

(3) All practicable means consistent with the department's mission should be employed to minimize or avoid adverse environmental consequences.

[Statutory Authority: Chapter 43.21C RCW. 87-05-014 (Order 87-01), § 323-12-040, filed 2/11/87.]

WAC 323-12-050 Designation of responsible official. Within the military department, the adjutant general is the person with ultimate responsibility for departmental actions. The responsible official for a specific proposal shall be the Army National Guard facilities management officer or Air National Guard base civil engineers or his/her designees. Significant actions proposed by other coordinating or special staff functions shall be coordinated through the appropriate responsible official.

[Statutory Authority: Chapter 43.21C RCW. 87-05-014 (Order 87-01), § 323-12-050, filed 2/11/87.]

WAC 323-12-060 Preparation of environmental documentation. Preparation of environmental documentation is the responsibility of the department's Army and Air National Guard's engineering sections. The responsible official shall be satisfied that all environmental documentation issued by the department is in compliance with these rules and chapter 197-11 WAC.

[Statutory Authority: Chapter 43.21C RCW. 87-05-014 (Order 87-01), § 323-12-060, filed 2/11/87.]

WAC 323-12-070 Timing of the SEPA process. (1) The SEPA process should be integrated with department activities at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems.

(2) The department shall prepare its threshold determination and environmental impact statement, if required, at the earliest possible point in the planning and decision making process, when the principal features of a proposal and its environmental impacts can be reasonably identified.

(3) Appropriate consideration of environmental information shall be completed before the department commits to a particular course of action.

[Statutory Authority: Chapter 43.21C RCW. 87-05-014 (Order 87-01), § 323-12-070, filed 2/11/87.]

WAC 323-12-080 Environmentally sensitive areas. In its actions the department shall respect "environmentally sensitive area" designations and their modified exemption criteria which have been adopted by local governments under WAC 197-11-908.

[Statutory Authority: Chapter 43.21C RCW. 87-05-014 (Order 87-01), § 323-12-080, filed 2/11/87.]

WAC 323-12-090 Threshold levels adopted by local governments. During threshold determination the department shall respect threshold levels adopted by local governments under WAC 197-11-800.

[Statutory Authority: Chapter 43.21C RCW. 87-05-014 (Order 87-01), § 323-12-090, filed 2/11/87.]

WAC 323-12-100 Coordination of combined state-federal action. When the department considers actions which also involve federal actions, it shall coordinate the two governmental processes so that only one EIS, or other environmental document, need be prepared for that proposal.

[Statutory Authority: Chapter 43.21C RCW. 87-05-014 (Order 87-01), § 323-12-100, filed 2/11/87.]

WAC 323-12-110 Public notice requirements. When these rules require notice of environmental document preparation or availability, as a lead agency the department shall give public notice by using at least one of the following methods:

- (1) Posting the property, for site-specific proposals;
- (2) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
- (3) Notifying the news media;
- (4) Directly notifying local jurisdictions affected by a proposed action.

[Statutory Authority: Chapter 43.21C RCW. 87-05-014 (Order 87-01), § 323-12-110, filed 2/11/87.]

WAC 323-12-120 Appeals. There are no appeals to a local legislative body, nor are there agency administrative appeal procedures. Judicial appeals provisions in SEPA are found in RCW 43.21C.075 and 43.21C.080.

[Statutory Authority: Chapter 43.21C RCW. 87-05-014 (Order 87-01), § 323-12-120, filed 2/11/87.]

**Title 326 WAC
MINORITY AND WOMEN'S BUSINESS
ENTERPRISES, OFFICE OF**

Chapters	
326-02	General provisions.
326-20	Certification.
326-30	Goal setting rules.

**Chapter 326-02 WAC
GENERAL PROVISIONS**

WAC	
326-02-030	Definitions.
326-02-040	Prohibited activities with regard to chapter 39.19 RCW.
326-02-050	Penalties which may be imposed.
326-02-060	Factors considered in determining penalties.
326-02-070	Suspension of contract.
326-02-080	Suspension of certification.
326-02-090	Procedures for suspension, hearing provided.

WAC 326-02-030 Definitions. Words and terms used in these rules shall have the same meaning as each has under chapter 120, Laws of 1983, unless otherwise specifically provided in these rules, or the context in which they are used clearly indicates that they be given some other meaning.

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Class of contract basis" means an entire group of contracts having a common characteristic. Examples include, but are not limited to, personal service contracts, public works contracts, leases, purchasing contracts, and contracts for specific types of goods and/or services.

(3) "Combination minority and women's business enterprise" means a business organized for profit, performing a commercially useful function, that is fifty percent owned and controlled by one or more minority men or MBEs certified by this office and fifty percent owned and controlled by one or more nonminority women or WBEs certified by this office. The owners must be United States citizens or lawful permanent residents.

(4) "Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor.

(a) For purposes of certification, factors which may be considered in determining whether a business is or will be performing a commercially useful function include, but are not limited to, the following:

(i) Whether the business is or will be responsible for executing a distinct element of work in the performance of a contract; and

(ii) Whether principals or employees of the business actually perform, manage, and supervise the work for which the business is or will be responsible; and

(iii) Whether the business could be considered a "conduit," "front," or "pass-through" as defined in this section; and

(iv) Whether the minority and/or women owner(s) has the skill and expertise to perform the work for which the business is being, or has been certified.

(b) The manner in which a supplier does business will be examined by the office for purposes of certification and may be considered by state agencies and educational institutions in awarding a contract. Factors in addition to those in (a) of this subsection which indicate that a supplier is performing a commercially useful function include, but are not limited to, the following:

(i) It either assumes the actual and contractual responsibility for furnishing goods or materials and executes material changes in the configuration of those goods or materials; or

(ii) Is the manufacturer of those goods or materials; or

(iii) Before submitting the certification application, it has secured a contract or distributor agreement with a manufacturer to act as an authorized representative, and can pass on product warranties to the purchaser; and

(iv) Performs a distinct element of work in a manner that is consistent with common industry practice. Factors which may indicate that a firm is not performing a commercially useful function include, but are not limited to, the following:

(A) A minimum amount of inventory is not maintained;

(B) Billing and shipping arrangements are performed by nonowners or staff of nonowners;

(C) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user;

(D) The supplier does not take ownership of the product.

(5) "Contract" means a mutually binding legal relationship, including a lease, or any modification thereof, obligating the seller to furnish goods or services, including construction, and the buyer to pay for them.

(6) "Contract by contract basis" means a single contract within a specific class of contracts.

(7) "Contractor" means a party who enters into a contract to provide a state agency or educational institution with goods or services, including construction, or a subcontractor or sublessee of such a party.

(8) "Director" means the director of the office of minority and women's business enterprises.

(9) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(10) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume for participation by minority and women-owned businesses, and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. Goals shall be met on a contract by contract or class of contract basis. In meeting their goals on either a contract by contract or a class of contract basis state agencies and educational institutions should facilitate the entry of minority and women's business enterprises into types of businesses in which MBE's and WBE's are underrepresented.

(11) "Goods and/or services" means all goods and services, including professional services.

(12) "Joint venture" means a single enterprise partnership of two or more persons or businesses created to carry out a single business enterprise for profit for which purpose they combine their capital, efforts, skills, knowledge or property and in which they exercise control and share in profits and losses in proportion to their contribution to the enterprise.

(13) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black: Having origins in any of the black racial groups of Africa;

(b) Hispanic: Of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(c) Asian American: Having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or

(d) American Indian or Alaskan Native: Having origins in any of the original peoples of North America.

Persons who are visibly identifiable as a minority need not provide documentation of their racial heritage but may be required to submit a photograph. Persons who are not visibly identifiable as a minority must provide documentation of their racial heritage which will be determined on a case-by-case basis. The final determination will be in the sole discretion of the office.

(14) "Minority business enterprise," "minority-owned business enterprise," or "MBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more minority individuals or minority business enterprises certified by this office. The minority owners must be United States citizens or lawful permanent residents.

(15) "MWBE" means a minority-owned business enterprise, a women-owned business enterprise; and/or a combination minority and women's business enterprise certified by the office of minority and women's business enterprises of the state of Washington.

(16) "Office" means the office of minority and women's business enterprises of the state of Washington.

(17) "Procurement" means the purchase, lease, or rental of any goods or services.

(18) "Public works" means all work, including construction, highway and ferry construction, alteration[s], repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(19) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. "State agency" does not include the judicial or legislative branches of government except to the extent that procurement or public works for these branches is performed by a state agency.

(20) "Women's business enterprise," "women-owned business enterprise," or "WBE" means a business organized for profit, performing a commercially useful function, which is legitimately owned and controlled by one or more women or women's business enterprises certified by this office. The women owners must be United States citizens or lawful permanent residents.

(21) "Common industry practices" mean those usages, customs, or practices which are ordinary, normal, or prevalent among businesses, trades, or industries of similar types engaged in similar work in similar situations in the community.

(22) "Conduit" means a WBE, MBE, or combination MWBE which agrees to be named as a subcontractor on a contract in which such WBE, MBE, or combination MWBE does not perform the work but, rather, the work is performed by the prime contractor, prime consultant, material supplier, purchasing contractor, or any other non-MWBE business.

(23) "Front" means a business which purports to be:

(a) A WBE but is in fact owned or controlled by a man or men; (b) a MBE but is owned or controlled by a nonminority person or persons; or (c) a combination MWBE but is owned or controlled by a man or men or by a nonminority person or persons to a greater extent than is allowed by WAC 326-02-030(3).

(24) "Pass-through" means a business which buys goods from a non-WBE, non-MBE, or noncombination MWBE and simply resells those goods to the state, state contractors or other persons doing business with the state for the purpose of allowing those goods to be counted towards fulfillment of WBE or MBE goals.

(25) "Manufacturer" means a business which owns, operates, or maintains a factory or establishment that produces or creates goods from raw materials or substantially alters goods before reselling them.

(26) "Supplier" means a business which provides or furnishes goods or materials, performs a commercially useful function, and is not considered a conduit, front, or pass-through.

(27) "Switch business" means a business which was previously owned and controlled by a man, men or nonminorities, which has made technical changes to its business structure so that it is now purportedly owned and controlled by a woman or women or by a minority person or persons, but continues to operate in substantially the same manner as it did prior to the written revisions of the business structure.

(28) "Corporate-sponsored dealership" means a bona fide minority or women's business which meets the following standards in lieu of the fifty-one percent ownership criteria set out in subsections (14), (15), and (20) of this section, and meets the following standards in lieu of the factors used to evaluate control in WAC 326-20-080.

(a) The minority or women owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell or distribute goods or services at wholesale or retail, leasing, or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.

(b) The capital investment for the dealership or business is jointly contributed by the minority or women owner(s) and the sponsoring corporation.

(i) The original investment contributed by the minority or women owner(s) may be less than fifty-one percent, but must constitute at least twenty-five percent of the capitalization investment (total required equity capital) in the dealership corporation.

(ii) A specified time limit of not more than ten years must be established, binding between the minority or women owner(s) and the sponsoring corporation, within which the buy-out of the corporate sponsor's interest is complete.

(c) If the sponsoring corporation retains majority voting rights and control of the board of directors, then the minority or women owner(s) must annually apply at least fifty percent of the net profit and bonuses toward the buy-out of the corporate sponsors' interest within the buy-out time limit established with the corporation.

(d) The minority or women owner(s) must show active participation in the decision-making process on the board of directors of the dealership.

(e) The minority or women owner(s) must have operational control, and as such have day-to-day management control of the dealership, with responsibility for sales, service volume, and profits.

(f) The sponsoring corporation must have specifically developed a national or regional corporate sponsored dealership program to address the present-day issue of lack of opportunities for minorities or women in the dealership industry, which includes such features as:

Capitalization assistance from the sponsoring corporation, on-going business operations training, technical assistance to the dealership owner, and a corporate sponsored minority and women's business program.

(g) The minority or women owner(s) must demonstrate that the relationship between the corporate sponsor and the minority or women's business was not formed for the primary purpose of achieving certification under chapter 39.19 RCW, or any similar provision of any ordinance, regulation, rule, or law.

(h) The minority or women owner(s) have prior business or management experience relating to the business being entered into as an owner.

(i) The minority or women owner(s) must be president of any corporation formed by the business.

(29) "Legitimately owned and controlled" for the purposes of determining whether a business is a minority business enterprise, a women's business enterprise, or a combination thereof, shall mean that women, minorities or a combination thereof shall possess:

(1) Ownership of at least fifty-one percent interest in the business, unless the minority and/or women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28). The ownership shall be real and continuing, and shall go beyond the pro forma ownership of the business reflected in the ownership documents. The minority and/or women owner(s) shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance and the form of the arrangements; and

(2) Control over management, interest in capital, interest in profit or loss and contributions to capital, equipment and expertise on which the claim of minority and/or women-owned status under this chapter is based. The minority and/or women owner(s) must possess and exercise the legal power to direct the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy, finances, and overall operations. If the owners of the business who are not minorities and/or women are disproportionately responsible for the operation of the business, then the business is not controlled by minorities and/or women. The minority and/or women owner(s) must control and manage the day to day operations of the business. The requirements of this shall not apply, if the minority/women's business qualifies as a corporate sponsored dealership under the provisions of WAC 326-02-030(28).

[Statutory Authority: Chapter 39.19 RCW. 88-12-060 (Order 88-5), § 326-02-030, filed 5/31/88; 88-08-031 (Order 88-4), § 326-02-030, filed 4/1/88; 87-18-030 (Order 87-6), § 326-02-030, filed 8/27/87; 86-17-018 (Order 86-2), § 326-02-030, filed 8/11/86; 85-14-101 (Order 85-6), § 326-02-030, filed 7/2/85; 84-09-002 (Order 84-5), § 326-02-030, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-02-030, filed 10/28/83.]

Reviser's note: RCW 34.04.058 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 326-02-040 Prohibited activities with regard to chapter 39.19 RCW. RCW 39.19.080 makes it unlawful for a person, firm, corporation, business, union, or other organization to:

(1) Prevent or interfere with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter;

(2) Submit false or fraudulent information to the state concerning compliance with this chapter or any such rule;

(3) Fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a minority or women's business enterprise for the purpose of this chapter;

(4) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority or women's business enterprise;

(5) Knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity that has requested certification as a minority or women's business enterprise;

(6) Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this chapter;

(7) Knowingly make false statements that any entity is or is not certified as a minority or women's business enterprise for purposes of obtaining a contract governed by this chapter;

(8) To fail or refuse to comply with any provision of chapter 39.19 RCW or with a contract requirement established under this chapter.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-02-040, filed 10/24/88.]

WAC 326-02-050 Penalties which may be imposed.

(1) The penalties under this section may be imposed by the office, or by the state agency or educational institution administering a contract within which a violation occurs. Nothing in chapter 39.19 RCW or this chapter prevents the state agency or educational institution administering the contract from pursuing any procedures or sanctions as are otherwise provided by statute, rule, or contract provision.

(2) Penalties which may be imposed include one or more of the following:

(a) Withhold payment until the violation is remedied;

(b) Debarment from contracting with the state for up to one year; debarment for up to three years may be imposed for willful repeated violations, exceeding a single violation;

(c) Suspension of the contract;

(d) Termination of the contract;

(e) Immediate suspension of the certification of a certified firm;

(f) Payment of civil penalties of up to five thousand dollars or up to ten percent of the amount of the contract.

(3) Penalties may be imposed on one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives trustees and receivers, or any group of persons.

(4) Penalties shall be imposed by the office giving a written notice which is either personally served upon or transmitted by certified mail, return receipt requested, to the person or entity incurring the penalty. Except for suspension of certification, which is covered by WAC 326-02-090, the notice of the civil penalty shall be a final order of the office unless, within fifteen days after the notice is received, the person incurring the penalty appeals the penalty by filing a notice of appeal with the office. If a notice of appeal is filed in a timely manner, a contested case hearing shall be conducted on behalf of the office by the office of administrative hearings. The administrative law judge shall issue a proposed decision, with findings of fact and conclusions of law, and a recommendation on the size and nature of the penalty to be imposed, if any. The director may adopt the recommendations of the administrative law judge, or affirm, or reduce the penalty, and shall issue a final order setting forth the civil penalty assessed, if any. The director's order may be appealed to the superior court within thirty days of service of the order. Any penalty imposed under this section is due and payable upon the issuance of the final order by the office, whether or not an appeal to superior court is pursued.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-02-050, filed 10/24/88.]

WAC 326-02-060 Factors considered in determining penalties. In determining the nature of the penalty and monetary amount, if any, of a penalty to be imposed, the factors which may be considered include, but are not limited to:

- (1) The potential harm to the MWBE or non-MWBE firm;
- (2) Potential harm to the state, due to delay or other problems;
- (3) The potential for harm to the public;
- (4) Whether the violation occurs in the context of particular contract;
- (5) The stage or percent of completion of a contract at which the violation occurs;
- (6) The timing of the discovery of the violation;
- (7) The contracting history of the alleged violator;
- (8) The extent to which the alleged violator has cooperated with the investigation;
- (9) Whether there have been previous violations by the person.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-02-060, filed 10/24/88.]

WAC 326-02-070 Suspension of contract. (1) The performance of a contract may be immediately suspended upon receipt of adequate evidence received by

the office that the person has engaged in any of the prohibited activities described in WAC 326-02-040 and RCW 39.19.080.

(2) The decision of the office to suspend a contract is discretionary and will not be based on an unsupported allegation. Decisions to suspend shall be in the public interest, including the government's interest in doing business with firms that are responsible and the interest in preserving competition.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-02-070, filed 10/24/88.]

WAC 326-02-080 Suspension of certification. The certification of a business certified under chapter 39.19 RCW and these regulations may be suspended for engaging in any of the activities prohibited by RCW 39.19.080 and WAC 326-02-040, upon a showing that immediate action is necessary to prevent harm to the public welfare.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-02-080, filed 10/24/88.]

WAC 326-02-090 Procedures for suspension, hearing provided. (1) If the director determines that suspension of certification of a firm is necessary to prevent immediate harm to the public welfare, the suspended person or firm will be notified by personal service or certified mail, return receipt requested, of the suspension and the reasons therefor. The suspension shall take effect immediately upon receipt of the notice. The suspended person or firm will be entitled to a hearing pursuant to chapter 326-08 WAC, but a written request for hearing must be made within twenty days of receipt of the notice of suspension.

(2) After the hearing, the administrative law judge may recommend that:

- (a) Suspension of certification remain in effect for up to one year;
- (b) The suspension be removed; or
- (c) That the firm be decertified.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-02-090, filed 10/24/88.]

**Chapter 326-20 WAC
CERTIFICATION**

WAC	
326-20-010	In general.
326-20-050	Proof of ownership of business.
326-20-080	Factors considered in determining control.
326-20-090	Repealed.
326-20-091	Size standards—Purpose.
326-20-092	Small business concern requirement.
326-20-093	Definitions.
326-20-094	Application of size standard.
326-20-095	Determination of firm size.
326-20-096	STURAA project size standard.
326-20-097	Change in firm size.
326-20-098	Applicability of federal regulations.
326-20-140	Duty to cooperate.
326-20-171	Denial of certification—Show cause review.
326-20-172	Decertification of firms.

326-20-173	Expiration of certification upon death or disability of owner of certified business.
326-20-180	Effect of certification.
326-20-185	Recertification.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

326-20-090	Size and length of time in business. [Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-090, filed 10/28/83.] Repealed by 88-06-030 (Order 88-2), filed 2/26/88. Statutory Authority: Chapter 39.19 RCW.
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WAC 326-20-010 In general. Any business which meets the definition of a minority business enterprise, a women's business enterprise, or a combination minority and women's business enterprise or corporate-sponsored dealership as set forth in this title is eligible to be certified by the state of Washington as a minority business enterprise, a women's business enterprise or a combination minority and women's business enterprise. A business owned and controlled by one or more minority females may be certified as both a MBE and a WBE.

[Statutory Authority: Chapter 39.19 RCW. 87-18-030 (Order 87-6), § 326-20-010, filed 8/27/87. Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-010, filed 10/28/83.]

WAC 326-20-050 Proof of ownership of business.

(1) All minority or women owners shall submit to the office proof of their ownership of the requisite percentage of the business at the time the application is submitted. Such proof shall consist of stock certificates, a notarized affidavit of stock ownership from the corporate treasurer, a partnership agreement, cancelled check used to purchase ownership, or other recognized proof of ownership.

(2) In cases of sole proprietorships or other cases where documentary proof of ownership is not available, the minority or women owners shall so advise the office, which may undertake further investigation. The office may also require documents showing how and when the minority or women owners' interest in the business was acquired.

(3) The office may, for any reason, require any minority or women owners to provide additional proof of, or information concerning, ownership. The office may request additional information regarding separate ownership of a business including, but not limited to, a separate property agreement.

(4) Ownership of a corporate-sponsored dealership shall be evaluated by using the standards set out in WAC 326-02-030(28).

[Statutory Authority: Chapter 39.19 RCW. 87-18-030 (Order 87-6), § 326-20-050, filed 8/27/87; 84-09-002 (Order 84-5), § 326-20-050, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-050, filed 10/28/83.]

WAC 326-20-080 Factors considered in determining control. Whether a minority or woman owner meets the control requirement as defined in WAC 326-02-030(29) is determined on an application-by-application basis. Factors which may be considered in determining whether the minority or woman owner meets the control

requirement include, but are not limited to, the following:

(1) Authority and restrictions as indicated in the articles of incorporation, bylaws, partnership agreements and/or other business agreements and documents;

(2) The financial interest and/or participation in any other business by any owner or key personnel;

(3) Past and current employment history of minority and women owners involved in the business;

(4) Members of the board of directors and corporate officers;

(5) Experience, training, and expertise of any owners;

(6) Recent changes in ownership and/or control of the business;

(7) Financial obligation to and capital contributions from nonowners of the business; and

(8) Documentation indicating who has ultimate authority to make policy and management decisions and to legally obligate the business.

(9) Control of a corporate-sponsored dealership will be evaluated using the standards set out in WAC 326-02-030(28).

[Statutory Authority: Chapter 39.19 RCW. 88-12-060 (Order 88-5), § 326-20-080, filed 5/31/88; 87-18-030 (Order 87-6), § 326-20-080, filed 8/27/87. Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-080, filed 10/28/83.]

WAC 326-20-090 Repealed. See Disposition Table at beginning of this chapter.

WAC 326-20-091 Size standards--Purpose. The purpose of WAC 326-20-091 through 326-20-098 is to set forth the procedure by which the office will apply maximum size standards which a firm must not exceed to be eligible for certification. The office's determination of whether a firm qualifies as a small business concern shall be, whenever possible, consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. 632, and its implementing regulations. (Authority: RCW 39.19.030 (7)(b)).

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-091, filed 4/18/88.]

WAC 326-20-092 Small business concern requirement. (1) In addition to meeting the ownership and control requirements of chapter 39.19 RCW and these regulations, in order to be entitled to certification under chapter 39.19 RCW, a firm must qualify as a small business concern as defined in WAC 326-20-093.

(2) A firm which exceeds the small business size limits after certification by the office shall be subject to decertification.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-092, filed 4/18/88.]

WAC 326-20-093 Definitions. (1) Affiliate:

(a) Except as otherwise noted, size determinations shall include the applicant concern and all its domestic and foreign affiliates. Moreover, all affiliates, regardless of whether organized for profit, must be included.

(b) Except as otherwise provided in this section, concerns are affiliates of each other when either directly or indirectly:

(i) One concern controls or has power to control the other, or;

(ii) A third party or parties controls or has the power to control both, or;

(iii) Such an "identity of interest" between or among parties exists so that affiliation may be presumed.

(c) In determining whether affiliation exists, consideration shall be given to all appropriate factors, including but not limited to common ownership, common management, common facilities, and contractual relationships: Provided, however, That restraints imposed on a franchise by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his or her effort, commensurate with ownership, and bears the risk of loss or failure.

(2) Annual receipts. In size determinations where the maximum size is set by reference to "annual receipts," size eligibility requires that the concern may not exceed the "annual receipts" in that standard.

(a) For the purpose of determining annual receipts of a concern, "receipts" is defined to include all revenue in whatever form received or accrued from whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. However, the term "receipts" excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, proceeds from payments of notes receivable and accounts receivable, and amounts collected as an agent for another, such as gross bookings on which a commission is earned (in which case only the commission earned would constitute revenue) or such as taxes collected for remittance to a taxing authority.

(b) Period of measurement. "Annual receipts" of a concern which has been in business for three or more completed fiscal years means the arithmetic annual average revenue of the concern over its last three completed fiscal years (total revenue compiled over the entire three year period would be divided by three).

(c) "Annual receipts" of a concern which has been in business for less than three fiscal years means the arithmetic annual average revenue over the time period the concern has been in business (total revenues compiled over the period the concern has been in business, divided by the number of weeks, including fractions of a week, the concern has been in business, multiplied by fifty-two).

(d) Method of determining annual receipts. Revenue may be taken from the regular books of account of the concern. If the Office so elects or the firm has not kept regular books of account or the Internal Revenue Service has found such records to be inadequate and has reconstructed income of the concern, then revenue as

shown on the Federal Income Tax return of the concern may be used in determining annual receipts along with other information the office deems relevant.

(3) Business concerns or concern. A business concern eligible for certification under this chapter is a business entity, including its affiliates, organized for profit, with a place of business located in the United States and which makes a significant contribution to the United States economy through payment of taxes and/or use of American products, materials and/or labor. Such business entity must be legitimately owned and controlled by an individual(s) who is (are) citizens of or lawfully admitted permanent resident aliens in the United States, or by another business entity (or entities) eligible for certification under chapter 39.19 RCW.

(4) Number of employees. In size determinations where the standard is "number of employees" size eligibility requires that the concern may not exceed the number of employees in that standard.

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

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

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

(5) Small business concern. Except as otherwise provided in WAC 326-20-096, for certain federal projects, a small business concern for purposes of eligibility for certification is a business concern which is independently owned and operated, is not dominant in its field of operations, and which does not exceed the size limitations as set forth in the current table of Standard Industrial Classification (SIC) codes and corresponding industry size standards as adopted by the Small Business Administration Federal Regulations, 13 CFR, Part 121. The number of employees or amount of annual receipts listed as the size standard for each SIC code indicates the maximum allowed for a firm (including its affiliates) to qualify as a small business concern. SIC size standard tables may be obtained at the following locations:

1. Office of Minority and Women's Business Enterprises
406 South Water, MS: FK-11
Olympia, Washington 98504-4611
(206) 753-9693 or SCAN 234-9693
2. METRO - MWBE/Contract Compliance Programs
821 Second Avenue, 6th Floor,
MS: 63
Seattle, Washington 98104
(206) 684-1337

3. Seattle Human Rights Department
105 Fourteenth Avenue
Seattle, Washington 98122
(206) 625-4384
4. King County Minority/Women's
Business Program
Room 400, King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 344-2617
5. Port of Seattle – Contract Compliance
Department
P.O. Box 1209
Seattle, Washington 98111
(206) 728-3296
6. City of Spokane – Affirmative
Action Department
Fourth Floor, Municipal Building
West 808 Spokane Falls Boulevard
Spokane, Washington 99201-3333
(509) 456-4368

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-093, filed 4/18/88.]

WAC 326-20-094 Application of size standard. (1) The office will determine which SIC code an applicant firm falls under based on information submitted by the firm. The office will prepare conversion tables showing the department of general administration's commodity code designations listed in the MWBE directory and the corresponding SIC codes, and the codes developed by the Construction Specifications Institute with the corresponding SIC codes.

(2) If an applicant's business activities encompass two or more SIC codes, the particular size standard to be applied will be based on the primary industry classification of the applicant concern. In determining what is the primary industry in which an applicant, including its affiliates, is engaged, primary consideration shall be given to the distribution of receipts, employees and costs of doing business among differing industry areas in which a concern is operating for the most recently completed fiscal year of the concern. Other factors (e.g., patents, contract awards, assets) may be considered.

(3) In the event a firm plans to expand the areas in which it does business, it must notify the office in writing at least thirty calendar days before the effective date of such expansion.

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

WAC 326-20-095 Determination of firm size. (1) At the time of application for certification, and again at each renewal, a firm must demonstrate to the office that it is a small business concern. The office, in turn, will verify that each firm qualifies as a small business concern. In verifying the applicant's size, the office will review the annual financial statements and other relevant information.

[1988 WAC Supp—page 2224]

(2) The size of the firm, including its affiliates, will be determined as of the time of application for certification, and at the time of each renewal of certification.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-095, filed 4/18/88.]

WAC 326-20-096 STURAA project size standard. For purposes of utilization on projects funded by the Federal Highway Administration or under The Surface Transportation and Urban Relocation Assistance Act of 1987, (P.L. 100-17, or STURAA) the maximum size standard set out in STURAA and 49 CFR Part 23 of \$14 million average annual gross receipts over the preceding three fiscal years, shall apply, even if the size standard would otherwise be set by reference to number of employees. The \$14 million figure is a ceiling and firms are still subject to applicable lower limits on business size as established by the Small Business Administration and these regulations.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-096, filed 4/18/88.]

WAC 326-20-097 Change in firm size. (1) In the event a firm that is certified as a small business concern under this chapter exceeds the size limits, it must notify the office in writing within thirty calendar days of the event or the effective date of the expansion.

(2) If a firm exceeds size limits while performing a contract, the rules set out at WAC 326-30-100(3) will apply.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-097, filed 4/18/88.]

WAC 326-20-098 Applicability of federal regulations. Whenever issues arise regarding whether a firm qualifies as a small business concern which cannot be resolved by reference to these regulations, federal regulations adopted by the Small Business Administration at 13 CFR 121 shall provide guidance to resolve such issues.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-098, filed 4/18/88.]

WAC 326-20-140 Duty to cooperate. The owners shall have the duty to cooperate fully in the office's investigation of the application, including promptly submitting any additional information requested by the office. In addition to any other penalties provided by law, the submission of false information to the office in connection with an application for certification or renewal of certification shall be grounds for denial of certification, or decertification.

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

WAC 326-20-171 Denial of certification—Show cause review. (1) If the office has reached the conclusion that an application for certification should be denied, the office shall notify the applicant in writing, by certified

mail, of its denial of certification. Within thirty days of receipt of this notification, the applicant must either:

(a) Submit a written request for show cause review by the director or designee, containing the information specified in subsection (2) of this section; or

(b) Submit a written request for a contested case hearing, pursuant to WAC 326-08-015.

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

(3) When an applicant requests a show cause review, the finality of the denial for appeal purposes is stayed until the show cause review is complete.

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

(5) The office will notify the applicant by certified mail of its decision either to affirm the denial or to grant certification. This notification is considered final for purposes of WAC 326-08-015.

(6) If a change in business circumstances occurs after the reconsideration period, then the applicant must submit a new application pursuant to WAC 326-20-220, and is not entitled to appeal the denial of the application in question on the basis of the change in business circumstances.

(7) "Reconsideration period," for purposes of this section, shall mean the thirty days after receipt of the denial letter, described in subsection (1) of this section plus any additional time authorized by the director in writing.

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

WAC 326-20-172 Decertification of firms. (1)

When the office has determined that a certified MWBE no longer meets the certification criteria or the certified MWBE fails to supply additional information requested by the office in a timely manner, the office will notify the firm in writing of its intent to decertify the firm.

(2) When a certified MWBE notifies the office that it is no longer in business, has sold the business, or no longer wishes to remain certified, or when the certified MWBE fails or refuses to return the renewal of certification form, the office will notify the firm in writing of its decertification. This notification is final for purposes of appeal, WAC 326-08-015.

(3) Upon receipt of an "intent to decertify" letter, the MWBE must either:

(a) Submit a written request for a show cause review by the director which meets the criteria set out in (c) of this subsection; or

(b) Submit a written request for a contested case hearing pursuant to WAC 326-08-018.

(c) The request for show cause review must be received by the office within thirty calendar days of receipt of the notice of intent to decertify the firm. The MWBE's request for a show cause review must set forth the reasons the MWBE believes the office's decision to decertify is in error and must include any additional information and documentation the business has to offer.

(4) If the office has not received a request for a show cause review nor any additional written documentation within thirty days of receipt of the "intent to decertify" letter, the decision to decertify becomes final, with no further rights to contest or appeal the decision.

(5) Upon receipt of the request for a show cause review, the office will review the request and any additional information provided and may conduct further investigation and/or request that the MWBE attend a show cause meeting with the director. The office will thereafter notify the MWBE by certified mail of its decision to either affirm or reverse its intent to decertify the firm. This decertification decision is considered final for purposes of WAC 326-08-015.

(6) If a show cause review is requested and the decision to decertify is affirmed, any aggrieved party may request a contested case hearing pursuant to WAC 326-08-015. The request must be made in writing and must be made within thirty days of receipt of the office's decision affirming the decertification decision.

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

(a) The time provided by WAC 326-08-015 for appeal of the decision to decertify has expired without action by the MWBE; or

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

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

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

WAC 326-20-173 Expiration of certification upon death or disability of owner of certified business. (1)

Upon death or commencement of long-term disability of the minority or woman owner of a business certified by the office, the guardian of the disabled owner, the executor of the owner's estate, or other person shall notify OMWBE in writing within thirty days of the death or documented disability. All notifications of long-term disability shall be documented by a statement from a qualified physician.

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

(3) The certification of a firm shall expire thirty days after receipt by the office of a notice of a death or documented disability of the owner of a certified firm. State agencies may continue to count the firm towards goal

attainment only for those contracts awarded prior to the date of death or onset of disability. Upon expiration of certification, the office shall notify the firm that it has been decertified. The decertification decision will be considered final for purposes of WAC 326-08-015.

(4) The office shall be notified of any transfer of ownership or substantial ownership interest which occurs within the six months following the death or onset of disability. The office may require the new owners to provide additional information, including requiring submission of a new application form. If transfer of ownership or substantial ownership interest occurring within six months of the date of death or date of documented disability results in majority ownership or control by nonfemales or nonminorities, where applicable, the firm shall be decertified by the office.

[Statutory Authority: Chapter 39.19 RCW. 88-22-017 (Order 88-9), § 326-20-173, filed 10/24/88.]

WAC 326-20-180 Effect of certification. Certification as a MWBE shall have the following effects:

(1) Certification as a MWBE shall entitle state agencies, educational institutions, and local government jurisdictions to utilize the MWBE toward meeting their MWBE goals under this chapter or local legislation. Certification as a MWBE for a federal program shall entitle state agencies, educational institutions, and local government jurisdictions to utilize the MWBE toward meeting the MWBE goals under those programs. Certification shall be effective as of the date the decision is made in writing.

(2) A firm may be decertified at any time the office determines that the MWBE does not meet the current criteria for eligibility for certification. The MWBE shall notify the office in writing within thirty calendar days of any changes in its size, ownership, control, or operations which may affect its continued eligibility as a MWBE. The duty of a business to cooperate with OMWBE investigation and the consent of a business to on-site investigation by OMWBE created in WAC 326-20-140 and 326-20-150 shall continue after a business is certified by OMWBE.

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-180, filed 4/18/88; 84-09-002 (Order 84-5), § 326-20-180, filed 4/5/84. Statutory Authority: 1983 c 120 § 3(7). 83-22-045 (Order 83-3), § 326-20-180, filed 10/28/83.]

WAC 326-20-185 Recertification. (1) Certification is effective for two years. The office will require of all certified firms and/or of selected certified firms annual notarized statements regarding changes in the information provided during the initial certification process. The office will generally renew the certification as long as the firm continues to meet the eligibility criteria, and there have been no determinations that the firm has violated chapter 39.19 RCW or this chapter. Debarment of a firm from contracting with one or more state or federal agencies or local government jurisdictions may be grounds for nonrenewal of certification.

[1988 WAC Supp.—page 2226]

(2) Each certified firm must submit a statement of present status prior to expiration of its two-year certification. The statement form will be provided to the certified business sixty days before expiration of its certification. Failure to return the completed form within thirty days may lead to decertification.

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

[Statutory Authority: Chapter 39.19 RCW. 88-09-047 (Order 88-5), § 326-20-185, filed 4/18/88; 85-07-006 (Order 85-2), § 326-20-185, filed 3/8/85.]

Chapter 326-30 WAC GOAL SETTING RULES

WAC

326-30-039 Goals for 1987-88.
326-30-03901 Goals for 1988-1989.
326-30-060 General exclusions from the contracting base.

WAC 326-30-039 Goals for 1987-88. The annual overall goals for each state agency and educational institution for each of the following classes of contracts for the period July 1, 1987 through June 30, 1988, shall be:

Construction/Public Works	10% MBE	6% WBE
Architect/Engineering	10% MBE	6% WBE
Purchased Goods and Services	8% MBE	4% WBE
Other Consultants	10% MBE	4% WBE

These MWBE participation goals are based on the state agency's or educational institution's total contracts subject to this chapter within each of the above noted classes of contracts, less excluded contracts.

[Statutory Authority: Chapter 39.19 RCW. 87-18-029 (Order 87-5), § 326-30-039, filed 8/27/87.]

WAC 326-30-03901 Goals for 1988-1989. The annual overall goals for each state agency and educational institution for each of the following classes of contracts for the period July 1, 1988 through June 30, 1989, should be:

Construction/Public Works	10% MBE	6% WBE
Architect/Engineering	10% MBE	6% WBE
Purchased Goods and Services	18% MBE	4% WBE
Other Consultants	10% MBE	4% WBE

These MWBE participation goals are based on the state agency's or educational institution's total contracts subject to this chapter within each of the above noted classes of contracts, less excluded contracts.

[Statutory Authority: Chapter 39.19 RCW. 88-17-045 (Order 88-8), § 326-30-03901, filed 8/16/88.]

WAC 326-30-060 General exclusions from the contracting base. Certain exclusions from the reporting base against which achievement of the annual overall goals is computed will be allowed without requesting permission from OMWBE.

(1) Exclusions will be reviewed by OMWBE on an annual basis.

(2) Contracts solely for the purchase of the following items are allowable exclusions:

- (a) Convention fees,
- (b) Emergency purchases, those made in response to unforeseen circumstances beyond the control of an agency/educational institution which presents a real, immediate and extreme threat to the proper performance of essential functions and/or which may be reasonably expected to result in excessive loss or damage to property, bodily injury, or loss of life,
- (c) Copyrighted materials,
- (d) Personal service contracts for consultant services in preparation for litigation and expert witness fees,
- (e) Purchases from other governmental agencies, including from cities and counties,
- (f) Honorariums,
- (g) Interagency purchases,
- (h) Interagency reimbursements,
- (i) Membership dues,
- (j) Purchases from nonprofit and not-for-profit firms,
- (k) Purchases for resale,
- (l) Purchases from quasi-governmental agencies, e.g., utilities,
- (m) Purchases from sheltered workshops,
- (n) Purchases from sole source suppliers, those which can be obtained from only one vendor and can be documented as such,
- (o) Subscriptions,
- (p) Contracts which are not competitively awarded and which are awarded to all qualified applicants, e.g., physicians and day care providers, and
- (q) Payments for travel made directly to a common carrier, not through a travel agency, whether by an agency/educational institution, or the employee.

[Statutory Authority: Chapter 39.19 RCW, 88-17-045 (Order 88-8), § 326-30-060, filed 8/16/88. Statutory Authority: 1983 c 120, 84-03-005 (Order 83-7), § 326-30-060, filed 1/5/84.]

Title 332 WAC NATURAL RESOURCES, BOARD AND DEPARTMENT OF

Chapters

332-10	Public records--Department of natural resources and board of natural resources.
332-12	Oil and gas leases.
332-16	Mineral prospecting leases and mining contracts.
332-24	Forest protection.
332-30	Aquatic land management.
332-52	Managed lands and roads--Use of.
332-100	Leases, sales, rights of way, etc.

332-140 Forest Products Industry Recovery Act of 1982.

332-150 Survey, plat and map filing and recording fees.

Chapter 332-10 WAC

PUBLIC RECORDS--DEPARTMENT OF NATURAL RESOURCES AND BOARD OF NATURAL RESOURCES

WAC

332-10-180 Application fee.

WAC 332-10-180 Application fee. An applicant to purchase or lease any public land or valuable materials shall pay a twenty-five dollar application fee, except for oil and gas leases as specified by WAC 332-12-230.

[Statutory Authority: RCW 79.01.618, 79.01.088 and 79.01.720, 87-21-005 (Order 523, Resolution No. 571), § 332-10-180, filed 10/9/87. Statutory Authority: RCW 79.01.088 and 79.01.720, 83-24-055 (Order 406), § 332-10-180, filed 12/6/83. Statutory Authority: RCW 79.01.088, 80-17-021 (Order 349, Resolution No. 310), § 332-10-180, filed 11/13/80.]

Chapter 332-12 WAC OIL AND GAS LEASES

WAC

332-12-150 Lands not under the jurisdiction of the department of natural resources.

WAC 332-12-150 Lands not under the jurisdiction of the department of natural resources. (1) May be leased by the commissioner. The commissioner of public lands is authorized to execute oil and gas leases, in accordance with and by authority of chapter 79.14 RCW, upon lands of the state of Washington not under the jurisdiction of the department of natural resources.

(2) [Competitive bid requirements. All oil and gas leases issued under this regulation shall be issued after competitive bidding unless otherwise requested by the agency requesting issuance.]

[(3)] Form of lease. Oil and gas leases issued under this regulation shall contain, in addition to the statutory provisions required by chapter 79.14 RCW, further terms, conditions, covenants, and limitations necessary to maintain the suitability of the lands for their intended use after consultation with the agency having jurisdiction over such lands.

[(4)] (3) Administrative expense. The commissioner of public lands may enter into necessary agreements with other agencies to provide for the reimbursement of the department of natural resources for expenses reasonably incurred in oil and gas leasing under this regulation. In the absence of such an agreement, reimbursement for expenses shall be by deductions from lease revenues as authorized by RCW 79.64.040.

[(5)] (4) Revenue from leases. All revenue [derived] less administrative expenses from oil and gas leases issued upon lands of the state of Washington not under