

## Chapter 5: SUBPART E– CERTIFICATION PROCEDURES

### Section 1: Colorado Unified Certification Program (UCP)

CDOT participates in, and is a certifying and Executive Committee member, of the Colorado Unified Certification Program (UCP). The Colorado UCP Plan specifies that the UCP will follow all certification procedures and standards of 49 CFR Part 26 on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of USDOT and its OAs; and that the UCP shall implement USDOT directives and guidance concerning certification matters. The agreement also commits recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

The UCP makes all certification decisions on behalf of all USDOT recipients in the state with respect to participation in the DOT DBE Program. Certification decisions by the UCP are binding on all USDOT recipients within the state. The UCP provides “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state. To apply for DBE certification with the Colorado UCP, a firm must be certified in its home state. In order for a DBE to count, a certification decision by the Colorado UCP must be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

The Colorado UCP Plan was submitted to FHWA and USDOT and approved on April 5, 2004. The Colorado UCP Plan was recently revised and the most current revision of the plan can be found **Subpart G, Exhibit K**.

Ref: 49 CFR 26.81

### Section 2: Procedures in Making Certification Decisions

Only firms that are certified by the Colorado UCP will be eligible participate as DBEs in CDOT's program. As a certifying member of the UCP, CDOT determines the eligibility of firms as DBEs consistent with the standards of 49 CFR 29 Subpart D. CDOT takes the following steps in determining whether a DBE firm meets the standards of subpart D of this part;

- a) Performs an on site visit to the offices of the firm. CDOT uses a standard template that may be modified for the particular interview. CDOT interviews the principal officers of the firm and reviews their resumes and/or work histories. CDOT also performs an on site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in CDOT's jurisdiction or local area, and such a visit is feasible. CDOT may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
- b) Analyzes documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate bylaws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing;
- c) Analyzes the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;
- d) Determines the work history of the firm, including contracts it has received, work it has completed; and payroll records;

- e) Obtains a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.
- f) Obtains or compiles a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- g) Obtains complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service;
- h) Requires potential DBEs to complete and submit an appropriate application form, except as otherwise provided in 49 CFR 26.85.

CDOT uses the application form required by 49 CFR 26, Appendix F. CDOT does not charge an application fee. CDOT's application can be accessed online at <https://cdot.dbesystem.com/>. To submit the application, the applicant must attest to the accuracy and truthfulness of the information on the application form by an unsworn declaration executed under penalty of perjury of the laws of the United States. CDOT reviews all information on the application form prior to making a decision about the eligibility of the firm. CDOT may request clarification of information contained in the application at any time in the application process.

When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information, CDOT promptly makes the information available to the other recipient. However, CDOT safeguards from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

Once CDOT has certified a DBE, it remains certified until CDOT removes its certification, in whole or in part, through the procedures of 49 CFR 26.87, except as provided in 49 CFR 26.67(b)(1). CDOT may not require DBEs to reapply for certification or undergo a recertification process. However, CDOT may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to CDOT's attention that leads CDOT to question the firm's eligibility, CDOT may conduct an on-site review on an unannounced basis, at the firm's offices and job site. CDOT's UCP partner currently conducts three year reviews of DBEs. CDOT intends to adopt this process in the coming year.

Firms that are certified by CDOT are required to notify CDOT in writing of any change in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership, or control requirements or any material change in the information provided in the application. This includes changes in management responsibility among members of a limited liability company. When providing notice to CDOT, the DBE must attach supporting documentation describing in detail the nature of such changes. The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States and must be provided within 30 days of the occurrence of the change. If a DBE fails to make timely notification of such a change, the DBE will be deemed to have failed to cooperate under 49 CFR 26.109(c).

Firms that are certified by CDOT must update their certification every year by the last day of the month of the anniversary of certification. Annual update applications must be submitted via the B2G Now system at <https://cdot.dbesystem.com/>. While these are called applications in the B2GNow System, the firm is only updating, not reapplying, for certification. CDOT sends an automatic reminder to all firms at the last known email address.

The annual update application includes an unsworn declaration executed under penalty of perjury of the laws of the United States by the owner of the firm affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has previously notified CDOT as provided above. The owner must also affirm that the firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of the firm's size and gross receipts (e.g., submission of Federal tax returns). If a DBE fails to provide this affidavit in a timely manner, the DBE will be deemed to have failed to cooperate under 49 CFR 26.109(c).

CDOT must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under 49 CFR Part 26. CDOT may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. CDOT's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to USDOT.

CDOT must advise each applicant within 30 days from receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. If no additional information is required, CDOT will "receive" the application in the online system. If additional information is required, CDOT may return the application to the applicant to be updated or send a Q&A to request additional information from the applicant.

Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before CDOT has issued a decision on the application, the applicant can resubmit the application at any time. However, the reapplication will be placed at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. CDOT may apply a one year waiting period to a firm that has established a pattern of frequently withdrawing applications before CDOT makes a decision.

If a firm is non-responsive, CDOT may either issue of determination or close the application. If CDOT closes the application, the application will be placed at the end of the queue when the additional information is received. There is no waiting period when CDOT has closed an application.

### **Section 3: Interstate Certification**

This section applies with respect to any firm that is currently certified in a home state outside Colorado. CDOT does not accept applicants not certified in their home state. All applicants certified in their home state are considered interstate applicants and must submit the following documentation via the Interstate Application in B2GNow at <https://cdot.dbesystem.com/>.

When a firm currently certified in its home state applies to CDOT for DBE certification, the applicant must provide to CDOT a complete copy of the application form, all supporting documents, and any other

information it has submitted to the home state or any other state related to the firm's certification. This includes affidavits of no change (see 49 CFR 26.83(j)) and any notices of changes (see 49 CFR 26.83(i)) that it has submitted to the home state, as well as any correspondence it has had with the home state's UCP or any other recipient concerning its application or status as a DBE firm. The applicant must also provide to CDOT any notices or correspondence from states other than the home state relating to its status as an applicant or certified DBE in those states. For example, if the firm has been denied certification or decertified in State C, or subject to a decertification action there, it must inform CDOT of this fact and provide all documentation concerning this action to CDOT. If the applicant has filed a certification appeal with DOT (see 49 CFR 26.89), it must inform CDOT of the fact and provide its letter of appeal and DOT's response to CDOT.

In order to submit the application, the firm's owners provide an unsworn declaration executed under penalty of perjury of the laws of the United States affirming that the firm has submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by 49 CFR 26.85(c)(1), is an identical copy of the information submitted to the home state. If the on-site report from the home state supporting a firm's certification in the home state is more than three years old, as of the date of its application to CDOT, CDOT may require the owner to also affirm that the facts in the on-site report remain true and correct.

When CDOT receives an interstate application, within seven days CDOT must contact the home state and request a copy of the site visit review report for the firm (see 49 CFR 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As the home state, CDOT must transmit this information to a requesting state within seven days of receiving the request. A pattern by a state of not making such requests in a timely manner or by not complying with such requests in a timely manner is noncompliance.

CDOT must then determine whether there is good cause to believe that the home state's certification of the firm is erroneous or should not apply in Colorado. Reasons for making such a determination may include the following:

- a) Evidence that the home state's certification was obtained by fraud;
- b) New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria;
- c) The home state's certification was factually erroneous or was inconsistent with the requirements of this part;
- d) Colorado law requires a result different from that of the law of the home state; and
- e) The information provided by the applicant firm did not meet the requirements of 49 CFR Part 26.

Unless CDOT determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Colorado, CDOT will, no later than 60 days from the date on which it receives from the applicant firm all the information required by paragraph (3) of this section, send to the applicant firm a notice that it is certified and place the firm on its directory of certified firms.

If CDOT determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Colorado, CDOT will, no later than 60 days from the date on which it receives from the all information required under 49 CFR Part 26, send to the applicant firm a notice stating the reasons for its determination. This notice will state with particularity the specific reasons why CDOT believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity

to respond to CDOT with respect to these reasons. The firm may elect to respond in writing, to request an in-person meeting with CDOT's decision maker to discuss CDOT's objections to the firm's eligibility, or both. If the firm requests a meeting, CDOT will schedule the meeting to take place within 30 days of receiving the firm's request. The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of 49 CFR Part 26 with respect to the particularized issues raised by CDOT's notice. The firm is not otherwise responsible for further demonstrating its eligibility to CDOT. The decision maker for CDOT will be an individual who is thoroughly familiar with the provisions concerning certification. CDOT will issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later. The firm's application for certification is stayed pending the outcome of this process. A decision under this paragraph may be appealed to the Departmental Office of Civil Rights under 49 CFR Part 26.89.

If CDOT does not receive from the home state a copy of the site visit review report within 14 days after it has made a timely request for it, CDOT may withhold action pending receipt of the site visit review report. In this event, CDOT will, no later than 30 days from the date on which it received all the information required by 49 CFR Part 26, notify the firm in writing of the delay in the process and the reason for it.

When CDOT denies a firm's application, rejects the application of the home state or any other State in which the firm is certified, or decertifies a firm, in whole or in part, CDOT will make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. CDOT will enter the following information:

- a) The name of the firm;
- b) The name(s) of the firm's owner(s);
- c) The type and date of the action; and
- d) The reason for the action.

CDOT will check the DOCR Web site at least once every month to determine whether any firm that is applying to it for certification or that it has already certified is on the list. For any such firm that is on the list, CDOT will promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, CDOT will provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, CDOT will then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

Ref: 49 CFR 26.85

#### **Section 4: Denials of Initial Requests for Certification**

When CDOT denies a request by a firm, which is not currently certified with CDOT, to be certified as a DBE, CDOT will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant, on request.

When CDOT denies a firm's certification, the firm may not reapply until 12 months have passed from CDOT's action. The time period for reapplication begins to run on the date the explanation for denial is received by the applicant. Additionally, per the Colorado UCP Plan, the firm must reapply with CDOT within the three years following denial or revocation. It cannot apply with the City and County of Denver during such time.

When CDOT makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the USDOT under 49 CFR 26.89. Appeals to USDOT do not stay the waiting period.

Ref: 49 CFR 26.86

### **Section 5: Removing a DBE's Eligibility**

Any person may file a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. CDOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may 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 will be protected consistent with 49 CFR Part 26.

Upon receipt of a complaint, CDOT will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. CDOT may request additional information from the firm or conduct any other investigation that CDOT deems necessary.

If CDOT determines that there is reasonable cause to believe that the firm is ineligible, CDOT will provide written notice to the firm that it intends to revoke certification and the reasons for the proposed revocation. If CDOT determines that reasonable cause does not exist, CDOT will notify the complainant and the firm in writing of this determination and the reasons for it. The intent to revoke will specifically reference the evidence in the record on which each reason is based.

If, based on notification by the firm of a change in its circumstances or other information that comes to CDOT's attention, CDOT determines that there is reasonable cause to believe that a currently certified firm is ineligible, CDOT will notify the firm that it intends to revoke certification and the reasons for the proposed revocation. The intent to revoke will specifically reference the evidence in the record on which each reason is based.

If the concerned operating administration determines that information in the certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm CDOT certified does not meet the eligibility criteria of this part, the concerned operating administration may direct CDOT to initiate a proceeding to remove the firm's certification. The concerned operating administration must provide CDOT and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. CDOT will immediately commence and prosecute a proceeding to remove eligibility.

When CDOT notifies a firm that there is reasonable cause to remove its eligibility, CDOT will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified. In such a proceeding, CDOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part. CDOT must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to USDOT, CDOT must provide a transcript of the hearing to DOT and, on request, to the firm. CDOT must retain the original record of the hearing. CDOT may charge the firm only for the cost of copying the record. DBE firms may elect to present information and

arguments in writing, without going to a hearing. In such a situation, CDOT bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards.

CDOT must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. It is CDOT policy to hire an outside attorney or specialist who is knowledgeable about the certification requirements of the DBE program.

CDOT may base a decision to remove a firm's eligibility only on one or more of the following grounds:

- a) Changes in the firm's circumstances since the certification of the firm by CDOT that render the firm unable to meet the eligibility standards of this part;
- b) Information or evidence not available to CDOT at the time the firm was certified;
- c) Information relevant to eligibility that has been concealed or misrepresented by the firm;
- d) A change in the certification standards or requirements since CDOT certified the firm;
- e) CDOT's decision to certify the firm was clearly erroneous;
- f) The firm has failed to cooperate (see 49 CFR 26.109(c));
- g) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see 49 CFR 26.73(a)(2)); or
- h) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

Following its decision, CDOT will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of the decision and of the availability of an appeal to USDOT. CDOT will send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed CDOT to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, CDOT must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the final decision. When CDOT makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to USDOT.

When a prime contractor has made a commitment to using a DBE firm, or CDOT has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before the firm is decertified, the ineligible firm cannot count toward the contract goal or overall goal. The prime contractor must replace the ineligible firm with an eligible DBE firm or demonstrate to CDOT that it has made a good faith effort to do so. If a prime contractor has executed a subcontract with a firm before it is notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where CDOT let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of ineligibility shall not count toward CDOT's overall goal, but may count toward the contract goal. However, if the DBE's ineligibility is caused solely by its

having exceeded the size standard during the performance of the contract, CDOT and the prime may continue to count its participation on that contract toward overall and contract goals.

Ref: 49 CFR 26.87

## **Section 6: Summary Suspension of Certification**

CDOT will immediately suspend a DBE's certification without adhering to the requirements in 49 CFR 26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated. CDOT may immediately suspend a DBE's certification without adhering to the requirements in 49 CFR 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify CDOT or UCP in writing of any material change in circumstances or fails to timely file an annual update. In determining the adequacy of the evidence to issue a suspension of this section, CDOT shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

The concerned operating administration may direct CDOT to take action if it determines that information available to it is sufficient to warrant immediate suspension. When a firm is suspended, CDOT will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR 26.87 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to CDOT information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, CDOT must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. If CDOT commences a decertification proceeding, the suspension remains in effect during the proceeding.

The decision to immediately suspend a DBE is not appealable to the US Department of Transportation. The failure of CDOT to either lift the suspension and reinstate the firm or commence a decertification proceeding is appealable to the U.S. Department of Transportation under 49 CFR 26.89 of this part, as a constructive decertification.

## **Section 7: Appealing Certification Decisions to the USDOT**

A firm that is denied certification or whose eligibility is removed by CDOT may make an administrative appeal to CDOT. Additionally, a complainant of an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in 49 CFR 26.87(c)), may appeal to USDOT if CDOT does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible. Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

Pending the Department's decision in the matter, CDOT's decision remains in effect. USDOT does not stay the effect of CDOT's decision while it is considering an appeal.

Appeals must be sent within 90 days of the date of CDOT's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that CDOT failed to consider, or what provisions of this Part CDOT did not properly apply. USDOT may accept an appeal filed later than 90 days after the date of the decision if USDOT determines that there was good cause for the late filing of the appeal or in the interest of justice.

When it receives an appeal, USDOT requests a copy of CDOT's complete administrative record in the matter. CDOT will provide the administrative record, including a hearing transcript, within 20 days of the Department's request. USDOT may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, CDOT must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to CDOT to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

USDOT makes its decision based solely on the entire administrative record as supplemented by the appeal. USDOT does not make a de novo review of the matter and does not conduct a hearing. USDOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

When CDOT provides supplementary information to USDOT, it will also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. USDOT makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source. USDOT affirms CDOT's decision unless it determines, based on the entire administrative record, that CDOT's decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

If USDOT determines, after reviewing the entire administrative record, that CDOT's decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, USDOT reverses CDOT's decision and directs CDOT to certify the firm or remove its eligibility, as appropriate. CDOT must take the action directed by the Department's decision immediately upon receiving written notice of it. USDOT is not required to reverse CDOT's decision if

USDOT determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, USDOT may remand the record to CDOT with instructions seeking clarification or augmentation of the record before making a finding. USDOT may also remand a case for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part. USDOT does not uphold CDOT's decision based on grounds not specified in your decision. The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

USDOT provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). USDOT will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If USDOT does not make its decision within this period, USDOT provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made. All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

Ref: 49 CFR Part 26.89

### **Section 8: Effect of USDOT Certification Appeal Decisions**

An appeal based upon CDOT's action is only binding on CDOT. Appeals based on the actions of other recipients are not binding on CDOT. When an action is binding on CDOT, CDOT will:

- a) if USDOT determines that CDOT erroneously certified a firm, remove the firm's eligibility on receipt of the determination, without further proceedings. Effective on the date of receipt of USDOT's determination, the consequences of a removal of eligibility take effect.
- b) If USDOT determines that CDOT erroneously failed to find reasonable cause to remove the firm's eligibility, expeditiously commence a proceeding to determine whether the firm's eligibility should be removed.
- c) If USDOT determines that CDOT erroneously declined to certify or removed the eligibility of the firm, certify the firm, effective on the date of receipt of the written notice of Department's determination.
- d) If USDOT determines that CDOT erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, take appropriate corrective action as determined by the Department.

If USDOT affirms CDOT's determination, no further action is necessary.

Where USDOT has upheld CDOT's denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a

proceeding to remove the firm's eligibility under 49 CFR 26.87. Recipients cannot remove the firm's eligibility absent such a proceeding. Where USDOT has reversed CDOT's denial of certification to or removal of eligibility from a firm, other recipients must take the USDOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the USDOT's decision.

Ref: 49 CFR 26.91