

Procedures Governing Removal of DBE Eligibility

A. Administrative Removal

1. The Executive Director or General Counsel will apply an administrative removal to any certified company deemed non-responsive during the annual renewal process. Or, any company that fails to respond to its requests for information in accordance with 49 CFR Part 26.
2. In the process of communicating with its certified companies, Certification Specialist will make every effort to contact or locate those companies. The Specialist assigned to the company will attempt to contact the company by mail, phone, and fax, if necessary. In communications by mail, Certification Specialist will give the company two opportunities to respond, with at least one letter sent by certified mail.
3. In administratively removing a company, Director of Civil Rights will remove a company's eligibility for a period of not more than 11 months based on the company's failure to respond.
4. The administrative removal does not engender a right of appeal or provide any opportunity for a local hearing. Rather, the company's non-responsiveness creates the presumption that the company no longer wishes to remain certified.
5. Director of Civil Rights will treat any affirmative requests by the company to withdraw its certification in a similar manner and administratively remove the company. Director of Civil Rights will accept the written withdrawal request of a company as final notice, and immediately remove the company from the directory.

B. Decertification

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

**The State Office of Minority and Women Business Assistance
State Transportation Building
10 Park Plaza, Room 3740
Boston, MA 02116**

2. Recipient-Initiated Proceedings
 - a. If, based on notification by the firm of a change in its circumstances or other information SOMWBA determines there is reasonable cause to believe that a currently certified firm is ineligible, the firm will be notified in writing that SOMWBA proposes to find the firm ineligible,⁽³⁵⁾ setting forth the reasons for the proposed determination. The statement of reasons for establishing reasonable cause will specifically reference the evidence in the record on which each reason is based.

3. USDOT Directive to Initiate Proceeding
 - a. If any USDOT operating administration determines that information in the certification records, or other information available to the relevant operating administration, provides reasonable cause to believe that a certified firm does not meet the eligibility criteria, the concerned operating administration may direct the MassDOT to initiate a proceeding to remove the firm's certification.

 - b. The concerned operating administration must provide an official of the MassUCP and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

4. Notification Process
 - a. Any recommendation to remove a company's DBE certification will require Executive Director or General Counsel to notify the company, in writing, of the grounds for the removal, its right to a local hearing, and the process necessary to request such a hearing.
 - i. As Executive Director or General Counsel may only recommend decertification, the company remains certified during the period leading up to any hearing. During which time, SOMWBA reserves the right to continue to collect evidence, and generally investigate the company.

 - b. Executive Director or General Counsel will maintain a record of the date it notified the DBE of the proposed decertification, process any requests for a local hearing, and promptly notify the MassUCP Adjudicatory Board of any such requests.

(35) Administrative Removal Letter

- c. Should the DBE fail to exercise its right to a local hearing within ten days of notification, Director of Civil Rights of MassDOT shall render a final decision and notify the entity, in writing, of its decertification.
 - i. In such a case, Executive Director or General Counsel will prepare the letter and control sheet for the authorized individual to sign.

5. Local Hearing

- a. Where Executive Director or General Counsel proposes to remove the DBE certification of a company, it has the burden of establishing that a rational basis exists to find the company no longer meets the certification standards or has failed to conform to the requirements of the DBE.
- b. The firm has ten days from the date of the notification, to request a local hearing before the MassUCP Adjudicatory Board to contest SOMWBA's recommendation. Failure to request a hearing, results in SOMWBA's recommendation becoming final.
 - i. If a company fails to exercise its right to a local hearing, it will be deemed to have exhausted all rights to seek redress of the decision.
- c. Should the company submit a valid request, a hearing will be conducted by the MassUCP Adjudicatory Board, the MassDOT Secretary of Transportation; and consisting of four members, one from the Transit Division, one from the Aviation and Port Division, one from the Office for Civil Rights, and the MassDOT Administrative Law Judge.
 - i. In the event that one of the members of the Board is required to recuse him or herself, which will occur in an action in which his or her impartiality or fairness may reasonably be questioned, the Administrative Law Judge will take the place of the recused member.
- d. None of the members of the adjudicatory board will have previously taken part in the actions leading to the removal of the firm's eligibility, and no member may be subject to the direction of any personnel who initiated the proposed action.
- e. While the right is to a local hearing, the firm may submit its arguments in writing without attending the hearing, and has the right to have the Board base its decision on the written documents.
- f. The hearing will be conducted in accordance with 49 CFR Part 26, Subpart D and Informal Fair Hearing Rules codified at 801 CMR 1.02; and a complete record, including a transcript, of the proceedings will be maintained, and will be made available to USDOT, if there is an appeal under 49 CFR Part 26.89, and to the firm upon request.