

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to amend the rules cited as 01 NCAC 44A .0101, .0202, .0204, .0206, .0301, .0401, .0404, .0501-.0502, .0601, .0605.

Proposed Effective Date: April 1, 2009

Public Hearing:

Date: January 14, 2009

Time: 10:00 a.m.

Location: Department of Administration, Administration Building, 5th Floor, Commission Room 5034, 116 West Jones Street, Raleigh, NC 27603.

Reason for Proposed Action: Changes to legislation G.S. 143-128.4 and G.S. 143-48.4

Procedure by which a person can object to the agency on a proposed rule: Written objections may be submitted to Bridget Wall-Lennon, Assistant to the Secretary, Department of Administration, Office for Historically Underutilized Businesses. Objections may be received by mail, delivery service, hand delivery or facsimile transmission. Objections may be directed to Bridget Wall-Lennon, 1336 Mail Service Center, Raleigh, NC 27699-1336, fax (919)807-2335.

Comments may be submitted to: Sheryl Cromedy, Certification Coordinator, Department of Administration, Office of Historically Underutilized Businesses, 1336 Mail Service Center, Raleigh, NC 27699-1336, phone (919)807-2330, fax (919)807-2335, email sheryl.cromedy@doa.nc.gov.

Comment period ends: January 30, 2009

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

- ☐ State
☐ Local
☐ Substantive ($\geq \$3,000,000$)
☒ None

CHAPTER 44 - OFFICE FOR HISTORICALLY UNDERUTILIZED BUSINESSES

SUBCHAPTER 44A - STATEWIDE UNIFORM CERTIFICATION

SECTION .0100 - GENERAL PROVISIONS

01 NCAC 44A .0101 SCOPE

The rules in this Subchapter are used to determine if a business is a historically underutilized minority business in accordance with G.S. ~~143-128.2;~~ 143-128.4.

Authority G.S. 143-48.4; 143-128.4.

SECTION .0200 - HUB CERTIFICATION APPLICATION

01 NCAC 44A .0202 DOCUMENTATION

(a) HUB staff shall request documentation to establish the ownership, management, and control of daily business operations of the business pursuant to Rule .0301 this Subchapter.

(b) ~~If the documentation provided by the business does not demonstrate ownership, management and control of daily business operations by the business, HUB Office staff shall conduct a site visit.~~ The HUB Office shall conduct a site visit of the majority owners at their principal office. The HUB Office may rely on the site visit of another entity that meets or exceeds the North Carolina Statewide Uniform Certification eligibility requirements.

(c) The HUB Office shall not consider organizational changes made to the business during the eligibility determination process.

Authority G.S. 143-48.4; 143-128.4.

01 NCAC 44A .0204 DURATION OF CERTIFICATION

Certification remains in effect for ~~two~~ four years unless there is a change in the business ownership, management or control of daily business operations that affects the HUB ~~status~~. Certification status. Businesses shall renew the HUB Certification annually using the process referenced in 01 NCAC 44A .0207.

Authority G.S. 143-48.4; 143-128.4.

01 NCAC 44A .0206 DENIAL

(a) The HUB Office shall deny HUB Certification ~~if the business does not meet the definition of minority business found at G.S. 143-128.2(g)(1) or 143-128.4(a1).~~ to businesses that do not meet eligibility requirements concerning operational status, group membership, ownership, management and control.

(b) ~~If the business wishes to submit a new request for HUB Certification it may do so after a period of 12 months from the date of denial.~~ Businesses shall be notified in writing when the application for certification is denied. Denial letters shall explain the reason(s) for the denial.

(c) ~~Vendors who are denied HUB Certification have a right to review pursuant to Section .0600 of this Subchapter.~~ New applications for HUB Certification may be submitted after a period of 12 months from the date of denial.

(d) Vendors who are denied HUB Certification have a right to review pursuant to Section .0600 of this Subchapter.

Authority G.S. 143-48.4; 143-128.4.

SECTION .0300 - DOCUMENTATION

01 NCAC 44A .0301 REQUIRED DOCUMENTATION

The Office for Historically Underutilized Businesses shall request the following documentation based on the business structure of the applicant, to determine that the applicant's ownership, management and control of daily business operations are consistent with the eligibility requirements as provided in G.S. 143-48 and 143-128.2:

- (1) ~~Sole Proprietorship~~
 - (a) ~~Bank signature card;~~
 - (b) ~~City or County Tax Records;~~
 - (c) ~~Company profile, including roles and responsibilities of officers and owners;~~
 - (d) ~~Home state certification (out of state vendors);~~
 - (e) ~~Professional License;~~
 - (f) ~~Proof of ethnicity or gender of owner (drivers license, birth certificate, tribal enrollment documents or passport);~~
 - (g) ~~Résumé of Principal Owner; and~~
 - (h) ~~Business privilege license; or~~
 - (i) ~~Certificate of Assumed name (if other than the owner)~~
- (2) ~~General Partnership~~
 - (a) ~~Bank signature card;~~
 - (b) ~~City or County Tax Records~~
 - (c) ~~Company profile, including roles and responsibilities of officers and owners;~~
 - (d) ~~Home state certification (out of state vendors);~~
 - (e) ~~Partnership Agreement;~~
 - (f) ~~Professional Licenses;~~
 - (g) ~~Proof of ethnicity or gender of owners (drivers licenses, birth certificates, tribal enrollment documents or passport);~~
 - (h) ~~Proof or verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);~~
 - (i) ~~Résumés of Owners; and~~
 - (j) ~~Amendments to the Partnership Agreement; or~~
 - (k) ~~Business privilege license; or~~
 - (l) ~~Certificate of Assumed name (if other than the owners).~~
- (3) ~~Limited Partnership~~
 - (a) ~~Bank signature card;~~
 - (b) ~~Business privilege license;~~
 - (c) ~~Certificate of Assumed name (if applicable);~~
 - (d) ~~Certificate of Limited Partnership (filed with the NC Secretary of State);~~
 - (e) ~~City or County Tax Records;~~
 - (f) ~~Company profile, including roles and responsibilities of officers and owners;~~
 - (g) ~~Home state certification (out of state vendors);~~
 - (h) ~~Partnership Agreement;~~
 - (i) ~~Professional Licenses;~~
 - (j) ~~Proof of ethnicity or gender of owners (drivers licenses, birth certificates, tribal enrollment documents or passports);~~

- (k) — ~~Proof or verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);~~
- (l) — ~~Résumés of Owners; and~~
- (m) — ~~Annual Information Return (filed with the NC Secretary of State); or~~
- (n) — ~~Copy of IRS form SS4; or~~
- (o) — ~~Employer Identification Numbers (Federal and State)~~
- (4) — ~~Limited Liability Partnership~~
 - (a) — ~~Bank signature card;~~
 - (b) — ~~Business privilege license;~~
 - (c) — ~~Certificate of Assumed name;~~
 - (d) — ~~Certificate of Limited Liability Partnership (filed with NC Secretary of State);~~
 - (e) — ~~City or County Tax Records;~~
 - (f) — ~~Company profile, including roles and responsibilities of officers and owners;~~
 - (g) — ~~Home state certification (out of state vendors);~~
 - (h) — ~~Partnership Agreement;~~
 - (i) — ~~Professional Licenses;~~
 - (j) — ~~Proof of ethnicity/gender of owners (drivers licenses, birth certificates, tribal enrollment documents or passport);~~
 - (k) — ~~Proof or verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);~~
 - (l) — ~~Résumés of Owners; and~~
 - (m) — ~~Annual Report (filed with the NC Secretary of State); or~~
 - (n) — ~~Copy of IRS form SS4; or~~
 - (o) — ~~Employer Identification Numbers (Federal and State);~~
- (5) — ~~Limited Liability Corporation:~~
 - (a) — ~~Articles of Organization;~~
 - (b) — ~~Bank resolutions and signature card;~~
 - (c) — ~~Business privilege license;~~
 - (d) — ~~Certificate of Assumed name (if applicable);~~
 - (e) — ~~Certificate of Limited Liability Corporation, or~~
~~— Certificate for filing with the North Carolina Secretary of State as a Professional Limited Liability Company;~~
 - (f) — ~~City or County Tax Records;~~
 - (g) — ~~Company profile, including roles and responsibilities of officers and owners~~
 - (h) — ~~Home state certification (out of state vendors);~~
 - (i) — ~~Operating Agreement;~~
 - (j) — ~~Professional Licenses;~~
 - (k) — ~~Proof of ethnicity or gender of owners (drivers licenses, birth certificates, tribal enrollment documents or passport);~~
 - (l) — ~~Proof or verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);~~
 - (m) — ~~Résumés of Owners; and~~
 - (n) — ~~Annual Report (filed with the NC Secretary of State); or~~
 - (o) — ~~Certificate of Assumed Name for Corporation; or~~
 - (p) — ~~Employer Identification Numbers (Federal and State);~~
- (6) — ~~Corporation:~~
 - (a) — ~~Articles of Incorporation;~~
 - (b) — ~~Bank resolutions and signature card;~~
 - (c) — ~~Business privilege license;~~
 - (d) — ~~Certificate of Assumed name (if other than the owners)~~
 - (e) — ~~City or County Tax Records;~~
 - (f) — ~~Company profile, including roles and responsibilities of officers and stockholders;~~
 - (g) — ~~Copy of actual Stock Ledger;~~
 - (h) — ~~Copy of Stock certificate (no specimens);~~
 - (i) — ~~Corporate By Laws;~~
 - (j) — ~~Home state certification (out of state vendors);~~
 - (k) — ~~Proof of ethnicity/gender of stockholders owners (drivers licenses, birth certificates, tribal enrollment documents or passport);~~
 - (l) — ~~Proof of Purchase if corporation was a buyout;~~
 - (m) — ~~Proof or verification of start-up investment capital (example: cash investment, opening of business account, equipment bill of sale, bank statement);~~
 - (n) — ~~Professional Licenses;~~
 - (o) — ~~Minutes of most recent board meeting;~~
 - (p) — ~~Résumés of stockholders; and~~
 - (q) — ~~And two of the following:~~
 - (i) — ~~Annual Report (filed with the NC Secretary of State);~~

- (ii) ~~Certificate of Assumed Name for Corporation;~~
- (iii) ~~Employer Identification Numbers (Federal and State);~~
- (iv) ~~IRS Tax Form 1120;~~
- (v) ~~IRS Schedule E; or~~
- (vi) ~~IRS Schedule K-1~~
- (1) All Applicants
 - (a) Work experience resumes for all owners that include places of ownership/employment with corresponding dates;
 - (b) Proof of citizenship or Permanent Residence (Birth Certificate, Passport, Voter's Registration Card, Green Card, Military ID, or Driver's License);
 - (c) Proof of Ethnicity (Passport, Green Card, Birth Certificate);
 - (d) Copies of Professional Licenses, if required;
 - (e) Schedule of Salaries paid to all officers, managers, owners, or directors of the firm;
 - (f) Copies of signed leases for office and/or storage space;
 - (g) List of equipment (leased or owned) along with signed lease agreements, titles/proof of ownership of equipment needed to operate your business;
 - (h) Documented proof of contributions used to acquire ownership for each owner;
 - (i) Statement prepared and signed by your banking institution listing names of all persons who have signature authority on your business account;
 - (j) Two letters of reference (with contact information, nature and duration of relationship, and statement of firm's capacity and ability to perform);
 - (k) Proof of other certifications; and for a
- (2) Corporation or LLC or Franchise
 - (a) All documentation requested in Item (1) of this Rule;
 - (b) Official Articles of Incorporation (signed by State official);
 - (c) Both sides of all Corporate Certificates and Stock;
 - (d) Assumed Name Certificate;
 - (e) Transfer ledger;
 - (f) Shareholders Agreement;
 - (g) Minutes of 1st and most recent stockholder and Board of Directors meetings;
 - (h) Corporate bylaws and any amendments;
 - (i) Articles of Organization (LLC);
 - (j) Operating Agreement (LLC); and
 - (k) Franchise Agreement (Franchise)
- (3) Partnership or Joint Venture
 - (a) All documentation requested in Item (1) of this Rule;
 - (b) Partnership Agreement; and
 - (c) Joint Venture Agreement

The HUB Office shall take all necessary steps to safeguard information requested in compliance with State and federal law, including G.S. 14-113.2; 14-113.8(6); 132-1.2; and 132-1.10.

Authority G.S. 143-48(d1); 143-128.3(e1).

SECTION .0400 - THIRD PARTY CHALLENGE

01 NCAC 44A .0401 CHALLENGE INITIATION

A third party may challenge, by notarized affidavit, the HUB ~~certification~~ Certification of any business. The challenge shall include detailed reasons or evidence for the challenge.

Authority G.S. 143-48.4; 143-128.4.

01 NCAC 44A .0404 HUB STATUS DURING CHALLENGE

The HUB ~~certification~~ Certification status shall remain in effect during the challenge process.

Authority G.S. 143-48.4; 143-128.4.

SECTION .0500 - REVOCATION OF HUB CERTIFICATION

01 NCAC 44A .0501 REASONS FOR REVOCATION

~~HUB Certification shall be revoked for any of the following reason(s):~~

- (1) ~~The business makes changes to the ownership or management and daily business operations of the company that render it no longer a HUB;~~
- (2) ~~The HUB Office determines that the business is not a HUB;~~
- (3) ~~The business is ineligible to contract with the State of North Carolina pursuant to 143-59.2; or~~

- (4) ~~The business fails to notify the HUB Office within 30 days of any changes in ownership or management and control of daily business operations.~~

The HUB Office shall revoke the HUB Certification for any of the following reason(s):

- (1) Firm's owner failed to cooperate with the Program's request for information;
- (2) Firm's owner falsified a sworn statement;
- (3) Firm no longer meets ownership eligibility standards;
- (4) Firm no longer meets control and daily management eligibility standards;
- (5) Firm is no longer owned by a qualifying individual;
- (6) Decertification requested by firm's owner;
- (7) Change in certification standards or requirements that render the firm ineligible;
- (8) Initial certification decision was based on erroneous information;
- (9) Information or evidence was not available at initial certification;
- (10) Information was misrepresented or concealed by firm during initial certification; or
- (11) The business is ineligible to contract with the State of North Carolina pursuant to G.S. 143-59.2.

Authority G.S. 143-48.4; 143-128.4.

SECTION .0500 - REVOCATION OF HUB CERTIFICATION

01 NCAC 44A .0502 NOTICE

- (a) The HUB Office shall notify the business in writing by certified mail of the decision to revoke HUB Certification and shall state the reason(s) for revocation.
- (b) The HUB Office shall advise the HUB of its right to a review and give the business ~~24~~ 15 business days in which to exercise this right.
- (c) If no review is requested, revocation of the HUB's status shall be enforced.
- (d) The vendor may reapply for HUB ~~certification~~ Certification 12 months from the date of the revocation notice.

Authority G.S. 143-48.4; 143-128.4.

SECTION .0600 - REVIEW

01 NCAC 44A .0601 REVIEW

To exercise a right of review, a review request shall be made in writing and addressed to the HUB Office Director within ~~24~~ 15 business days of the date of the denial or revocation notice.

Authority G.S. 143-48.4; 143-128.4.

01 NCAC 44A .0605 STATUS PENDING REVIEW

The HUB ~~certification~~ Certification status remains in effect pending a review.

Authority G.S. 143-48.4; 143-128.4.