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Governor

## COMMONWEALTH of VIRGINIA

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### **POLICY FOR PROCESSING**

#### **Certification Applications from Non-Virginia Based Businesses**

**Effective September 1, 2008**

**Revised November 4, 2020**

#### **PURPOSE**

The Code of Virginia § 2.2-1606 (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 13, Chapter 20 of the Virginia Administrative Code (7 VAC 13-20 et seq.). The regulations establish the minimum requirements for the certification of small, women- and minority-owned businesses pursuant to Chapter 16 (§ 2.2-1600 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 Small Business and Supplier Diversity (also known as the “SBSD”).

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.” The Director issued the regulations for Virginia’s certification programs, which became effective on September 1, 2008. Subsequent revisions have been made since that date.

Effective July 1, 2017, any out-of-state business applying for certification in Virginia as a small, women-owned, or minority-owned business must possess the equivalent certification in its home state as a prerequisite for approval. In addition to this requirement, out-of-state businesses from certain states may have additional criteria to meet prior to becoming certified in Virginia.

Section 7VAC13-20-80, Eligible Out-of-State Business Enterprise, states that SBSD 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 the business maintains its headquarters, where the business's books and records are kept, and where the natural persons who direct, control, and manage the business's day-to-day operations are located. If the offices from which management is directed and where the business records are kept are in different locations, the department will determine the principal place of business.

**NOTE:**

*The Virginia Department of Small Business and Supplier Diversity 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 ten (10) days of the date on which the notice of denial of recertification or the notice of revocation was sent by the department. All appeals must be sent to [appeals@sbsd.virginia.gov](mailto:appeals@sbsd.virginia.gov).*

#### I. States and Districts 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 for in-state firms only
- Ohio MBE and SBE Programs only for in-state firms and OH residents
- 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:**

- Colorado

- Delaware Must have home-state certification
- Indiana
- Kentucky Must have home-state certification
- Maryland Size limits based on field of operation
- Missouri Must have home-state certification and MO registration and licensure
- New York Must have home-state certification and NY registration and Licensure
- 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
- Washington Must have WA registration and licensure
- West Virginia
- Wisconsin Must have home-state certification; Must be performing a “useful business function”; Must be at least one (1) year old under current ownership; WBE applicants are required to be performing a useful function at the time of application in the State of Wisconsin and should provide proof of revenue received from a government entity or business located in the state.

### 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; Home state certification
- Georgia Vendor registry with self-identification
- Illinois Business Enterprise Program (BEP) for “minor”, women, or disabled business owners; Small Business Set Aside Program available to IL firms only.
- Kansas Online MBE/WBE Registry
- Massachusetts MBE/WBE available to VA firms; Small Business Purchasing Program available to in-state firms only
- 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 to NJ firms only
- 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
- Arizona
- Hawaii
- Idaho
- Maine
- Montana
- Nevada
- North Dakota
- South Dakota
- Utah
- Vermont
- Wyoming

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

A. The Department of Small Business and Supplier Diversity may revoke the certification of a business that it finds no longer qualifies as a small, women- or minority-owned business under § 2.2-1606 of the Code of Virginia. The Virginia Administrative Code, 7VAC13-20-200 provides the criteria for revocation of certification. The criteria include:

1. The organization, structure, management, or control of the certified women-owned or minority-owned business has changed to the extent that it no longer satisfies the requirement of ownership, control, and active management of the business by women or minority individuals.
2. The number of employees or revenues exceeds the requirements for certification of a small business or the small business no longer satisfies the requirements to be independently owned and operated.
3. The business fails to submit the required documentation or to comply with a reasonable request from the department for records or information within the allotted time.
4. 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.

5. The business is based in a state that denies like certifications to Virginia-based small, women-owned, or minority-owned businesses or that provides a preference for small, women-owned, 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 Small Business and Supplier Diversity reserves the right to modify, amend, or revise this Policy at any time without prior notice.*

State	Eligible for SWaM?	MBE/SBE/WBE Certification Program(s) Offered	VA SWaM Program Requirement
Alabama (AL)	Yes	Department of Economic and Community Affairs' Office of Minority Business Enterprise; MBE/WBE 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 <a href="http://adeca.alabama.gov/Divisions/ced/cdp/Pages/ombe.aspx">http://adeca.alabama.gov/Divisions/ced/cdp/Pages/ombe.aspx</a>	<ul style="list-style-type: none"> <li>• Firm must have been in operation for at least one year prior to applying for certification</li> <li>• Must register with Virginia State Corporation Commission (SCC)</li> <li>• Home state certification</li> </ul>
Alaska (AK)	Yes	None	
Arizona (AZ)	Yes	Arizona Steps Up equity in procurement program: directory of certified minority-owned, women-owned and small businesses; firms included in database are those certified by Arizona Dept of Transportation (as DBEs)	
Arkansas (AR)	No	Economic Development Commission's Division of Small and Minority Business; SBE and MBE certification open to in-state firms only. The firm must be owned by a permanent resident or residents of the state of Arkansas. <a href="http://www.arkansasedc.com/divisions/small-and-minority-business">http://www.arkansasedc.com/divisions/small-and-minority-business</a>	
California (CA)	No	Department of General Services' Office of Small Business & Disabled Veteran Business Enterprise Services; SB/Disabled Veteran certification; Firms must have principal office in CA and owners/officers must be domiciled in CA. <a href="http://www.dgs.ca.gov/pd/Programs/OSDS.aspx">http://www.dgs.ca.gov/pd/Programs/OSDS.aspx</a>	
Colorado (CO)	Yes	Department of Transportation; Emerging Small Business (ESB) Program <a href="http://www.mbcolorado.com/certifications/types-of-certifications">http://www.mbcolorado.com/certifications/types-of-certifications</a>	
Connecticut (CT)	No	Department of Administrative Services' Office of Supplier Diversity; SBE/MBE certification open to firms whose principal place of business is in CT. <a href="http://das.ct.gov/cr1.aspx?page=34">http://das.ct.gov/cr1.aspx?page=34</a>	
Delaware (DE)	Yes	Office of Supplier Diversity; MBE/WBE/SBE certification; Firm must be certified in home state <a href="http://gss.omb.delaware.gov/osd/certify.shtml">http://gss.omb.delaware.gov/osd/certify.shtml</a>	Home state certification
Florida (FL)	No	Department of Management Services' Office of Supplier Diversity; MBE certification (MBE is defined to include women); 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.	

		<a href="http://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd/get_certified">http://www.dms.myflorida.com/agency_administration/office_of_supplier_diversity_osd/get_certified</a>	
Georgia (GA)	Yes	Department of Administrative Services; MBE certification; Firm must be DBE certified prior to be certified in state MBE program. <a href="http://doas.ga.gov/state-purchasing/suppliers/minority-business-enterprise-certification">http://doas.ga.gov/state-purchasing/suppliers/minority-business-enterprise-certification</a>	Home state certification
Hawaii (HI)	Yes	None	
Idaho (ID)	Yes	None	
Illinois (IL)	MBE/WBE	Department of Central Management Services Business Enterprise Program (BEP) Minority, Women, Disabled Veterans); BEP open to out of state businesses; <a href="https://www.illinois.gov/cms/business/sell2/bep/Pages/default.aspx">https://www.illinois.gov/cms/business/sell2/bep/Pages/default.aspx</a> Small Business Set Aside Program open to in-state firms only. <a href="https://www.illinois.gov/cpo/general/Pages/Sell2Illinois.aspx">https://www.illinois.gov/cpo/general/Pages/Sell2Illinois.aspx</a>	<ul style="list-style-type: none"> <li>• Firms are not eligible for SBE certification.</li> <li>• Home state certification</li> </ul>
Indiana (IN)	Yes	Department of Administration's Minority and Women's Business Enterprises Division; MBE/WBE certification <a href="https://www.in.gov/idoa/mwbe/2489.htm">https://www.in.gov/idoa/mwbe/2489.htm</a>	Home state certification
Iowa (IA)	<b>No</b>	Economic Development Authority; Targeted Small Business (TSB) certification is open to in-state firms only. <a href="https://www.iowa.gov/tsb">https://www.iowa.gov/tsb</a>	
Kansas (KS)	Yes	Office of Minority and Women Business Development; MBE/WBE certification; <a href="http://ks-kdoc.civicplus.com/index.aspx?NID=231">http://ks-kdoc.civicplus.com/index.aspx?NID=231</a>	Home state certification
Kentucky (KY)	Yes	Kentucky Finance and Administration Cabinet; MBE/WBE certification; <a href="https://mwbe.ky.gov/Pages/default.aspx">https://mwbe.ky.gov/Pages/default.aspx</a>	Home state certification
Louisiana (LA)	<b>No</b>	Economic Development; Hudson Initiative certification program is open to in-state firms only. <a href="https://www.opportunitylouisiana.com/small-business/special-programs-for-small-business/hudson-initiative">https://www.opportunitylouisiana.com/small-business/special-programs-for-small-business/hudson-initiative</a>	
Maine (ME)	Yes	None	
Maryland (MD)	Yes	Department of Transportation; MBE certification; WBE is considered a minority and falls under MBE certification; <a href="http://www.mdot.maryland.gov/newMDOT/MBE/CertificationForms/CertificationsForms.html">http://www.mdot.maryland.gov/newMDOT/MBE/CertificationForms/CertificationsForms.html</a> Governor's Office of Small, Minority & Women Business Affairs and The Maryland Department of General Services; Small Business Reserve (SBR) Program <a href="http://goma.maryland.gov/Pages/sbr-Program.aspx">http://goma.maryland.gov/Pages/sbr-Program.aspx</a>	Home state certification
Massachusetts (MA)	MBE/WBE	Supplier Diversity Office; MBE/WBE certification; <a href="http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-">http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-</a>	<ul style="list-style-type: none"> <li>• Firms are not eligible for SBE certification</li> <li>• Home state certification</li> </ul>



		<a href="#">and-serv/sdo/state-cert-prog/</a> Small Business Purchasing Program (SBPP) open to firms whose principal place of business is in Massachusetts; <a href="https://www.mass.gov/how-to/register-for-the-small-business-purchasing-program-sbpp">https://www.mass.gov/how-to/register-for-the-small-business-purchasing-program-sbpp</a>	
Michigan (MI)	Yes	None	
Minnesota (MN)	<b>No</b>	Office of State Procurement; Targeted Group (TG)/Economically Disadvantaged (ED)/Veteran-Owned (VO) Small Business Program; <a href="http://www.mmd.admin.state.mn.us/mn02001.htm">http://www.mmd.admin.state.mn.us/mn02001.htm</a>	
Mississippi (MS)	<b>No</b>	Development Authority's Minority and Small Business Development Division; MBE certification (includes women); Owner(s) must be domiciled in MS; Business must have operations physically located in MS. <a href="https://www.mississippi.org/home-page/business-services/minority-business-certification/">https://www.mississippi.org/home-page/business-services/minority-business-certification/</a>	
Missouri (MO)	Yes	Office of Equal Opportunity; MBE/WBE certification <a href="https://oeo.mo.gov/oeo_certifications/">https://oeo.mo.gov/oeo_certifications/</a>	Home state certification
Montana (MT)	Yes	None	
Nebraska (NE)	Yes	None	
Nevada (NV)	Yes	None	
New Hampshire (NH)	Yes	Department of Administrative Services; Vendor registration <a href="https://das.nh.gov/purchasing/vendor.asp">https://das.nh.gov/purchasing/vendor.asp</a>	
New Jersey (NJ)	MBE/WBE	Division of Revenue and Enterprise Services; MBE/WBE certification <a href="http://www.nj.gov/njbusiness/contracting/">http://www.nj.gov/njbusiness/contracting/</a> ; Small Business Set Aside Program open to firms whose principal place of business is NJ. <a href="http://www.nj.gov/njbusiness/contracting/sbsa/index.shtm">http://www.nj.gov/njbusiness/contracting/sbsa/index.shtm</a> <a href="#">1</a>	<ul style="list-style-type: none"> <li>• Firms are not eligible for SBE certification.</li> <li>• Home state certification</li> </ul>
New Mexico (NM)	<b>No</b>	Tax and Revenue Department; In-State/Veteran Preference certification; Open to in-state firms only <a href="http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx">http://www.tax.newmexico.gov/Businesses/in-state-veteran-preference-certification.aspx</a>	
New York (NY)	Yes	Division of Minority and Women's Business Development; MBE/WBE/SDV certification; <a href="https://esd.ny.gov/doing-business-ny/mwbe">https://esd.ny.gov/doing-business-ny/mwbe</a> <a href="https://ogs.ny.gov/veterans">https://ogs.ny.gov/veterans</a>	<ul style="list-style-type: none"> <li>• Firm must have been in operation for at least one year prior to applying for certification</li> <li>• Must register with Virginia State Corporation Commission (SCC)</li> <li>• Home state certification</li> </ul>
North Carolina (NC)	Yes	Office for Historically Underutilized Businesses; HUB Program for SBE/MBE/WBE;	Home state certification



		<a href="https://ncadmin.nc.gov/businesses/hub/hub-certification">https://ncadmin.nc.gov/businesses/hub/hub-certification</a>	
North Dakota (ND)	Yes	Office of Management and Budget; Vendor registry open to any firm; No MBE/WBE/SBE program <a href="https://www.nd.gov/omb/vendor/bidders-list-application-and-maintenance">https://www.nd.gov/omb/vendor/bidders-list-application-and-maintenance</a>	<ul style="list-style-type: none"> <li>• Firms are not eligible for SBE certification.</li> <li>• Home state certification</li> </ul>
Ohio (OH)	<b>No</b>	Department of Administrative Services' Equal Opportunity Division; MBE/EDGE certification open to in-state firms only. Firm must be owned and controlled by OH residents. <a href="http://das.ohio.gov/Divisions/EqualOpportunity/BusinessCertification.aspx">http://das.ohio.gov/Divisions/EqualOpportunity/BusinessCertification.aspx</a>	
Oklahoma (OK)	Yes	Department of Commerce's Office of Business Development; WBE certification; <a href="http://okcommerce.gov/business/certifications/">http://okcommerce.gov/business/certifications/</a>	<ul style="list-style-type: none"> <li>• Must register with Virginia State Corporation Commission (SCC)</li> <li>• Home state certification</li> </ul>
Oregon (OR)	MBE/WBE	Office for Business Inclusion and Diversity; MBE/WBE certification; Emerging Small Business (ESB) certification open to in-state firms only <a href="http://www.oregon4biz.com/How-We-Can-Help/COBID/">http://www.oregon4biz.com/How-We-Can-Help/COBID/</a>	<ul style="list-style-type: none"> <li>• Firms are not eligible for SBE certification.</li> <li>• Must register with Virginia State Corporation Commission (SCC)</li> <li>• Home state certification</li> </ul>
Pennsylvania (PA)	Yes	Bureau of Diversity, Inclusion & Small Business Opportunities; Small Diverse Business program; <a href="https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Pages/default.aspx">https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Pages/default.aspx</a>	Home state certification
Rhode Island (RI)	Yes	Office of Diversity, Equity & Opportunity's Minority Business Enterprise Compliance Office; MBE certification (includes women) <a href="http://odeo.ri.gov/offices/mbeco/index.php">http://odeo.ri.gov/offices/mbeco/index.php</a>	Home state certification
South Carolina (SC)	Yes	Division of Small and Minority Business Contracting and Certification; MBE certification (includes women) <a href="http://smbcc.sc.gov/">http://smbcc.sc.gov/</a>	<ul style="list-style-type: none"> <li>• Firm must have been in operation for at least one year</li> <li>• Home state certification</li> </ul>
South Dakota (SD)	Yes	None	
Tennessee (TN)	Yes	Department of General Services Governor's Office of Diversity Business Enterprise; Diversity Business Enterprise program <a href="https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--.html">https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--.html</a>	Home state certification
Texas (TX)	<b>No</b>	Comptroller of Public Accounts; HUB program; Open to in-state firms only <a href="https://comptroller.texas.gov/purchasing/vendor/hub/">https://comptroller.texas.gov/purchasing/vendor/hub/</a>	

Utah (UT)	Yes	None	
Vermont (VT)	Yes	None	
Virginia (VA)	Yes	Department of Small Business and Supplier Diversity; MBE/WBE/SBE certification; Open to out-of-state firms if applicant's home state allows VA firms to become certified and participate in their program; <a href="https://www.sbsd.virginia.gov/certification-division/">https://www.sbsd.virginia.gov/certification-division/</a>	
Washington (WA)	Yes	Office of Minority and Women's Business Enterprise; MBE/WBE certification; Firm must be licensed to do business in Washington State <a href="http://www.omwbe.wa.gov/certification/">http://www.omwbe.wa.gov/certification/</a>	<ul style="list-style-type: none"> <li>• Must register with Virginia State Corporation Commission (SCC)</li> <li>• Home state certification</li> </ul>
Washington, DC (DC)	<b>No</b>	Department of Small and Local Business Development; Certified Business Enterprise (CBE) certification; Open to in-district firms only <a href="https://dslbd.dc.gov/page/get-certified">https://dslbd.dc.gov/page/get-certified</a>	
West Virginia (WV)	Yes	Purchasing Division; SWAM certification; <a href="https://www.state.wv.us/admin/purchase/VendorReg.html">https://www.state.wv.us/admin/purchase/VendorReg.html</a>	Home state certification
Wisconsin (WI)	Yes	Department of Administration; MBE/WBE certification; Must have home-state certification; Must be performing a "useful business function"; Must be at least one (1) year old under current ownership; WBE applicants are required to be performing a useful function at the time of application in the State of Wisconsin and should provide proof of revenue received from a government entity or business located in the state. <a href="http://doa.wi.gov/Divisions/Enterprise-Operations/Supplier-Diversity-Program">http://doa.wi.gov/Divisions/Enterprise-Operations/Supplier-Diversity-Program</a>	<ul style="list-style-type: none"> <li>• Firms must be performing a "useful business function"</li> <li>• Must be in business at least one year under current ownership</li> <li>• WBEs must provide proof of revenue from VA based business or government entity</li> <li>• Home state certification</li> </ul>
Wyoming (WY)	Yes	None	

