

SECTION 1 – GENERAL PROVISIONS

1-101 Definitions.

- (1) *Applicant* means a business which has applied for certification with National Women Business Owners Corporation (NWBOC).
- (2) *Beneficiary* means a person who is entitled to enforce a trust.
- (3) *Business* means a for profit sole proprietorship, general partnership, limited partnership, limited liability partnership, corporation (Subchapter C or Subchapter S), and limited liability company, as defined under the laws of the jurisdiction where the Applicant was organized, which headquarters is located in the United States or one of its trust territories and which is (a) at least 51.0% owned by females who are United States citizens or have permanent resident status; or (b) at least 51.0% owned by an NWBOC certified entity; or (c) at least 51.0% owned by such females and an NWBOC certified entity.
- (4) *Certification* means an NWBOC Certification Committee has verified that an Applicant is owned and controlled by a woman or by women.
- (5) *Certification Committee* means a committee of persons trained by NWBOC. Certification Committees should review all certification applications, conduct or arrange for site visits, and make decisions regarding granting or denying the certification of Applicants and refers to Certification Committee or Certification Committees.
- (6) *Certified Business* means a business that has been certified by Certification Committee of NWBOC as owned and controlled by a woman.
- (7) *Consortium Partner* refers to a local organization that has entered into an agreement with NWBOC to conduct the certification process and, pursuant to such agreement with NWBOC, has appointed a Certification Committee.
- (8) *Control* means to have and exercise the power to direct the management and operations of the Applicant, including the power to appoint a majority of the directors of a corporate board of directors, or a majority of the governing body of another form of entity such as a limited liability company.
- (9) *Debt* means a fixed and certain obligation to repay indebtedness for money borrowed or a similar obligation, such as a purchase money or seller note of obligation.
- (10) *Equity Security* means (i) shares in a corporation, e.g., common stock or preferred stock, (ii) interest of a partner in a partnership, (iii) profit participation in the aggregate profits of a business or (iv) option, warrant or right, other than a right to

convert, to purchase, sell, or subscribe to a share, security or interest of a kind specified in (i) or (ii).

(11) *Front Operation* means an entity falsely posing as a business owned and controlled by a woman.

(12) *General Partnership* means a partnership in which the parties carry on business for the joint benefit and profit of all partners. The partners share the profits and losses as well as management equally, though their capital contributions may vary.

(13) *NWBOC International Women Business Owners Database* means a database developed by NWBOC that will include businesses certified by a variety of entities as owned and controlled by women.

(14) *Joint Venture* means an entity composed of two or more businesses engaged in a single business purpose of a limited scope and nature for profit.

(15) *Limited Liability Company* means a hybrid of a partnership and a corporation and formed as a limited liability company under the laws of a state of the United States of America. It has limited liability, like a corporation, and the tax pass-through benefits and management flexibility of a partnership. The members have liability limited to the amount of the original contribution, unless the members affirmatively take on such a burden. Distributions to a member are usually based on the members' capital contributions. Member's capital contributions also generally dictate the member's management rights.

(16) *Limited Liability Partnership* means a form of general partnership in which partners are insulated from personal liability arising from the negligence, malpractice, or improper conduct of other partners or employees of the partnership. The limitation on liability of limited partners is premised on the partners' limited involvement with the management of the entity. Partners are jointly and severally liable for the debts of the partnership. In a few states, this protection is extended to insulate a partner against personal liability for all debts and obligations of the partnership. At least one partner must be a general partner, bearing full liability for partnership debts and obligations.

(17) *Limited Partnership* means a partnership in which the general partner manages the partnership and is personally liable for partnership debts. A limited partner does not control the business and is relieved from liability beyond the amount of the capital contributed by her.

(18) *NAWBO* means the National Association of Women Business Owners, which is a sister organization of NWBOC.

(19) *Obligor* means a person who has promised to perform an obligation.

(20) *Obligee* means a person in favor of whom an obligation is contracted.

(21) *Own* means to have legal or beneficial title to property and to be entitled to all of the economic attributes with respect thereto, including the right to earnings and profits.

(22) *Reciprocal Certification* means the acceptance by Consortium Partners of other Consortium Partner certifications, and the acceptance of Reciprocal Organization certifications.

(23) *Reciprocal Organization* means a non-profit organization, business or government agency that has been determined by NWBOC to have essentially the same ownership and control standards as the NWBOC National Certification Program, and a reputation of adherence to the standards and procedures of such entity.

(24) *Site Visit* means an inspection of the Applicant's headquarters, operations and its books and records by an NWBOC trained site visitor located in closet geographic proximity to the site to ensure that the Applicant meets the certification standards.

(25) *Standards* refers to the National Women Business Owners Corporation National Certification Program Standards and Procedures.

(26) *Trust* means a right of property, real or personal, held by one party for the benefit of another.

(27) *Woman* (unless the context otherwise requires) refers to a woman and women and entities certified by NWBOC as woman owned and controlled under these standards.

1-102 Principle of Ownership and Control

An Applicant shall be eligible for certification only if a woman owns (see Section 2) and controls (see Section 3) the entity.

1-103 Unconditional Ownership and Control, and Contingent Interests.

(1) Unconditional Ownership and Control. Ownership and control must be unconditional. This means that ownership and control of an Applicant must not be subject to conditions precedent, conditions subsequent, executory agreements, partnership agreements, profit-sharing syndications, voting trusts, by-law provisions, shareholder agreements or other similar arrangements which effectively transfer ownership or control of the Applicant from a woman to a man or entity owned or controlled by a man such as the existence of any formal or informal restrictions which limit the discretion of the woman-owned business such as restrictions through corporate charter provisions, bylaws, contracts or any other formal or informal devices (for example, cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-women partners, conditions

precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the woman, without the cooperation or vote of any man, from making a business decision for the Applicant. (A requirement that a spouse co-sign certain financing documents does not signify a lack of independence.)

COMMENTARY:

Closely held businesses with more than one owner frequently have provisions providing restrictions on transfer of an owner's interest and rights of first refusal in the entity and/or other owners. These agreements may also require a sale of an owner's business upon the occurrence of certain events which terminate the owner's active involvement in the business; for example, on the death, disability or retirement of the owner. Often the price is based on a formula. These arrangements are often contained in the organizational agreement for the entity such as an operating agreement of an LLC or a partnership. They should be closely scrutinized but should not preclude a woman whose ownership interest is subject to reasonable laws to which substantially all other owners are subject, for being considered owned by the woman.

(2) Contingent interest. Contingent interests in warrants, convertible debentures, stock options and similar Equity Securities will be viewed as having a present effect on ownership and control if the conditions for exercise of these interests are reasonably likely to occur within 12 months from the date of certification.

COMMENTARY:

Third Party Analysts (see Section 4-104) may be useful in analyzing these issues.

1-104 Independence.

(1) Tax Recognition Alone Is Insufficient. An Applicant shall be an independent business. Recognition of the Applicant as a separate entity for tax or corporate purposes is not sufficient in determining whether an Applicant is an independent business.

COMMENTARY:

(1) It is common for a former owner to remain on the board of directors to protect his investment, so the potential for the former owner to resume control must be reviewed. The former owner may have the right to repurchase company assets if payments on promissory notes are not timely made, and the potential for such a repurchase must be scrutinized.

(2) Transactions, which do not reflect "market" values, may be found to be legitimate. For example, the assets may have been purchased as part of a workout, or tax considerations may have played a major role in structuring a

transaction. Third Party Analysts (see Section 4-103) may be useful in examining these situations.

(2) Employment Relationships. A previous and/or continuing employer/employee relationship between Applicant and a past or present owner must be carefully reviewed to ensure that the Applicant is a woman controlled business and not controlled by a male employee.

COMMENTARY:

If an Applicant is sharing resources such as office space, equipment, or staff, with a man-owned firm, this must be carefully reviewed to understand the magnitude and length of time of these shared resources versus those that are directly owned.

(3) Other Arrangements. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In determining whether a woman controls the entity, the following factors should be considered:

- a. Relationships with non-women owned firms in such areas as personnel, facilities, equipment, financial and/or bonding support and other resources.
- b. Relationships with prime contractors to determine the existences of a pattern of exclusive or primary dealings that could compromise the independence of the woman owned Applicant.
- c. Whether the relationship between the Applicant and non-women owned firms is consistent with normal industry practice.

SECTION 2 – OWNERSHIP

2-101 Principle of Ownership

An Applicant shall be eligible for certification if a woman owns [see Section 1-101 (21)] one of the following:

- (1) 100% of the assets of a sole proprietorship;
- (2) At least 51.0% of each class of proprietorship interests in a partnership as reflected in the partnership agreement; or
- (3) At least 51.0% of each class of voting stock of a corporation and 51.0% of the aggregate of all stock outstanding determined by the percentage that would be distributed to a woman if the corporation were liquidated.
- (4) At least 51.0% of each class of membership interest in a limited liability company.

2-102 Holding of Assets

(1) Direct Ownership of Assets. All assets purportedly compromising the ownership interest of a woman shall be held directly by her except as provided in subparagraph (3) and (5) below.

(2) Asset Attribution. Where a woman is the principal obligor on a debt, that portion of the debt, which has been paid by her to obligee, shall be considered an asset of the woman.

(3) Assets Held in Trust. Securities or assets held in trust are regarded as held by a woman for purposes of determining ownership of the firm, if the beneficial owner of securities or assets held in trust is a woman, and the trustee is the same or another woman.

(4) Assets Acquired for Less Than Full Consideration.

- a. For purposes of determining ownership, all interests in a business or other assets obtained by a woman as the result of a gift, or transfer without adequate consideration (other than a gift or transfer by a trust instrument) from any of the following who are not woman owned and shall be presumed as not being owned by a woman:
 - i. A person involved in the Applicant or an affiliate of the Applicant;
 - ii. A person involved in the same or a similar line of business as the Applicant; or
 - iii. A person engaged in an ongoing business relationship with the Applicant, or an affiliate of the Applicant.
- b. To overcome this presumption and permit the interests or assets to be counted, the Applicant must demonstrate, by clear and convincing evidence, that:
 - i. The gift or transfer to the woman was made for reasons other than obtaining certification; and
 - ii. The woman actually controls the management, policy, and operations of the Applicant, notwithstanding the continuing participation of the person who provided the gift or transfer.

(5) Ownership by NWBOC certified entities. Assets owned by an NWBOC certified entity shall be deemed female owned.

COMMENTARY:

This use of trusts as an estate-planning device is common among small business owners, and NWBOC wants to ensure that women business owners have the same opportunity as men business owners to take advantage of it.

2-103 Community Property.

The determination of ownership shall be made without giving effect to state community property laws.

COMMENTARY:

This provision is intended to prevent discrimination against a woman based upon her marital status or state marital property laws.

2-104 Inherited Property.

Inherited interests over whom the woman has actual control shall be counted toward ownership interest.

2-105 Contributions to Business.

Contributions of capital or services by a woman to acquire her interest in the Applicant shall be real and substantial.

COMMENTARY:

- (1) Examples of insufficient contributions include unsecured or inadequately secured promise to contribute capital, and an overvalued non-cash contribution.
- (2) A note payable to the Applicant is considered real and substantial if it is a consistently current obligation, and the loss of shares is not reasonably likely.
- (3) A contribution of capital may include issuance of stock to the woman owner in exchange for cancellation of the corporation's indebtedness to her.
- (4) Expertise alone is not sufficient. Expertise in the services provided, however, is considered a contribution. For example, where an attorney is the sole proprietor of a law firm and decides not to be paid salary for a certain period of time, the fair market value of her salary can be counted as services toward the capitalization of the firm.

- (5) Third Party Analysts (see Section 4-104) may be useful in analyzing this issue.

2-106 Proportional Profits and Risks

- (1) Receipt. Receipt of profits in proportion to the risk incurred by a woman owner is highly indicative of ownership. Reinvestment of Applicant's profits by the woman owner into the Applicant is acceptable so long as all other owners do the same.

- (2) Dissolution. In the event of the liquidation, dissolution, bankruptcy, or reorganization of Applicant, the woman owner must be entitled to receive at least 51 percent of assets left to be distributed after all creditors are paid, or otherwise provided for.

2-107 Joint Venture.

A joint venture will not be certified because parties to a joint venture lack ownership interests in the venture. A joint venture relationship may, however, result in the creation of an independent business. This new business can be certified if it otherwise meets the Standards.

SECTION 3 – CONTROL

3-101 Principle of Control.

An Applicant shall be eligible for certification if a woman has control [see Section 1-101(9)] as described below:

- (1) 100% of the control of a sole proprietorship;
- (2) At least 51.0% of the control of a general partnership;
- (3) The woman owner or an entity certified by NWBOC as woman owned and controlled shall be the general partner, and if there is more than one general partner, the managing general partner, of a limited partnership or a limited liability partnership; or
- (4) The woman owner is entitled to appoint a majority of a corporate board of directors.
- (5) A woman or women shall be the sole manager, able to appoint unconditionally the majority of managers of a manager managed LLC or have 51.0% control of a member managed LLC.

COMMENTARY:

(1) Control or lack of it can be established through disproportional voting schemes, irrevocable proxy, voting agreements, voting trusts, shareholder agreements or by-laws which provide that certain classes of stock limit voting to certain directors. Irrevocable proxies or voting trusts in favor of a woman can be counted in determining a woman's control if the agreements appear valid under the circumstances.

(2) Provisions in partnership agreements that permit the partners to oust a general partner without cause must be scrutinized carefully.

3-102 Leadership Position.

A woman must serve as the Chief Executive Officer, or in the equivalent position with the Applicant as shown in the Applicant's organization documents.

COMMENTARY:

In a closely held corporation, the President generally dictates its operations and, therefore, would be the equivalent of the Chief Executive Officer. However, many owners of closely held corporations prefer the title of Chairman in their capacity as Chief Executive Officer and may appoint a President as the chief operating officer. This is especially true where there are multiple corporations.

3-103 Franchises.

A franchise agreement entered into by an Applicant which contains provisions typically used by the same franchiser in agreements with other franchisees, such as requirements for quality, advertising, and accounting, does not evince a lack of control by the Applicant. The Standards, however, must otherwise be met and the franchisee must have a right to profit from its efforts and bear a risk of loss commensurate with its ownership.

COMMENTARY:

One avenue for making this determination would be to review a pro forma franchise agreement. The Certification Committee could also request an affidavit from the franchiser that its agreement with Applicant is closely aligned with the level of control it requires of all its franchisees.

3-104 Management and Operational Decisions.

(1) Woman Directs. A woman shall direct the management and operations of the Applicant. She must be able to make final decisions regarding operations. She must have authority to sign checks and contracts on behalf of the business entity.

(2) Experience and Delegation. A woman owner's entrepreneurial experience, or managerial, technical, or professional experience in the industry in which the Applicant seeks certification is indicative of the woman's control of the business. A woman owner, however, need not have more expertise in a given area than an employee; may delegate functions to employees; and may rely on the judgment of those employees, regardless of their sex, providing that she possesses sufficient background to be able to use intelligently, and evaluate critically, the information presented by her employees.

COMMENTARY:

(1) Whether a woman owner holds a professional license does not, in and of itself, determine whether she controls the business. This factor, along with others, should be evaluated together to make this determination. The exception is where the owner is required to be licensed to work in her industry.

(2) Delegation of various tasks by owners in the day-to-day business of a company is a necessary and common activity. For example, an owner may delegate the task of issuing checks to other employees up to an established limit.

(3) The Applicant may seek paid or unpaid advice or assistance.

(4) Volunteer work should be evaluated in assessing experience in the same fashion as work that is compensated.

3-105 Useful Business Function.

The Applicant must perform a useful business function according to the custom and practice of the industry in which it does business. A commercially useful function means the performance of actual services which are integral to, and necessary for, the performance of a contract.

COMMENTARY:

(1) This section is intended to prevent a front operation from forming solely to act as a conduit to funnel goods and services from the producer to the purchasing entity for purposes of a particular contract.

(2) The traditional duties of firms in particular industries need to be evaluated to determine if the Applicant is performing a useful business function; e.g. a securities firm sells bonds when a bond issue is being underwritten for a local jurisdiction. The Applicant should play only a management role in the transaction when it partners with a man-owned business.

3-106 Debt.

(1) Reasonable Rate. Debt instruments must provide for a reasonable annual rate of interest. A lack of reasonable terms in debt instruments may evidence a lack of control by the Applicant. An annual rate of interest is considered reasonable on the date the determination is made if it is a rate within the range of rates paid to similar financial institutions or other investors by other obligators of the same or similar credit quality on similar instruments during the period of time that the debt was actually incurred.

COMMENTARY:

Research by the National Foundation for Women Business Owners has shown it is costly for women business owners to obtain capital, and often they do not have access to it. This is why section (1) allows for review of nontraditional debt transactions. It would not be unusual for a woman business owner to be rejected by a financial institution, which results in her seeking out alternative sources of financing at higher rates. The reality is that high interest debt is sometimes the only debt available to women business owners.

(2) Reasonable Payment Schedule. The debt instruments must contain a reasonable debt repayment schedule, and payments must be made in accordance with that schedule. The debt instrument must also have a specified maturity date unless the instrument is payable on demand by the obligee.

COMMENTARY:

(1) Debt with commercially unreasonable terms may also be disguised equity, particularly in distressed situations. This should be scrutinized carefully.

(2) An obligee's potential remedies such as the ability to foreclose on real or personal property does not, in and of itself, affect the woman's ownership interest.

SECTION 4 – CERTIFICATION PROCEDURES

4-101 Application; Cooperation.

(1) Submission and Fee. An Applicant shall submit a timely completed certification application and all supporting documentation to NWBOC. A nonrefundable application-processing fee in the amount specified by NWBOC must be paid when the application is submitted.

(2) Cooperation. The Applicant must cooperate fully with the Certification Committee in application and on-site reviews, and arbitration, decertification and challenge proceedings. The Applicant must provide information by the dates requested by NWBOC, and may contact appropriate third parties, such as the Certification Committee, NWBOC's attorneys, accountants and other professional advisors to provided and discuss information needed for the certification process. Failure, or refusal,

to furnish requested information, or any other failure to cooperate, will result in denial of certification of the Applicant.

4-102 Notices.

All communications between the Applicant and NWBOC or the Certification Committee shall be sent any of the following means in order to be able to verify receipt: certified mail, return receipt requested, confirmed fax or nationally recognized courier.

4-103 Withdrawal.

The Applicant may, at any time, request in writing to NWBOC that its application be withdrawn, however, the application-processing fee is nonrefundable.

COMMENTARY:

NWBOC and/or the Certification Committee shall either return or destroy all documentation submitted by the Applicant which is in the possession of either of them.

4-103 Required Proof and Third Party Analyses.

The Applicant is obligated to prove that a woman owns and controls the entity. The Applicant can do so through the application and supporting documentation. In addition, the Applicant may submit a legal opinion, provided that it is reasonably satisfactory in form and substance to the Certification Committee and to legal counsel for NWBOC and expressly provides that NWBOC, the Certification Committee and all parties accepting NWBOC certification may rely on it. Likewise, an audit and auditor's letter providing that the Certification Committee may rely on the audit may be submitted by the Applicant. Appraisals or valuations performed by appraisers or financial advisors will also be considered. Attorneys, certified public accountants, appraisers and financial advisors are known collectively as "Third Party Analysts." Legal opinions, audits, appraisals and valuations shall be considered representations by the Applicant and relied on by the same persons and for the same purposes as representations of Applicant.

COMMENTARY:

(1) The Certification Committee may require that financial statements be compiled by an independent public accounting firm. This compilation is distinct from an audit which an applicant may provide as Third Party Analysts.

(2) Legal opinions may be given in various situations, such as making a determination of how a state's partnership law may resolve governance issue which is not addressed in the partnership agreement. Legal counsel of NWBOC

may be consulted regarding the form and substance of the opinion to be provided by Applicant's legal counsel.

- (3) An audit must be issued in accordance with the Statements of Auditing Standards for Certified Financial Statements. Audits may be used in various situations, such as showing whether a contingent interest will be exercised during the 12 months following a certification determination.
- (4) Legal opinions and audits will probably only be effective options for larger companies which have sophisticated business structures.
- (5) All Third Party Analysts must be reputable, and have no financial or business interest in the Applicant.
- (6) Where an Applicant can demonstrate it satisfied a regulatory body's ownership or control criteria, this determination will be considered in the Certification Committee's decision. An example of this is the analysis by the National Association of Securities Dealers regardless who controls broker/dealers subject to regulation by NASD.

4-104 Confidentiality.

(1) Safeguards. NWBOC and the Certification Committee shall take all reasonable measures to safeguard Applicants' information from disclosure to third parties, including those provided for in section 4-108(3), other than (a) information requested by subpoena, court order or other judicial, administrative or litigation process, or as otherwise may be required by law; (b) information that was already made public other than through the act or omission of NWBOC or the Certification Committee or (c) on a "need to know" basis for employees, officers, directors or consultants of a Certification Committee who agree to the same confidentiality obligation.

(2) Confidential Application Information. Applicants will be informed that certain fields so designated in their application will be maintained in the NWBOC International Women Business Owners Database.

4-106 Application Review.

The NWBOC staff shall determine if the application and all supporting documentation are in compliance with the Standards. Applicants will be requested to submit any missing information within 30 business days of the request.

Failure to provide the information in the time allotted will result in the Applicant's file being administratively closed.

COMMENTARY:

If the file is administratively closed, NWBOC shall return or destroy all documentation submitted by the Applicant.

4-107 On-Site Review.

An on-site review may include interviews, scheduled or unannounced visits to job or facility sites, and inspection of documentary materials relevant to the Applicant, which were not previously available for review. The on-site review will be conducted by NWBOC trained site visitors.

COMMENTARY:

- (1) Interviews may be conducted with the Applicant and third parties such as customers and suppliers. Telephone interviews prior to site visits may also be conducted.
- (2) The review of company books and records is limited to those documents relevant to an evaluation of ownership and control.
- (3) In situations where a Certification Committee is certifying an entity that is not located in its city, because there is no Certification Committee in the Applicant's city, the Certification Committee may charge the Applicant for the cost of the time to travel to the site(s) and related expenses, which must be paid by the Applicant prior to the site visit.
- (4) Virtually all site visits should be announced to the Applicant. Generally, it would be in NWBOC's interest to undertake site visits in this manner because the site visitors would want to ensure that key staff members of the Applicant would be available to meet with them. Where, however, there is a concern about who controls the enterprise, which an unannounced visit might resolve, an unannounced visit is one tool the Certification Committee may use in its review so long as it informs all Applicants it may do so when the certification process is initiated.
- (5) All those who conduct site visits will be trained by the NWBOC staff to conduct this function, and will be given site visit forms to complete. It is preferable that members of the Certification Committee undertake site visits, but other parties may do so if they have been trained.

4-108 Certification Committee.

(1) Establishment. At least one Certification Committee shall be established in each of the following regions which correspond to the regions of NWBOC's sister organization, NAWBO: Atlantic, Southeast, Midwest, Southwest, and Western.

(2) Membership. The Certification Committee shall be composed of an odd number of members and no less than three members. An experienced business attorney and certified public accountant must be included as members of the Committee. The other member or members can be corporate or government representatives or women entrepreneurs.

COMMENTARY:

It will also be important in some situations that the Certification Committee have access to industry representatives to develop an understanding of how firms typically operate in the industry in which the Applicant operates.

(3) Duties. Pursuant to an agreement, all members of the Certification Committee shall maintain financial interest and trade confidences disclosed in the certification process, and disclose conflicts of interest. Under no circumstances may a member receive information about an Applicant, or work on the review and processing of, or participate in the decision-making regarding an application, if (a) such member, or any entity with which such member has an employment or investment interest, is a direct competitor of the Applicant; (b) has conducted a material amount (i.e., greater than \$10,000) of business with the Applicant within the past 12 months; or (c) has a direct or indirect economic interest in the Applicant, or is related by blood, marriage or adoption to any officer, director or greater than 5% owner of the Applicant.

(4) Meetings. The Certification Committee should meet monthly, or more often as necessary to fulfill the demand by the Applicants. A quorum is necessary to conduct the business of the Committee, and quorum is defined as one more than one-half of the total number of Committee members at the time of any vote.

(5) Review of Application and Decision. The Certification Committee shall review all applications, Third Party Analyses, and site visit reports and make the decision regarding Certification of the Applicant. A simple majority is required for all decisions.

4-109 Certification Decision.

The Certification Committee will review each of the Certification Committee's recommendations. The Certification Committee will then vote to approve or deny certification. This decision will be made within 90 days of Applicant's submission of all required documentation.

4-110 Notice, Duration and Use of Certification.

(1) Notice. The NWBOC will inform the Applicant in writing of the Certification Committee's decision on its application. The Notice of Certification will inform the Applicant that it has been certified within specific commodity or service industries. The Notice will also state the 12-month certification validation period. The Notice of Certification will further state whether the applicant qualifies to be certified under 49 Code of Federal Regulations, Part 26, which meets the requirements of the Department of Transportation of the United States Government. NWBOC will inform the Applicant, which has been denied certification, of the grounds for denial and the Applicant's right to arbitration.

(2) Duration. Certification shall be valid for one year, unless Section 6-101 is invoked.

(3) Posting of Decision. All decisions by the NWBOC Certification Committee to grant or deny certification will be posted on the NWBOC Network World Wide Web site and the NWBOC International Women Business Owners Database.

4-111 Reciprocity.

(1) Consortium. Reciprocity of certification will exist among all Certification Committees.

(2) Reciprocal Organizations. NWBOC certification will be granted to businesses certified by Reciprocal Organizations. The certification program of a Reciprocal Organization must be approved by the NWBOC Board of Directors after a review of the entity's standards and procedures, and its reputation.

COMMENTARY:

(1) If the Applicant states in writing that it has been certified by another entity that uses "essentially the same ownership and control standards and procedures" as those used by NWBOC in its National Certification Program, the Certification Committee may review the other certifying body's program and then recommend to NWBOC that it review this entity's certification program to determine if it meets the criteria to be named a Reciprocal Organization.

(2) This section applies to all Applicants which have been previously certified by other organizations with the proviso that the process and standards that were in place at the time of that certification must be reviewed. This review could prove difficult where it has been more than one year since the certification due to possible changes in personnel and policy.

(3) Reciprocal Organization Reciprocity. Applicants which have been certified by Reciprocal Organizations can be certified by NWBOC by submitting

NWBOC's reciprocity application and a copy of the Reciprocal Organization's document which evidences its certification of Applicant. On a case-by-case basis, NWBOC may require additional supporting documentation, or conduct a site visit of the Applicant if none was undertaken by the Reciprocal Organization.

4-112 Disclosure Obligation.

A business certified by NWBOC has a continuing obligation to report material changes in ownership or control to the Certification Committee in writing and, if necessary, reapply for certification within 30 days of the effective date of the change.

SECTION 5 – ARBITRATION OF DENIALS OF CERTIFICATION

5-101 Right and Request for Arbitration; Fee.

An Applicant which believes it has been wrongly denied certification may request that the matter be arbitrated by submitting a request in writing ("Arbitration Request") to NWBOC within 30 calendar days of the date shown on the denial of certification issued by NWBOC. An untimely Arbitration Request shall be rejected. No specific form is required for the Arbitration Request, but the requirements of Section 5-102 must be met. The Applicant shall pay the fees of the arbitrator who shall be selected by mutual agreement of the Applicant and NWBOC or, if they do not agree, the arbitrator shall be selected by the chapter of the American Arbitration Association in closest proximity to the Applicant.

5-102 Grounds.

The Arbitration Request must identify the decision for which a reexamination is sought; set forth specific reasons as to why the decision is alleged to be erroneous; and present arguments in support of such allegations.

5-103 Arbitration and Determination.

The arbitration shall take place at the convenience of the parties but no later than 120 days after the date of Applicant's Arbitration Request. The arbitration may take as long as needed to resolve the matter so long as the 120-day time period is met and the Applicant pays for all additional costs related to any extensions of the arbitration. The NWBOC board of directors shall be notified by its staff of the results of the arbitration and given a recommendation about further action on which it will take action.

Any action to enforce or interpret the Standards & Procedures and/or the Application, to resolve any claims, or to resolve any disputes in connection with or arising out of any of the terms or provisions of the Standards & Procedures and/or the Application shall be settled by the final and binding arbitration in accordance with the rules of the American Arbitration Association ("AAA"). Each party to this Agreement knowingly waives its right to trial before a state or federal court and waives its right to

trial by a jury. The parties have chosen to resolve all disputes or claims between them by arbitration under the auspices of the AAA and arbitration shall be the exclusive dispute resolution process of the parties. The substantive law of the state where the Applicant resides shall be applied by the arbitrator to the resolution of the dispute. All decisions of the arbitrator shall be final and binding on all parties and shall be non-appealable. Judgment may be entered upon any such decision in accordance with applicable law in any court having appropriate jurisdiction thereof. The arbitrator (if permitted under applicable law) or such court may issue a writ of execution to enforce the arbitrator's decision. Unless the parties agree otherwise, the award of the arbitrator shall be accompanied by a reasoned opinion. The parties shall only be entitled to limited discovery, shall arbitrate only narrowly defined issues.

5-104 Notice and Finality of Decision.

The Applicant shall be notified in writing of the decision, which shall be final.

COMMENTARY:

The last sentence means that the Applicant will not have a right to seek judicial remedies.

SECTION 6 – COMPLIANCE REVIEWS & DECERTIFICATION

6-101 Grounds for Decertification.

The certification of a Certified Business shall automatically terminate for the following reasons without any further action on the part of NWBOC.

- (1) Cessation of business operations, including sale, exchange or transfer of ownership.
- (2) Failure of the business to continue to meet the Standards.
- (3) Failure or refusal of the business to cooperate as defined in Section 4-101(b).
- (4) Failure to provide notice to the Certification Committee within 30 days of a change in the status of ownership or control reasonably likely to affect its ability to meet the Standards as provided for in Section 4-112.
- (5) Submission of any false or misleading information, or misrepresentation by omission, or any attempt to circumvent the Standards.
- (6) Failure to submit an application for renewal of certification and required documentation within the time period provided for in Section 8-102.

6-102 Right to Initiate Compliance Review, Decertification, and Notice.

(1) Grounds for Review. The Certification Committee may initiate a compliance review of a Certified Business whenever it has reason to believe that grounds for decertification may exist.

(2) Process for Review. After the Certification Committee decides to initiate a compliance review, it will take the following actions: (a) inform the Certified Business in writing of the Certification Committee's concerns about the Certified Business' continued eligibility, and (b) provide the Certified Business an opportunity to respond to these concerns in person and in writing. The Certification Committee shall provide an opportunity to the parties to address the Certification Committee.

(3) Notice. The Certification Committee will provide the Certified Business with a written explanation of the reasons for the Certification Committee's final decision. This entire process may be brief and informal. All decisions by the Certification Committee to decertify a business will be posted on the NWBOC Network and NWBOC's International Women Business Owners Database.

6-103 Arbitration.

When an Applicant believes it has been wrongly decertified, it may seek to arbitrate the matter as provided for in Section 5.

SECTION 7 – CHALLENGES

7-101 Notification.

Any third party may challenge the certification of a business. The challenge shall be made in writing to the Certification Committee. No specific form is required for a challenge. The Certified Business and the third party challenger shall each pay one-half the cost of processing the challenge. The party who does not prevail shall reimburse the other party.

7-102 Grounds.

The challenging party shall include all information to support the assertion that the Certified Business is not owned or controlled by a woman. A challenge must be sufficiently specific to provide reasonable notice as to the grounds upon which the certification is challenged. A challenge merely alleging that the Certified Business is not owned or controlled by a woman without setting forth any basis for the allegation will not be deemed adequate. Challenges that do not contain sufficient specificity may be dismissed by the Certification Committee.

7-103 Notice to Certified Business.

The Certification Committee shall notify the Certified Business in writing that its status has been challenged. The notice shall identify the challenging party and delineate the grounds for the challenge. The notice shall also require the Certified Business to provide to the Certification Committee information sufficient to permit it to evaluate the challenge within 30 days.

7-104 Determination of Challenge.

The Certification Committee shall determine on the basis of information required in Sections 7-102 and 7-103 whether there is reason to believe the assertion. If the Certification Committee determines that there is no reason to believe the assertion, it shall so inform the challenging party and Certified Business in writing. This notice terminates the proceeding. If the Certification Committee determines there is reason to believe the assertion may be valid, it shall begin an arbitration proceeding as provided for in Section 5. All decisions by the Certification Committee regarding challenges will be posted on the NWBOC Network and NWBOC's International Women Business Owners Database.

SECTION 8 – MISCELLANEOUS

8-101 Reapplication.

If an Applicant's application for certification or re-certification is denied, such Applicant may, after one year, reapply for certification upon the submission of information indicating a change of circumstances that caused the original denial or termination of certification. The procedures in Sections 4-101 through 4-110 shall also be followed.

8-102 Renewal of Certification.

A Certified Business shall make an application for renewal of certification annually and submit a renewal fee to be determined from time to time by NWBOC. The renewal form shall be submitted no later than thirty (30) calendar days and no earlier than sixty (60) calendar days prior to the expiration of the certification. Upon consideration of the information submitted by the Applicant for renewal of certification, the Certification Committee shall determine whether continued certification is warranted. In making this determination, the Certification Committee shall apply the standards in Sections 2 and 3. The Certification Committee shall then notify the Certified Business of the decision on the renewal prior to the close of the certification period.

COMMENTARY:

The renewal application, which will be automatically mailed by NWBOC to the Certified Business, will be short and simple. It will include a request that the

Certified Business state that there has been no material change in the business since it was certified that would affect its status as a woman-owned and controlled firm. This annual renewal is also important because it ensures that NWBOC has continuously updated information on certified business to provide on the International Women Business Owners Database to prospective purchasers.

8-103 Modifications of Standards and Procedures.

The NWBOC President shall appoint a Certification Task Force to review the Standards and to make suggested recommendations to the Board after the end of the trial phase of the National Certification Program. Until that time the Board shall make changes to the Standards based upon recommendations of the NWBOC staff.

COMMENTARY:

The Standards comprise a living document that will be continuously refined to meet the evolving needs of NWBOC's stakeholders. These Standards may be revised at any time by the NWBOC Board of Directors without advance notice to any Applicant or other party; provided, however, that after revision, the revised Standards shall be delivered to all corporations, government entities and reciprocal certifiers with a notice indicating the amendments to the Standards and Procedures.