

**Title 7--DEPARTMENT OF TRANSPORTATION  
Division 10--Missouri Highways and Transportation Commission  
Chapter 8--Disadvantaged Business Enterprise Program**

**PROPOSED RULE**

**7 CSR 10-8.061 Missouri Unified Certification Program**

**RECEIVED**

**JAN 12 2018**

**SECRETARY OF STATE  
ADMINISTRATIVE RULES**

**COPY**

*PURPOSE: This rule describes Missouri's Unified Certification Program (UCP) for the United States Department of Transportation Disadvantaged Business Enterprise certifications.*

(1) Unified Certification Program (UCP). USDOT included in Title 49 of the Code of Federal Regulations (CFR) part 26 a provision for a "one-stop" certification process for all Disadvantaged Business Enterprises (DBEs) that is required to be implemented by agencies that are recipients of federal funds from the USDOT.

(2) Missouri Regional Certification Committee (MRCC). The Missouri Regional Certification Committee is the UCP for the state of Missouri. The five (5) agencies that directly receive USDOT funds and currently operate a USDOT approved DBE program are: (1) Missouri Department of Transportation (MoDOT); (2) City of St. Louis, Missouri; (3) Bi-State Development/Metro; (4) Kansas City Area Transportation Authority (KCATA); and (5) the City of Kansas City, Missouri. These entities shall be referred to as the "Direct Partners," and are the members of the MRCC.

(3) Unified Certification Agreement. All Direct Partners agreed to the procedures, processes, and requirements set out in the Unified Certification Agreement, Policies, & Procedures. This process allows for DBE certification by one Direct Partner to be honored by all other Direct Partners. It also allows for the review of a determination of DBE ineligibility by the MRCC Direct Partners who were not involved in the decision to remove DBE eligibility. The Missouri Highways and Transportation Commission (Commission) incorporates by reference and makes a part of this rule the MRCC's Unified Certification Agreement, Policies & Procedures as published by the MRCC whose address is Missouri Department of Transportation, External Civil Rights Division, 105 West Capitol Avenue, Jefferson City, MO 65102, and effective June 15, 2011. This rule does not incorporate any subsequent amendments or additions to this publication. All final decisions to remove a DBE's eligibility will be made by the MRCC.

(4) Certifications, Eligibility, and Hearings. MoDOT may request a removal of a DBE's eligibility, and such a removal shall be determined by the MRCC. All initial certification denials by MoDOT are administratively appealable to the USDOT. Any hearing conducted on a DBE's eligibility or a complaint filed against a DBE shall be conducted by the MRCC and the MRCC shall issue the decision. Such decision by the MRCC is administratively appealable to the USDOT pursuant to 49 CFR § 26.89.

(5) NAICS Codes. The types of work a DBE firm can perform (whether on initial certification or when a new type of work is added) should be described in terms of six (6)-digit North American Industry Classification System (NAICS) codes. The MRCC will make the final determination after an informal, independent administrative review hearing after a MRCC member requests that a DBE be denied a NAICS code expansion or has a NAICS code removed.

(6) NAICS Code Descriptions. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to the USDOT recipients.

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The initial determination of NAICS codes will be determined by the member agency of the MRCC in receipt of the DBE firm application and occurs simultaneously with the initial determination of DBE eligibility. The Bureau of Census website ([www.census.gov/naics](http://www.census.gov/naics)) provides additional information about the details of NAICS codes. The DBE firm has the primary responsibility to provide the detailed company information the member agency of the MRCC needs to make an appropriate NAICS code determination.

(7) NAICS Code Descriptions Not Adequate. DBE firms shall rely on, and not depart from, the plain meaning of the NAICS code descriptions in determining the scope of a firm's certification. However, in situations in which a DBE firm believes that the NAICS codes on record for the firm do not adequately describe the scope of the work the firm can perform, DBE firms should use the following guidance:

(A) If a DBE firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE for a commission project, the firm may request that MoDOT, in the firm's certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm certification. A vague, general, or confusing description is not sufficient for this purpose, and MoDOT will not rely on such a description in determining whether a firm's desires to obtain DBE certification will be given that specific NAICS code, and, as a result, whether it's participation may be counted toward the DBE goals established for the project.

(B) The MRCC is not precluded from changing a NAICS code determination or description if there is a factual basis in the record resulting from the informal, independent administrative hearing authorized in this rule for doing so.

(8) NAICS Code Expansion Denial or Removal. If MoDOT initially denies or removes a NAICS code expansion request, the DBE firm has fifteen (15) days from the date of receipt of the denial of a NAICS code expansion or removal of a NAICS code to request an informal, independent administrative review hearing before the MRCC in the same manner as a hearing under 49 CFR § 26.87. The DBE firm must exhaust all administrative remedies with the MRCC prior to appealing a decision denying or removal of a NAICS code expansion to the USDOT. In the case of a removal of NAICS code, the DBE maintains its NAICS code unless and until a final decision of the MRCC removes such code. If the DBE firm chooses to appeal to the MRCC, it will retain its rights to any future appeals to the USDOT. In the event the DBE firm chooses to not appeal this decision to the MRCC, the DBE firm then waives its rights to appeal to the USDOT and any judicial review. If the DBE firm fails to make a timely request for an informal, independent administrative review by MRCC within fifteen (15) days from the date of receipt of the denial of the NAICS code expansion by MoDOT, MoDOT's decision regarding the DBE's NAICS code expansion will be final.

*AUTHORITY: Sections 226.900-.910 and Section 226.150, RSMo 2000\*; Section 226.020, RSMo 1939; Title 49 Code of Federal Regulations part 26; Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 105-178, 112 Stat. 107, 113; Map-21, The Moving Ahead for Progress in the 21<sup>st</sup> Century Act, Public Law 112-141; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Original rule filed May 10, 2000, effective Nov. 30, 2000. Rescinded and Readopted: Filed January 12, 2018.*

*\*Original authority: 226.150, RSMo 1939, amended 1977.*

*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Highways and Transportation Commission, Pamela J. Harlan, Secretary to the Commission, 105 W. Capitol Avenue, PO Box 270, Jefferson City, MO 65102 or [Pamela.Harlan@modot.mo.gov](mailto:Pamela.Harlan@modot.mo.gov). To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*