



COMMONWEALTH of VIRGINIA

Robert F. McDonnell
Governor

Department of Minority Business Enterprise

Lisa M. Hicks-Thomas
Secretary of Administration

1111 East Main Street, Suite 300
Richmond, Virginia 23219

Ida O. McPherson
Director

POLICY FOR PROCESSING

Certification Applications from Non-Virginia Based Businesses

Effective September 1, 2008

Revised August 26, 2011

✦ PURPOSE ✦

The Code of Virginia § 2.2-1403 (8) requires that the Director of the Agency adopt regulations to implement certification programs for Small, Women- and Minority-owned businesses (also known as “SWaM” businesses), which are found in Title 7, Agency 10 and Chapter 21 of the Virginia Administrative Code (code citation: 7 VAC 10-21 et seq.). The regulations establishes the minimum requirements for the certification of small, women- and minority-owned businesses pursuant to Chapter 14 (§ [2.2-1400](#) et seq.) of Title 2.2 of the *Code of Virginia* and to provide a process for evaluating local, state, private sector, and federal certification programs that meet those requirements.

This communiqué provides an overview of the recent changes to the *Regulations to Govern the Certification of Small, Women- and Minority-owned Businesses*, and the policy for processing certification applications from non-Virginia based businesses and applications from businesses from states which do not offer reciprocating certification programs. N.B.: The certifying agency for the Commonwealth of Virginia’s SWaM Program is the Virginia Department of Minority Business Enterprise (also known as the “DMBE”).

One of the statutory requirements for the SWaM Program is that the certifying agency shall “deny certification to vendors from states that deny like certifications to Virginia-based small, women- or minority-owned businesses or that provide a preference for small, women- or minority-owned businesses based in that state that is not available to Virginia-based businesses.”¹ The Director issued the regulations for Virginia’s certification programs, which became effective on September 1, 2008, and also made subsequent revisions to the applicable sections were made effective December 28, 2010.

Section 7VAC10-21-130, Eligible Out-of-State Business Enterprise, states that DMBE may certify a non-Virginia based business if:

1. It meets the applicable eligibility standards for certification as a small, women-owned or minority-owned business; and

2. The state in which the business has its principal place of business does not deny a like certification to a Virginia-based small, women-owned or minority-owned business or provide a preference to small, women-owned or minority-owned firms that is not available to Virginia-based businesses. (*Emphasis added*)

The "principal place of business" means the physical business location where natural persons who control the business's day-to-day operations spend most working hours, and the books and records of the company are being kept. A "Virginia-based business" means a business that has its principal place of business in Virginia. As such, the business's state of incorporation is no longer given eligibility consideration for an out-of-state business.

NOTE:

The Virginia Department of Minority Business Enterprise reserves the right to modify, amend, or revise this Policy at any time without prior notice. Any denial appeals must be submitted in writing to the Agency within fifteen (15) days of the receipt of a written notice of denial for certification under the SWaM Certification Program. All appeals must be sent to: Virginia Department of Minority Business Enterprise, 1111 East Main Street, Suite 300, Richmond, Virginia 23219.

I. STATES AND DISTRICT WITH IN-STATE/IN-DISTRICT PREFERENCE PROGRAMS

The following 12 states/district do not allow Virginia-based businesses to participate equally in their SWaM programs or have a preference affecting Virginia-based businesses. Therefore, applicants from these states **ARE NOT ELIGIBLE** to participate in the Virginia SWaM Program and will not be certified:

- Arkansas In-state firms only
- California Must have physical and legal presence in CA
- Connecticut Must have physical presence in CT for at least 1 year
- Florida Must have physical presence in FL and owned by FL residents
- Iowa Must have physical presence in IA
- Louisiana Must have physical presence in LA and owned by LA residents
- Minnesota In-state firms only
- Mississippi Must have physical presence and owned by MS residents
- New Mexico SBE program only to in-state firms only
- Ohio MBE and SBE Programs only to in-state firms and OH residents only
- Texas Must have physical presence in TX
- Washington, DC In-District firms only

II. States with Certification Programs Open to Virginia SWaMs

The following 16 states allow Virginia businesses to participate equally in their certification and preference programs, provided that they are first certified by Virginia, or without any restriction. Applicants from these states **ARE ELIGIBLE TO PARTICIPATE** in the Virginia SWaM Program **but with the same legal requirements, if any, such as having home state certification, licensure, etc. to transact business in Virginia:**

- Delaware Must have home-state certification
- Indiana
- Maryland Size limits based on field of operation
- Massachusetts Must have home-state certification
- Missouri Must have home-state certification and MO registration and licensure
- New York Must have home-state certification and NY registration and Licensure; firms from NY City are not eligible to participate
- North Carolina Must have home-state certification
- Oklahoma Must have OK registration and licensure
- Pennsylvania Must have home-state certification
- Rhode Island Must have home-state certification
- South Carolina Must have SC registration and licensure
- Tennessee Must have home-state certification
- Vermont
- Washington Must have WA registration and licensure
- West Virginia
- Wisconsin Must have home-state certification and “no abundance of in-state firms providing the same service”

III. States with Partial In-State Preference Programs or Registries

The following 11 states offer certification or a type of registration service to Virginia SWaMs, but with restrictions. Applicants from these states **ARE ELIGIBLE TO PARTICIPATE in the Virginia SWaM Program but with similar requirements, if applicable:**

- Alabama Must have SCC registration and has been in business more than one year
- Arizona Firms from Phoenix and Tucson are not eligible to participate
- Colorado Voluntary Business-to-Business Database for MBEs/WBEs
- Georgia Vendor registry with self-identification
- Illinois Business Enterprise Program (BEP) for “minor” , women, or disabled business owners; Small Business Set Aside Program available only to IL firms.
- Kansas Online MBE/WBE Registry
- Michigan Vendor registry with self-identification
- Nebraska Vendor registry with self-identification
- New Hampshire Online SBE Registry
- New Jersey Voluntary small business database; Small Business Set Aside Program available only to NJ firms.

- Oregon MBE/WBE Program available to VA firms; Emerging Small Business Program only available to OR firms.

IV. States with No Certification Programs

The following 11 states do not have certification programs or procurement initiatives for small, women- or minority-owned businesses but may have DBE Programs. Applicants from these states **ARE STILL ELIGIBLE** to participate in the Virginia SWaM Program:

- Alaska
- Hawaii
- Idaho
- Kentucky
- Maine
- Montana
- Nevada
- North Dakota
- South Dakota
- Utah
- Wyoming

VI. Procedures for Handling a SWaM Certification Applicant from States Not Eligible to Participate in the Virginia SWaM Program

A. The Department of Minority Business Enterprise may revoke the certification of a business that it finds no longer qualifies as a small, women- or minority-owned business under § 2.2-1401 of the Code of Virginia. Administrative Code 7VAC10-21-520 provides the criteria for revocation of certification. The criteria include:

- The business knowingly provides false or misleading information in support of its initial application or its application for recertification or in response to the department's request for records or information.
- The business is based in a state that denies like certifications to Virginia-based small, women- or minority-owned businesses or that provides a preference for small, women- or minority-owned businesses that is not available to Virginia-based businesses.

B. Appeals

1. Non-Virginia based applicants that were denied certification or re-certification under the VA SWaM Program are eligible to appeal the agency's decision under the Administrative Process Act. As such, a state/district listed under Section I above that repeals its restriction or prohibition of VA firms participating in its

certification or supplier diversity program, may petition in writing the Director of the agency to allow such states' vendors to participate in the VA SWaM Program.

2. **N.B.:** Such petition shall include a signed affidavit from the state director of purchasing or supplier diversity (MBE/WBE/SBE Office) indicating that Virginia firms are not prohibited or restricted from participating in that state/district's program.

NOTE: The Virginia Department of Minority Business Enterprise reserves the right to modify, amend, or revise this Policy at any time without prior notice.

¹Endnotes

i Code of Virginia § 2.2-1403 (8): Adopt regulations to implement certification programs for small, women- and minority-owned businesses, which regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 2 of § 2.2-4002. Such certification programs shall deny certification to vendors from states that deny like certifications to Virginia-based small, women- or minority-owned businesses or that provide a preference for small, women- or minority-owned businesses based in that state that is not available to Virginia-based businesses. The regulations shall (i) establish minimum requirements for certification of small, women- and minority-owned businesses; (ii) provide a process for evaluating existing local, state, private sector, and federal certification programs that meet the minimum requirements; and (iii) mandate certification, without any additional paperwork, of any prospective state vendor that has obtained certification under any certification program that is determined to meet the minimum requirements established in the regulations.

prospective state vendor that has obtained certification under any certification program that is determined to meet the minimum requirements established in the regulations.

State	SWaM Certification?	MBE/SBE/WBE Certification Program(s) Offered	VA SWaM Program Requirement
Alabama (AL)	Yes	MBE/WBE/SBE Certification: firms must have been in business for at least one year, and must register with the Alabama Secretary of State's Office Alabama Dept. of Economic Development Office and Community Affairs- Office of Minority Business Enterprise; website: http://216.226.178.189/C15/OMBE/default.aspx	<ul style="list-style-type: none"> • Firm must have been in operation for at least one year prior to applying for business certification status; • It must register with Virginia State Corporation Commission (SCC)
Alaska (AK)	Yes	None	
Arizona (AZ)	Yes to firms outside of Phoenix and Tucson (see Notes)	Arizona Steps Up equity in procurement program: directory of certified minority-owned, women-owned and small businesses; firms included in data base are those certified by Arizona Dept of Transportation (as DBEs), Phoenix and Tucson certification restricted to in state firms	Firm must be certified as Virginia DBE
Arkansas (AR)	No	SBE and MBE certification open to in state firms only 10% goal for in-state only; The firm must be owned by a permanent resident or residents of the state of Arkansas. Economic Development Commission. Website: http://www.arkansasedc.com/business-development/small-and-minority-businesses/mbe-certification-program.aspx	
California (CA)	No	Small Business and Micro-business certification and 5% bid preference; 25% goal for contract dollars spent by state Firms must have principal office in CA and owners/officers must be domiciled in CA	
Colorado (CO)	Yes	Voluntary business to business marketing data base for MBE/WBE Program Emerging Small Business (ESB) certification/goal for CO DOT's DBE Program. Office of Economic Development & International Trade; website: http://www.colorado.gov/cs/Satellite?c=Page&cid=1165009699718&pagename=OEDIT%2FOEDITLayout	
Connecticut (CT)	No	SBE/MBE (minority defined to include women) certification program with 25% set aside goal for small business contracting (including WBE and MBE), Must have principal place of business in state for at least a year. Department of Administrative Services, Supplier Diversity Program; website: http://www.das.state.ct.us/Purchase/New_PurchHome/busopp_template.asp?F_ID=25	

Delaware (DE)	Yes	MBE/WBE certification program: Must be certified in home state. Office of Management and Budget: Office of Minority and Women Business Enterprise: website: http://omwbe.delaware.gov/certify.shtml	Home-state certification
Florida (FL)	No	MBE certification (MBE is defined to include women); mentor/protégée programs Firm must be “domiciled” in FL, i.e., have its principal place of business in FL; must be 51% owned and controlled by minority persons who are permanent residents of FL. Minority Business Enterprise Office; website: http://dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/certification__1	
Georgia (GA)	Yes	Vendor registry with self-identification and designation Dept. of Administrative Services, Office of Minority Business Development; website: http://doas.ga.gov/StateLocal/SPD/Pages/Home.aspx	
Hawaii (HI)	Yes	None	
Idaho (ID)	Yes	None	
Illinois (IL)	MBE & WBE only	Business Enterprise Program (BEP; Minority, Women, Disabled Veterans); Small Business Set Aside 19% goal for in-state SBEs only BEP open to out of state businesses; Small Business Set Aside only for in state firms. IL Department of Central Management Services' Business Enterprise Program; website: http://www.sell2.illinois.gov/bep/Small_and_Diverse_Businesses.htm	SBE not eligible for VA SWaM certification
Indiana (IN)	Yes	MBE/WBE certification; 12% goal; Department of Administration; website: http://www.in.gov/idoa/2489.htm	
Iowa (IA)	No	Targeted Small Business certification; 10% goal; Limited to Iowa firms only. IA Dept of Inspections and Appeals; Website: http://www.dia.iowa.gov/page7.html	
Kansas (KS)	Yes	Online business registry with MBE/WBE status: Department of Commerce Office of Minority & Women Business Development; website: http://www.kansascommerce.com/Default.aspx?tabid=144&ds_uc_id=70	
Kentucky (KY)	Yes	None	
Louisiana (LA)	No	Small Entrepreneurship (SE) program: firms must be owned by individuals domiciled in LA who maintain the principal business office in LA; SEBD (Small and Emerging Business Development): LA firms only; firms must have principal place of business in LA and be owned and controlled by one or more persons who has lived in LA for at least a year	
Maine (ME)	Yes	None	

Maryland (MD)	Yes	<p>MBE/WBE certification and Small Business Reserve certification with 10% set-aside goal; MBE goal of 25% (7% AA owned; 10% WBO). Open to VA firms; Size limits are smaller than VA Maryland's Governor's Office of Minority Affairs; website: http://www.mdminoritybusiness.com/</p>	<p>Wholesale: not more than 50 employees and gross receipts not exceed \$4,000,000 (three year average)</p> <p>Retail: not more than 25 employees and gross receipts not exceed \$3,000,000 (three year average)</p> <p>Manufacturing: not more than 100 employees and gross receipts not exceed \$2,000,000 (three year average)</p> <p>Service: not more than 100 employees and gross receipts not exceed \$10,000,000 (three year average)</p> <p>Construction: not more than 50 employees and gross receipts not exceed \$7,000,000 (three year average)</p> <p>Service: not more than 100 employees and gross receipts not exceed \$4,500,000 (three year average)</p>
Massachusetts (MA)	Yes	<p>MBE/WBE certification; 10% goal; Must be certified in home state; State Office of Minority & Women Business Assistance; website: http://www.somwba.state.ma.us/</p>	Home-state certification
Michigan (MI)	Yes	Vendor registry with self-identification and designation	
Minnesota (MN)	No	<p>MBE/WBE/SBE certification (Targeted Group/Economic Disadvantage): Only open to in-state firms; must be based in MN; website: http://www.mmd.admin.state.mn.us/mn02001.htm</p>	
Mississippi (MS)	No	<p>MBE/WBE certification program: Owners must be domiciled in MS; business operations must be physically located in MS. Economic Development Authority; website: http://www.mississippi.org/index.php?id=120</p>	
Missouri (MO)	Yes	<p>MBE/WBE certification: 15% goal; Open to VA firms; Must be certified in home state or by NMSC or Unified Certification Entity and registered to do business in the state. Office of Supplier and Workforce Diversity; website: http://oa.mo.gov/oswd/</p>	Home-state or DBE certification, registered with SCC
Montana (MT)	Yes	<p>None: Department of Commerce; website: http://commerce.mt.gov/</p>	

Nebraska (NE)	Yes	Vendor registry with self-identification and designation: City of Omaha Human Rights & Relations Department	
Nevada (NV)	Yes	None	
New Hampshire (NH)	Yes	Online SBE vendor registry: Dept. of Administrative Services; website: http://www.nheconomy.com/sell-to-the-government/selling-to-state-government.aspx .	
New Jersey (NJ)	MBE & WBE only	Self declaration data base for SWaM vendors; state certification available for MBEs/WBEs; SBE set aside program for in-state firms only: Office of Economic Growth Division of Minority & Women Business Development; website: http://www.state.nj.us/njbusiness/contracting/minority/certification.shtml	SBE not eligible for VA SWaM certification
New Mexico (NM)	No	Has a 5% preference for in-state small businesses: in-state ("resident") firms only. http://www.newrules.org/retail/rules/local-purchasing-preferences/local-purchasing-preferences-new-mexico	
New York (NY)	Yes to firms outside of New York City (see Notes)	State MBE/WBE certification program and Small Business Program (no SBE certification program): with listing in Official Directory of Minority and Women Owned Business Enterprises; Must be certified in home state and have authority to do business in NY MBE/WBE/SBEs and firms from those New York City locales cannot participate in the VA Program; New York City's geographic market has in-county preferences for the following counties: -Within the State of New York: Bronx, Kings (Brooklyn), New York, Queens, Richmond (Staten Island) Dept. of Economic Development Division of Minority & Women Business Development http://www.nylovesbiz.com/MWBE.html . Manhattan Chamber of Commerce: http://www.manhattancc.org/common/news/guide/detail.cfm?QID=3138&TopicID=183&Guide=wmbe&ClientID=11001 .	SCC Registration and MBE/WBE Home-state certification for firms outside of New York city
North Carolina (NC)	Yes	Historically Underutilized Business Program for MBE/WBEs: 15% goal; Open to VA firms; Must be certified in home state. Department of Administration Office for Historically Underutilized Businesses; website: http://www.doa.nc.gov/hub/	MBE/WBE Home-state certification
North Dakota (ND)	Yes	Vendor registry with self-identification and designation: Must register to do business in ND. Reference: http://www.nd.gov/spo/vendor/registry/	SCC registration

Ohio (OH)	No	MBE and EDGE (SBE) certification and assistance programs open only to OH firms; 15% goal: Open only to firms owned and controlled by Ohio residents. Minority Business Enterprise Unit; website: http://www.odod.state.oh.us/dmba/minoritysmallbusinesscert.htm	
Oklahoma (OK)	Yes	WBE program: Must be licensed to do business in OK. OK Dept of Commerce: http://www.okcommerce.gov/index.php?option=com_content&task=view&id=18&Itemid=770	SCC registration
Oregon (OR)	MBE & WBE only	MBE/WBE certification programs: open to VA firms but must have state registration and license; Emerging SBE program: restricted to OR firms only. Office of Minority, Women and Emerging Small Business; website: http://www.oregon.gov/OBDD/OMWESB/index.shtml	MBE/WBE: SCC registration SBE not eligible for VA SWaM certification
Pennsylvania (PA)	Yes	MBE/WBE certification programs; 10% goal: Must be certified in home state; Department of General Services Bureau of Minority and Women Business Opportunities: http://www.portal.state.pa.us/portal/server.pt/community/bureau_of_minority_and_women_business_opportunities/1358	MBE & WBE: Home-state certification
Rhode Island (RI)	Yes	MBE/WBE certification program; 10% goal: Must be certified in home state; Minority Business Enterprise Compliance Office; website: http://www.mbe.ri.gov/	MBE & WBE: Home-state certification
South Carolina (SC)	Yes	MBE certification but definition of MBE is "socially and economically disadvantaged individual;" 10% goal: Must be licensed to do business in SC; SC Governor's Office of Small and Minority Business Assistance; website: http://www.oep.sc.gov/osmba/	SCC registration
South Dakota (SD)	Yes	None	
Tennessee (TN)	Yes	MBE/WBE/SBE certifications: Must be certified in home state; Office of Minority Business Enterprise; website: http://www.state.tn.us/businessopp/vendor_reg.html	Home-state certification
Texas (TX)	No	Historically Underutilized Business Program: open to MBEs/WBEs located in TX only, "principal place of business" or headquartered in TX". Texas Comptroller of Public Accounts; website: http://www.window.state.tx.us/procurement/prog/hub/hub-certification/	
Utah (UT)	Yes	None	

Vermont (VT)	Yes	Self-certification MBE/WBE/SBE vendor registry: Reference: http://vermontbusinessregistry.com/	
Virginia (VA)	Yes	MBE/WBE/SBE certifications are open to out-of-state firms if applicant's home state allows VA firms to become certified and participate in their program; Department of Minority Business Enterprise; website: www.dmbe.virginia.gov	
Washington (WA)	Yes	MBE/WBE certification programs: Must be registered and licensed to do business in WA, Washington State Office of Minority & Women Business Enterprise; website: http://www.omwbe.wa.gov/certification/certification_mwbe.shtml	SCC registration
Washington, District of Columbia (DC)	No	In-District Preference for District of Columbia SBEs, MBE/WBE/DBEs; overall 50% goal: Open only to in-state firms; Department of Small and Local Business Development; website: http://dslbd.dc.gov/olbd/site/default.asp	
West Virginia (WV)	Yes	State Small, Women- and Minority-owned Business Program created 3/13/2010 by legislation; similar to Virginia's SWaM Program: West Virginia Purchasing Division; website: http://www.state.wv.us/admin/purchase/vrc/pforms.htm	
Wisconsin (WI)	Yes	MBE/WBE certification programs: Must have home state certification; in operations at least more than 1 year. Dept of Commerce Office of Minority Business Development; website: http://www.commerce.state.wi.us/BD/BD-MBD-index.html	Home-state certification In operations more than one year
Wyoming (WY)	Yes	None	