that represent a share in a business, or a debt owed by a business.
- (43) "Shares" means the units into which the proprietary interests in a corporation are divided.
- (44) "Sole proprietorship" means a business in which one person owns all the assets of the business and is solely liable for all the debts of the business.
- (45) "Stock-affirmation form" means a form provided by the department and affirmed by the applicant stating that the stock ownership of the corporation is as presented in the application, and in which the applicant agrees to notify the department in the event that additional stock is sold.
- (46) "Stock certificate" means a certificate issued by a corporation certifying that the named person is the owner of a designated number of shares of stock.
- (47) "Subsidiary" means a corporation in which one other corporation owns a majority of the voting shares.
- (48) "Treasury shares" means the shares which have been issued but later re-acquired by a corporation and which have not been canceled or restored to the status of authorized but unissued shares.
- (49) "Unissued shares" means shares which the corporation is authorized to issue but which have not yet been distributed to shareholders or subscribers.
- (50) "Useful business function" means the provision of materials, supplies, equipment or services to customers in addition to this state. Acting as a conduit to transfer funds to other than a woman-owned business does not constitute a useful business function, unless doing so is a normal industry practice.
- (51) "Value added" means something that is added to a product or service by a marketer or distributor which warrants a markup in the retail price.
- (52) "Voting shares" means those shares that give the holder the right to vote for directors and other matters, in contrast to non-voting shares, which simply entitle the holder to dividends, if any.
- (53) "Woman-owned business, woman-owned business enterprise, or WBE" means a sole proprietorship, general partnership, corporation, limited liability company, limited liability partnership, or joint venture, which is organized for a profit basis and which fulfills all of the following requirements:

(a) If privately owned, it is at least 51 percent owned, controlled, and actively managed by one or more women who are either U.S. citizens or lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20).

(b) If publicly owned, at least 51 percent of the stock is owned and controlled by one or more women who are either U.S. citizens or lawfully admitted to the United States for permanent residence, as defined under 8 USC 1101 (a) (20); and the management and daily operations are controlled by one or more of those women.

(c) It is currently performing a useful business function in Wisconsin.

**Note:** Section 8 USC 1101 (a) (20) reads as follows “The term ‘lawfully admitted for permanent residence’ means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.”

(54) “Wholesaler” means a middle person or distributor who sells mainly to retailers, other merchants, and industrial commercial institutional users, as distinguished from consumers.

(55) “Wisconsin business” means a business that either is incorporated under ch. 180, Stats., or has its principal place of business in Wisconsin.

**Comm 104.20 Certification criteria.** In order to become certified as a woman-owned business enterprise, a business shall meet all of the following eligibility standards:

(1) The business satisfies all of the criteria in the WBE definition in s. Comm 104.12 (53).

(2) If the business is a sole proprietorship, a woman owns 100 percent of the company assets.

(3) (a) If the business is a partnership, two or more persons agree to carry on a business or venture together, upon the terms of mutual participation in the profits and losses of the business. The partnership is a contract of mutual agency, each partner acting as a principal in her or his own behalf and as agent of his or her co-partners, and general rules of law applicable to agents shall apply with equal force in determining rights and liabilities of partners.

(b) If the business is a general partnership, one or more women own at least 51 percent of the partnership interests.

(c) If the business is a limited partnership, one or more women general partners own at least 51 percent of the general partnership interest and exert at least 51 percent of the control among general partners. The women general partners receive at least 51 percent of the profits and benefits, including tax credits, deductions and postponements. In addition, the women limited partners shall own at least 51 percent of the limited partnership interests and receive at least 51 percent of the profits and benefits, including tax credits, deductions and postponements.

(4) If the business is a limited liability company, one or more women own at least 51 percent of membership interests in the LLC organization, and exert at least 51 percent of the management and control among the members. The women owners also participate in all risks and profits of the organization at a rate commensurate with their membership interests.

(5) If the business has a corporate form of organization, one or more women own at least 51 percent of all voting stock of the corporation. Any voting agreements among the shareholders do not dilute the beneficial ownership, the rights, or the influence of the women owners of the stock or classes of stock of the corporation. The women owners possess the right to all customary incidents of ownership, such as the ability to transfer stock, title possession, and enter binding agreements.

**Note:** Nonprofit corporations do not meet the requirements in sub.(5) and are therefore not eligible for certification.

(6) If the business is a joint venture, one or more woman-owned businesses hold at least 51 percent of the beneficial ownership interest in the joint venture, and exert at least 51 percent of the control and management of the joint venture. The woman-owned business partners of the joint venture are certified or are eligible for certification as woman-owned business enterprises.

(7) If the business is a subsidiary or affiliate, one or more women own at least 51 percent of the parent company .

**Comm 104.22 Documentation of gender.** An applicant shall provide one of the following to verify the gender of each of the woman owners of a business:

- (1) A birth certificate.
- (2) A passport.
- (3) A state-issued, motor vehicle operator's license or identification card.

**Comm 104.24 Determination of ownership.** (1) An applicant shall meet all of the following eligibility standards:

(a) 1. The ownership by one or more women is real, substantial and continuing, going beyond the pro-forma ownership of the business as reflected in its ownership documents.

2. Each woman owner shares in all risk and profits commensurate with her ownership interest as demonstrated by a detailed examination of the substance of her business arrangements with others.

3. Each woman owner receives the customary incidents of ownership, such as salary, rights to dividends, ownership of assets and ownership of intangible assets such as copyrights and patents.

(b) The contributions of capital and expertise by the woman owner or owners to acquire their interest in the business is real and substantial, and in proportion to the interest acquired.

(2) Contributions of personal or professional services alone are not real and substantial for the purposes of this section, except these contributions shall receive consideration when given in conjunction with other tangible forms of investment. Other insufficient contributions include, but are not limited to, promises to contribute capital or expertise in the future, a note payable to the business or to its owners who are not women, or the mere participation as an employee.

(3) Women shall hold at least 51 percent of the securities that constitute ownership of a business.

(4) Securities or assets of a business that are held in trust are not considered as held by a woman in determining the ownership of a business, except under the following circumstances:

(a) The beneficial owner of the securities or assets held in trust is a woman, and the trustee is a woman.

(b) A woman is the sole grantor of assets held in a revocable living trust, and a woman is the beneficiary and trustee.

(5) The department may not consider securities that are held by any guardian for a minor, in determining ownership and control.

(6) An ownership interest arising in a male spouse solely because of the operation of marital property laws may not disqualify an applicant from certification if both spouses certify that the female performs the majority of the control and management of the business.

**Comm 104.25 Documentation of ownership.** (1) (a) An applicant shall submit documentation showing ownership of at least 51 percent of the business by a woman. This documentation may include, but is not limited to, the three preceding years of business taxes, a current business financial statement, business licenses, buy-out agreements and financial agreements.

(b) For a sole proprietorship, additional documentation may include, but is not limited to, canceled checks used to purchase ownership.

(c) For a partnership, additional documentation may include, but is not limited to, partnership agreements, purchase agreements, and salary and profit-sharing records.

(d) For a corporation, additional documentation may include, but is not limited to, articles of incorporation, corporate by-laws, a corporate-borrowing resolution, stock certificates, stock-affirmation forms, and salary and profit-sharing records.

(e) For a joint venture, additional documentation may include, but is not limited to, a joint venture agreement that is written and signed by all of the joint venturers. Each joint venture agreement shall specify all of the following:

1. The capital contribution made by each joint venturer, the control each will exercise, and the distribution of profit and loss. The agreement shall allocate the control and the distribution of profit and loss in proportion to the contributions of the joint venturers.

2. The useful business function the joint venture will perform and the part of the work each joint venturer will do.

(2) The department may require documentation showing how and when the woman's interest in the business was acquired.

(3) (a) The department shall apply the following rules in situations in which marital assets form a basis for ownership of a business:

1. When marital assets other than the assets of the business in question are held jointly or as marital property by both spouses, and are used to acquire the ownership interest asserted by the woman, the department shall conclude that the woman acquired her ownership interest in the enterprise with her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the enterprise is domiciled. The department may not count a greater portion of joint or marital property assets toward ownership than state law would recognize as belonging to the qualifying member of the business.

2. The application for WBE certification shall include a copy of the document that is used for legally transferring and renouncing the rights as required in subd. 1.

(b) In instances where marital ownership is not clearly established, the department may request a marital-property waiver form in which both spouses certify that only the female spouse controls and manages the business, or an affidavit stating that the spouses have signed a marital-property agreement in which the male spouse relinquishes control and management of the business.

**Comm 104.28 Determination of control.** (1) Factors that the department shall consider in determining whether one or more women owners control a business include, but are not limited to, the following:

(a) Authority and restrictions as indicated in the articles of incorporation, by-laws, minutes of corporate meetings, bank signature cards, partnership and joint venture agreements and other business agreements and documents.

(b) Membership of one or more women owners on the board of directors.

(c) Holdings by women owners of the voting interests in the business.



(d) The managerial experience, knowledge and expertise of the women owners in such areas as finance, budgeting, personnel, production, marketing and research.

(e) Whether the women owners have the authority to make policy decisions in such areas as finance, budgeting, personnel, production, marketing and research.

(2) An applicant's assertion of being independent from a male-owned business may not rest solely on recognition of the women owners by governmental taxing authorities. Other test criteria include, but are not limited to, the following:

(a) An applicant's relationship with any male-owned business, that involves any long-term contract or lease agreements.

(b) The existence of working agreements with any male-owned business.

(c) An applicant's status as a party to any contract or lease agreement on terms at variance with industry standards or prudent business practices.

(d) The existence of restrictive financing agreements with any male-owned business or financial institution that impose undue limitations on the applicant.

(e) Interlocking stock ownership of the applicant and any male-owned business in the same industry.

(f) Common directors or officers between the applicant and any male-owned business.

(g) An applicant's use of employees, equipment, expertise, facilities, or other resources from a male-owned business.

(h) The receipt by a male-owned business of financial benefits, such as profits and wages, that are not commensurate with the duties performed.

(i) An applicant that cannot operate without licenses, permits or insurance held by another business.

(j) An applicant that does not possess all legal requirements necessary to its operation.

**Comm 104.29 Documentation of control.** (1) An applicant shall submit evidence that one or more women owners have control over the business. Such evidence shall include, but is not limited, to the following:

(a) Signed bids and contracts.

(b) Signed debt instruments.

(c) Signed hiring decisions.

(d) Bank signature cards and bank resolution authorizations, for savings, checking and other financial accounts.

(e) Written proof that the organizational and governing documents of an applicant, such as limited liability company operating agreements, partnership agreements, or articles of incorporation and by-laws, do not contain any provision which restricts the woman owner from exercising control of the business.

(f) 1. Documentation, such as résumés, showing that the women owners have the managerial experience, knowledge and expertise – in such areas as finance, budgeting, personnel, production, marketing and research – needed for exercising day-to-day control over the business.

2. The department may waive the managerial experience required in subd. 1., when a woman is starting a woman-owned business.

(2) The managerial experience, knowledge and expertise of the women owners substantially demonstrates their ability to make independent and unilateral business decisions necessary to guide the future and destiny of the business. The applicant may document this ability and control in a number of ways. For a woman owner to demonstrate the extent of this control, the department may consider the following or other aspects of a business:

(a) Authority to sign payroll checks and letters of credit.

(b) Signature responsibility for insurance or bonds.

(c) Authority to negotiate and execute contracts and financial services agreements.

(d) Ability to obtain bank authorization resolutions.

(3) Agreements for support services are permitted as long as the power of the woman owner to control the company is not restricted or impaired, as determined by the department.

**Comm 104.32 Determination of active management.** Factors that the department shall consider in determining whether one or more women owners actively manage a business include, but are not limited to, the following:

(1) **DIRECT OPERATIONAL MANAGEMENT.** (a) The operational management of the woman owner is the demonstrated extent to which the woman owner actually operates the day-to-day business.

(b) Departmental assessments of operational management shall rest upon the peculiarities of the industry of which the business is a part. In order to clarify the level of operational management of the woman owner, the department may consider each of the following:

1. 'Experience.' The woman owner has education, demonstrable working knowledge or experience in the area of specialty or industry claimed in the application.

2. 'Responsibility for decision-making.' a. The woman owner makes basic decisions pertaining to the daily operation of the business, such as the purchase of goods, equipment, business inventory and services.

b. The woman owner supervises the business's employees.

3. 'Technical competence.' a. The woman owner has technical competence in the industry or specialty of the business or a working knowledge of the technical requirements of the business sufficient to critically evaluate the work of subordinates.

b. The woman owner has the ability to perform in her area of specialty or expertise without substantial reliance upon finances and resources – such as equipment, automobiles and facilities – of males or non-woman-owned business enterprises.

(2) DELEGATED OPERATIONAL MANAGEMENT. Where the actual day-to-day operational management is delegated to a person other than a woman owner, the active-management requirements may be met if the woman owner has the ultimate power to hire and fire that person.

(3) POTENTIAL CONSTRAINTS ON OPERATIONAL MANAGEMENT. In reviewing governance documents and issues, the department shall give special attention to the extent to which all of the following aspects affect the ability of the woman owner to direct the management and policies of the business:

(a) The composition of the business's governing body.

(b) The functioning of the governing body.

(c) The content of shareholder's agreements, bylaws, or state incorporation statutes.

**Comm 104.33 Documentation of active management.** The applicant shall submit evidence that one or more women owners actively manage the business. This evidence may include, but is not limited to, the following:

(1) Signed purchase orders, invoices and contracts.

(2) Evidence that the women owners have delegated work assignments to the business employees.

(3) Documentation, such as résumés, showing that the women owners have the education or work experience in the skill areas required to produce the product or service provided by the business.

(4) Where the actual day-to-day operational management is delegated to a person other than a woman owner, documentation, such as a signed contract, showing that the women owners have the ultimate power to hire and fire that person.

**Comm 104.36 Determination of performance of a useful business function.** Factors that the department shall consider in determining whether a woman-owned business is performing a useful business function include, but are not limited to, the following:

(1) The degree to which the business has customers other than the state.

(2) The adequacy of the business's resources to carry out its business functions.

(3) The degree to which the business is independent of control or substantial influence by another business. Business relationships that tend to defeat the useful business function include, but are not limited to, shared space, equipment, employees, or other resources, and financing agreements.

(4) Whether the business acts as a conduit to transfer funds to a male-owned business, unless doing so is a normal industry practice.

**Comm 104.37 Documentation of performance of a useful business function.** The applicant shall submit evidence that the business is performing a useful business function. This evidence may include, but is not limited to, the following:

(1) Contracts, purchase orders, invoices, and other documents demonstrating that the business has customers.

(2) Evidence that the quantity, type and condition of the business's equipment and inventory are adequate to carry out its business functions.

(3) Loans and other financing agreements, leases, employee contracts, payroll records and other documents demonstrating that the business's relationships with non-woman-owned businesses do not preclude it from performing a useful business function.

(4) Contracts, purchase orders, invoices, and other documents showing that the business has a diversity of suppliers and is not acting as a conduit for a single supplier.

**Comm 104.40 Special circumstances.** Any one of the following circumstances creates a presumption that an applicant does not satisfy the eligibility standards for certification as a WBE. In such instances, the applicant has the burden of establishing to the department's satisfaction that the business meets the eligibility standards despite the existence of one or more of the following factors:

(1) The business was formed within one year prior to an application for certification.

(2) The ownership or control of the business has changed within one year prior to an application for certification.

(3) Shares of stock transferred from a male-owned business to a woman owner of the business, within one year prior to an application for certification.

(4) The business has unissued shares that, if issued, could result in less than 51 percent woman ownership of the business or in less than dominant control by women owners.

(5) The business is subject to conversion rights that, if exercised, would result in less than 51 percent woman ownership of the business or in less than dominant control by women owners.

(6) One or more of the women owners is a former or current employee of a male-owned business that has an ownership interest in or a business relationship with the applicant, particularly if the male-owned business is in a substantially similar line of business.

(7) An applicant's directors or management or both, are substantially the same as those of a male-owned business that has an ownership interest in, an investment in, or a business relationship with the applicant, particularly if the male-owned business is in a substantially similar line of business.

(8) The business shares indistinguishable facilities, such as office space; production, distribution or storage facilities; machinery and equipment; or employees, with a non-woman-owned business.

**Comm 104.50 Certification procedure for Wisconsin businesses. (1) APPLICATION AND REVIEW.** (a) Any Wisconsin business that meets the standards for certification may file a WBE certification application with the department.

(b) The applicant shall submit a valid, department-supplied application form; the three preceding years of business taxes; current business financials; and attestation to serving a useful business function, to the department of commerce, bureau of minority business development, P.O. Box 7970, Madison, WI 53707.

**Note:** See Appendix for the version of the application form that became valid upon publication of this chapter. Subsequent to that publication, later versions may have become valid instead, upon posting at the department's Web site. To view the version that is currently valid, refer to the department's Web site at [www.commerce.wi.gov](http://www.commerce.wi.gov), and search for the woman-owned business certification program.

(c) Each application shall include a fee of \$50, and an additional payment of \$100 for two, one-year renewal fees. The department shall refund the \$100 payment if certification is ultimately denied.

(d) Upon receipt of the application, the department shall review the application for completeness and for compliance with the requirements of s. 560.035 (1), Stats., and s. Comm 104.20.

(e) The department may request, at any time that it deems necessary, that the applicant submit additional information or documentation for providing clarification or substantiation, or for resolving any ambiguities or inconsistencies in the application form. Failure to cooperate fully may result in denial of WBE certification.

(f) The department may impose a time limit of not less than 30 calendar days in which the applicant shall provide the requested information, except the department shall grant a time extension where good cause is shown by the applicant. Any request for a time extension shall specify the length of time for which the extension is requested and the reasons for the request.

(g) All information submitted shall become the property of the department.

(h) The department may conduct a scheduled or unannounced on-site visit of the applicant's operations. The visit may include, but is not limited to, the following:

1. A discussion of business operations with the owners.

2. An examination of the applicant's physical plant, inventory, machinery and equipment, financial records, accounting records, project files, customers accounts, and any legal documents and records that may be relevant to the certification of the business as a WBE.

3. A review of the applicant's organizational structure, management responsibilities and labor force characteristics. In this review, the department may do the following:

a. Analyze the ownership of stock in the enterprise, if the applicant is a corporation.

b. Examine the work history of the applicant, including contracts the applicant has received and the work the applicant has completed.

(i) After completing a review of the application, the department shall send the applicant either a notice of certification – or a notice of intent to deny certification stating the reasons for denial and offering the applicant the opportunity for an informal hearing under s. Comm 104.70.

(j) The department shall maintain a WBE database that includes the name of the owner, business name, type of business industry, business owner e-mail address, sales volume and growth rates, number of full-time employees, and North American Industrial Classification or National Institute of Governmental Purchasing coding indicating the functional mission of the business.

**(2) DENIAL OF CERTIFICATION.** (a) The department shall deny certification for any of the following reasons:

1. The department determines that the applicant fails to meet the eligibility standards for certification.

2. The applicant fails to furnish the department with requested information within the allotted time period.

3. The applicant knowingly provides false or misleading information to the department.

4. The applicant shares indistinguishable facilities, such as office space; production, distribution or storage facilities; machinery and equipment; or employees, with a male-owned business.

(b) Applicants shall have 30 calendar days from the date of a department notification of intent to deny certification, to submit a written request for an informal hearing.

(c) If no request for an informal hearing is made, the determination to deny certification shall become final, and the department shall send a final notice of denial to the applicant within 30 calendar days after expiration of the time period in par. (k). The notice shall state the reason for denial and notify the applicant of its appeal rights under ch. 227, Stats., and s. Comm 104.75.

(d) Each applicant denied certification may reapply for certification, no earlier than 12 months from the date of the final notice of denial of certification.

**(3) LENGTH OF CERTIFICATION.** A WBE shall remain on the WBE database for a period of three years unless the certification is not renewed under s. Comm 104.52, 104.70 or 104.75; or the WBE is decertified under s. Comm 104.65, 104.70 or 104.75.

**Comm 104.52 Renewal procedure.** (1) Prior to the end of each of the first two years of every three-year certification period, the department shall review any accumulated information for the WBE. As part of the review, the department may collect or require submittal of further information for the WBE. The review shall address whether the WBE is continuing to comply with this chapter. Unless the department notifies the WBE otherwise at the completion of the review, the certification shall renew for the following year.

(2) A WBE shall have 30 calendar days from the date of a department notification of intent to deny renewal of certification, to submit a written request for an informal hearing under s. Comm 104.70.

(3) If no request for an informal hearing is made, the determination to deny renewal of certification shall become final, and the department shall send a final notice of denial to the WBE within 30 calendar days after expiration of the time period in sub. (2). The notice shall state the reason for denial and notify the WBE of its appeal rights under ch. 227, Stats., and s. Comm 104.75. The department shall send a copy of the final notice to the departments of administration and transportation.

**Comm 104.55 Recertification procedure.** To maintain its certification status, a WBE shall reapply for its certification prior to the designated expiration date, in accordance with the following procedure:

(1) The department shall send a recertification application form to each WBE by electronic mail, at least 60 calendar days prior to the certification expiration date.

(2) The WBE shall submit the completed recertification application form, the three preceding years of business taxes, current business financials, attestation to providing a useful business function, and a fee of \$150, to the department within 30 calendar days of receipt of the application form, except the department shall grant a time extension where good cause is shown by the WBE. Any request for a time extension shall specify the length of time for which the extension is requested and the reasons for the request.

(3) Processing of recertification applications shall follow the certification procedure described in s. Comm 104.50.

**Comm 104.60 Decertification criteria.** (1) The department shall decertify a WBE that is found to not meet the WBE eligibility standards in s. Comm 104.20.

(2) Sufficient reasons for decertification include, but are not limited to, the following:

(a) The status of the WBE has changed to the extent that it no longer satisfies the requirement of ownership, control, and active management of the business or the requirement to perform a useful business function.

(b) The WBE fails to submit an application for recertification within the allotted time period.

(c) The WBE fails to comply with a request from the department for records or information within the allotted time period.

(d) The WBE knowingly provides false or misleading information in support of its certification or recertification application or in response to the department's request for records or information.

(e) The WBE is notified of a change to the certification standards and procedures and does not comply with the department's notification to comply.

(f) The WBE does not maintain current information on the WBE database.

**Comm 104.65 Decertification procedure.** (1) INITIATION OF DECERTIFICATION PROCESS. (a) The department may, at the request of any state agency or at its own discretion, examine any business certified as a WBE to verify that the WBE qualifies for certification.

(b) Any business or individual who believes that a business certified as a WBE does not qualify under the standards of eligibility for certification may request a decertification investigation by the department. This request shall be written and signed and shall contain specific identification of the affected WBE, and the basis for the belief that the WBE does not meet the eligibility standards.



**(2) INVESTIGATION PROCEDURE.** (a) The department shall notify the WBE, in writing, that the WBE is the subject of a decertification investigation. The notification shall explain the basis for the belief that the WBE does not meet the eligibility standards for certification.

(b) The department may request records or other documentation from the WBE, may conduct an on-site visit of the WBE facilities and may question other parties during its investigation.

(c) The department may impose a time limit of not less than 15 calendar days in which the WBE shall respond to a request for records or other documentation, except the department shall grant a time extension where good cause is shown by the WBE. Any request for a time extension shall specify the length of time for which the extension is requested and the reason for the request. If the WBE fails to provide the information within the time limit imposed, the department shall issue a notice of intent to decertify.

(d) Upon completion of the investigation, the department shall prepare a written report that includes all of the following:

1. A statement of the facts leading to the investigation.
2. Steps taken in the investigation.
3. Findings of the investigation.
4. A conclusion that contains a recommendation for disposition of the matter.

**(3) NOTICE OF INTENT TO DECERTIFY.** (a) If the department determines that a WBE does not qualify for certification, the department shall send the WBE a copy of the report prepared under sub. (2) (d) – along with a notice of intent to decertify, stating the reasons for decertification and offering the WBE the opportunity for an informal hearing under s. Comm 104.70.

(b) The WBE shall have 30 calendar days from the date of the department's notification to submit a written request for an informal hearing.

(c) If no request for an informal hearing is made, the administrator shall issue a final notice of decertification, stating the factual and legal grounds therefore and notifying the WBE of its appeal rights under ch. 227, Stats., and s. Comm 104.75.

(d) The department shall send a copy of the final notice of decertification to the affected WBE and to the departments of administration and transportation, within 30 calendar days after expiration of the time period in par. (b).

**(4) REAPPLICATION.** A decertified business may reapply for certification no earlier than 12 months from the date of the final notice of decertification. Any reapplication shall comply

with the same submittal requirements as an initial application for certification, except the reapplication shall include notation of the previous decertification.

**Comm 104.70 Informal hearing procedure.** (1) Any business that has received a notice of intent to deny certification, to deny renewal of certification, to deny recertification, or to decertify, may submit a written request for an informal hearing. The request shall set forth the grounds on which the business believes the decision is in error, and shall include any additional information that the business has to offer. The business shall submit the request for the informal hearing to the administrator, at the division of business development, department of commerce, P.O. Box 7970, Madison, WI 53707. The business shall simultaneously file a copy of the request with the bureau.

**Note:** Sections Comm 104.50 (2) (b), 104.52 (2), 104.55 (3), 104.65 (3) (b) and 104.94 (3) specify deadlines for submitting requests for informal hearings.

(2) The department shall schedule an informal hearing within 30 calendar days of receipt of the request. The department shall send a written notice of the scheduled hearing to all interested parties at least 10 calendar days prior to the hearing date. The notice shall specify the date, time and location of the hearing. Interested parties shall include all persons who signed the application for certification or recertification.

(3) The department shall conduct the hearing on an informal basis.

(4) Within 10 business days after the hearing, the administrator shall notify the business in writing of his or her final decision.

(5) If the final decision is to grant certification, renew a certification, or issue a recertification, the department shall inform the business of that decision. If the final decision is to deny a certification, a certification renewal, or a recertification, or to decertify, the department shall notify the business of that final decision and the reasons therefore. That notification shall also include reference to the applicant's appeal rights under subch. III of ch. 227, Stats., and s. Comm 104.75.

(6) Once the department has made a final decision on certification, recertification or decertification, that determination shall take effect immediately. If a business has been denied certification or recertification or has been decertified, and then appeals the department's decision, the department's decision remains in effect unless and until the decision is reversed as a result of the appeals process.

**Comm 104.75 Appeal procedure.** (1) Any business which has been denied certification, certification renewal, or recertification, or which has been decertified, may submit a written request for a formal hearing under s. 227.42, Stats. The request shall be received by the department within 30 calendar days of the mailing date of the administrator's notification. The request shall set forth the grounds on which the business believes the decision is in error, and shall include any additional information that the business has to offer. The business shall submit the request for the formal hearing to the office of the secretary, department of commerce, P.O. Box

7970, Madison, WI 53707. The business shall simultaneously file a copy of the request with the bureau.

(2) The department shall schedule the formal hearing and shall send a written notice of the scheduled hearing to all interested parties at least 10 calendar days prior to the hearing date. The notice shall specify the date, time and location of the hearing. Interested parties shall include all persons who signed the application for certification or recertification.

(3) The hearing shall be conducted pursuant to ss. 227.43 to 227.51, Stats. Both the business and the department may present evidence, subpoena witnesses and records, and cross-examine witnesses. The business and the department may be represented by counsel.

**Note:** Under ch. 227, Stats, the department may designate an official of the department or an employee on its staff or borrowed from another state agency as a hearing examiner to preside over a contested case.

(4) Within 20 business days after the conclusion of the hearing, the department shall make a decision based on findings of fact and conclusions of law, except as provided in sub. (5).

(5) The secretary may delegate the authority to make the final decision to the hearing examiner of another state agency. When this authority is delegated, the hearing examiner's decision shall be the final administrative decision of the department.

(6) Within 30 business days after the conclusion of the hearing, the department shall notify the affected business and the departments of administration and transportation of the final decision regarding certification, certification renewal, recertification or decertification.

**Comm 104.80 Notification of changes in application information.** (1) A WBE shall notify the bureau in writing of any change in the information contained in an application for certification or recertification within 30 calendar days of the change or before bidding on a state contract, whichever is earlier.

(2) Within 15 calendar days of receiving the changes in sub. (1), the department shall send the WBE a written determination of either of the following:

- (a) The change is not material, and the certification of the WBE continues.
- (b) The change is material and warrants a review of the status of the WBE.

(3) If the change warrants a review of the status of the WBE, the department shall conduct the review following the decertification procedures in s. Comm 104.65.

(4) Failure by a WBE to notify the department of a change that would reduce woman ownership, control or management, or change the business function performed, may result in decertification and may result in the department forwarding pertinent information to the appropriate law enforcement authority for investigation and possible prosecution.

**Comm 104.90 Certification of a Wisconsin business by another public agency. (1)**

The department may waive some or all of the certification application requirements and procedures under s. Comm 104.50 for a Wisconsin business that is already certified by another public-sector agency if the department determines that the agency's standards for certification and certification procedures are substantially equivalent to the department's.

(2) In making the determination in sub. (1), the department shall consider factors that include, but are not limited to, the following:

(a) The documentation that the applicant was required to provide to receive certification by the agency.

(b) Whether an on-site visit was performed.

(c) The length of time for which certification is effective.

(3) To receive any waivers under this section, an applicant shall provide the department with documentation showing the equivalency specified in sub. (1) and addressing the factors specified in sub. (2), except the documentation for sub. (1) is not required for an applicant that submits proof of being certified by an agency listed under sub. (4).

(4) The department shall maintain a list of certification agencies whose certification procedures are found under sub. (1) to be equivalent to the department's standards.

**Comm 104.92 Certification criteria for a non-Wisconsin business.** The department may certify a non-Wisconsin business only if the business meets the eligibility standards in s. Comm 104.20, and the business is certified by any applicable state agency in the business's own state.

**Comm 104.94 Certification procedure for a non-Wisconsin business. (1)** For non-Wisconsin applicants certified by a state that the department determines has certification requirements which are substantially equivalent to the requirements in s. Comm 104.20, the applicant shall submit the following documentation:

(a) A copy of the letter of certification from the state in which the applicant is incorporated or has its principal place of business.

(b) A copy of the most recent application and supporting documentation the applicant submitted to its certifying state in support of its certification, certification renewal or recertification.

(c) Documentation that the applicant meets the WBE definition in s. Comm. 104.12 (53).

(2) The department may request information from the certifying state, including a copy of any on-site report.

(3) Upon receipt of the documentation specified in subs. (1) and (2), the department and the applicant shall follow the procedures specified in ss. Comm 104.50 (1) (d) to (j), (2) and (3).

(4) The department may charge the applicant a fee of \$150 to cover department expenses in making the certification determination and subsequent renewals.

**Comm 104.96 Certification criteria for a for-profit corporation owned by a nonprofit organization.** (1) The department may certify a for-profit corporation owned by a nonprofit organization if the department determines that the nonprofit organization is woman-controlled and managed. Factors that the department may consider in reaching this determination include, but are not limited to, the following:

(a) At least 51 percent of the members who may elect the board of directors or trustees and who are entitled to vote on a dissolution of the nonprofit organization are women.

(b) At least 51 percent of the board of directors or trustees of the nonprofit organization are women.

(c) The minutes of the organization's meetings document the active control and participation of the women members of the board in such areas as setting and monitoring financial policy, personnel policy and program policy.

(d) The nonprofit organization is independent of control or substantial influence by a male-owned nonprofit or for-profit organization. The department shall rebuttably presume that the nonprofit woman-owned organization is dependent on a male-owned organization if the woman-owned organization shares office space, staff, equipment, or other resources, with a male-owned for-profit or nonprofit organization or if the woman-owned organization receives a majority of its funding from a single male-owned organization.

(2) The applicant and department shall follow the certification procedures described in s. Comm 104.50.

## **Chapter Comm 104**

### **APPENDIX**

The material contained in this appendix is numbered to correspond to the number of the rule, as the rule appears in the text of the code.

**A-104.50 Department-supplied application form.** The following pages contain the department's application form and instructions for applying for certification under this chapter.

(END)

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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after the date of publication in the Wisconsin administrative register.

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*File reference: Comm 104/rules 2007gLR*