

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1101

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

**NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

*Please be sure that hard copies are printed one-sided.*

*Overall it is unclear to me what is going on with these Rules? What is the overall intent? What are the requirements imposed upon your regulated public and to whom do they apply? Some appear to apply to contractors and others to "eligible firms"? I assume that these are not the same entity? What is the hierarchy here? Also, when would 49 CFR 23 versus 49 CFR 26 apply? Is 49 CFR 23 applicable in contracts regarding airport concessions and 49 CFR 26 is applicable for everything else? I think if you could provide some additional information somewhere (perhaps in this Rule), it would provide some clarity to this entire Section.*

*Also, the blanket reference to 49 CFR 23 and 26 do not provide any additional information over the incorporation, making them unnecessary. Please go through each Rule and provide the specific cross-reference to provide some additional meaning.*

*Are (a) and (b) necessary? They do not appear to be providing any directives to your regulated public and are instead saying what you all will do. If they are necessary, please consider revising these to say something like "Disadvantaged Business Enterprises shall have the opportunity..." and delete "the Department shall ensure"*

*I don't understand the difference in (a) and (b) since you have defined minority and business enterprises as having the same meaning as a disadvantaged business enterprise. That makes them all the same thing. When would one qualify for projects with federal funding vs. non-federal funding? Please provide some additional information.*

*What is meant by the reference to G.S. 136.84.4 in (c)? I see that provides directives to the Department. What is there for enterprises to comply with?*

*Would it make sense to include (e) in .1107? I think it would since this is a "purpose and scope" rule.*

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

*In (h), are the substantive requirements of the form set forth elsewhere in rule, statute, or CFR? If not, please provide the substantive requirements. I also made a note of this in .1103. The contents of the form do not need to be in both places. I think that they would make more sense in .1103.*

*Please add 136-284.4 to your History Note.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1101 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1101 PURPOSE AND SCOPE**

4 (a) ~~The North Carolina Department of Transportation~~ shall ensure that Disadvantaged Business Enterprises ~~(DBE)~~  
5 (DBE), have the opportunity to participate in the performance of contracts financed in whole or in part with Federal  
6 funds.

7 (b) ~~The North Carolina Department of Transportation~~ shall ensure that Minority Business Enterprises (MBE) and  
8 Women Business Enterprises (WBE) have the opportunity to participate in the performance of contracts financed in  
9 whole or in part with non-Federal funds.

10 (c) Contracts financed in whole or in part with federal funds shall comply with 49 C.F.R. §§ 23 and 26. ~~CFR 23 and~~  
11 ~~26.~~ Contracts financed with non-federal funds shall comply with G.S. 136-28.4 and 49 C.F.R. §§ 23 and 26. ~~CFR 23~~  
12 ~~and 26.~~

13 (d) 49 C.F.R. §§ 23 and 26 ~~CFR 23 and 26~~ are incorporated by reference, including all subsequent amendments and  
14 editions. 49 C.F.R. §§ 23 and 26 are available at no cost by accessing <https://www.govinfo.gov/>.

15 (e) Written appeals shall be sent to the following address: U.S. Department of Transportation, Departmental Office  
16 of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

17 (f) The DBE/UCP Program Manager is the Department contact for the Unified Certification Program. Mail addressed  
18 to the DBE/UCP Program Manager may be sent to 1511 Mail Service Center, Raleigh, NC 27699-1511. The  
19 DBE/UCP Program Manager may be contacted by phone at 919-508-1852.

20 (g) The Department DBE, MBE, and WBE directory may be accessed at no cost at  
21 <https://www.ebs.nc.gov/VendorDirectory/default.html>.

22 (h) Unified Certification Applications may be obtained at no cost by accessing <https://www.ncdot.gov/>, or from the  
23 DBE/UCP Program Manager, 919-508-1852. ~~Information referenced in this Section may be viewed or obtained from~~  
24 ~~the following sources:~~

25 (1) ~~49 CFR 23 and 26 is available at website <http://www.gpoaccess.gov/cfr/index.html> or may be~~  
26 ~~purchased at a cost of twenty three dollars (\$23.00) from the U.S. Government Printing Office,~~  
27 ~~Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402 9238, telephone number~~  
28 ~~202 512 1800.~~

29 (2) ~~DBE written appeals: U.S. Department of Transportation, Office of Civil Rights, 400 7th Street,~~  
30 ~~SW, Room 5414, Washington, DC 20590.~~

31 (3) ~~The Department's State Contractor Utilization Engineer, 1509 Mail Service Center, Raleigh, NC~~  
32 ~~27699 1509, telephone number 919 733 7174.~~

33 (4) ~~Disadvantaged/Minority/Women Business Enterprise Directory:~~  
34 ~~<http://apps.dot.state.nc.us/vendor/directory/>.~~

35 (5) ~~Unified Certification Application: <http://www.ncdot.org> or may be obtained at no cost from the~~  
36 ~~State Contractor Management Engineer, Telephone number, (919) 733 7174.~~

1     *History Note:*     *Authority G.S. 136-28.4; 143B-348;*  
2                         *Eff. April 30, 1997;*  
3                         *Amended Eff. February 1, 2008;*  
4                         *Readopted Eff. April 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1102

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

**NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

*In (2) and (3), why have you defined "minority" and "women"? I do not see these terms as stand alone in your Rules. Everywhere I see these words, they are in "Minority Business Enterprises" and "women business enterprise" Plus they are already defined in statute. Why not just reference 136-28.4?*

*In (4) and (5), why have you included "disadvantaged minority-owned business" and "disadvantaged women-owned business" Also, the only time I see "disadvantaged" it is with "disadvantaged business enterprise." Are you defining this terms because this is the language used in statute? If so, please pull these out as their own definitions. Otherwise, you have used "Minority Business Enterprise" and "Women Business Enterprise" (without the owned) throughout your rules.*

*Also in (4) and (5), please delete everything after "Business Enterprise" since you have already defined "Disadvantaged Business Enterprise"*

*In Item (6), I don't read 49 CFR 26.81 through 26.91 to give a "meaning." Instead, I read it as providing requirements. Here, do you mean something like "The Department's Unified Certification Program (UCP) shall follow the certification procedures set forth in "49 CFR 26.81 through 26.91"? Given the rest of your Rules, is this necessary here? Would it be more appropriate elsewhere. Maybe in .1103 where you could add something to (a) and say "The Department's Unified Certification Program shall certify... program participants in accordance with 49 CFR 26.81 through 26.91." Then here you can say "the Department's Unified Certification Program is responsible for the certification of Disadvantaged Business Enterprises"? If you choose to move this out of here entirely, your formatting will be different than my suggestions below. I note that in .1103 you have used "49 26.61 through 26.91" so I'm not sure what is applicable.*

*Incorporating these suggestions would look something like one or the other of the following:*

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

~~For Purposes [the purposes of the]~~ In addition to the terms defined in G.S. 136-28.4, ~~rules~~ Rules in this Section, the following terms shall ~~[apply.] apply~~ apply for purposes of this Section:

- (1) Disadvantaged Business Enterprise shall have the same meaning as ~~shown~~ provided in 49 C.F.R. § 26.5(2), 49 CFR 26 Subpart A.
- ~~(2) Minority shall be defined in accordance with G.S. 136-28.4.~~
- ~~(3) Women shall be defined in accordance with G.S. 136-28.4.~~
- ~~(4)(2)~~ Disadvantaged Minority-owned Business ~~Business/Business Enterprise~~ shall have the same meaning as a Disadvantaged Business Enterprise. ~~Enterprise as shown [provided] in [49 C.F.R. § 26.5(2).] 49 CFR 26 Subpart A.~~
- ~~(5)(3)~~ Disadvantaged Women-owned Business ~~Business/Business Enterprise~~ shall have the same meaning as a Disadvantaged Business Enterprise. ~~Enterprise as shown [provided] in [49 C.F.R. § 26.5(2).] 49 CFR 26 Subpart A.~~
- ~~(4)~~ Minority Business Enterprise shall have the same meaning as a Disadvantaged Business Enterprise
- ~~(5)~~ Women Business Enterprise shall have the same meaning as Disadvantaged Business Enterprise.
- ~~(6)(2)~~ The Department's Unified Certification Program (UCP) is responsible for certification of Disadvantaged Business Enterprises in accordance with ~~shall have the same meaning as shown [provided] in 49 C.F.R. §§ 26.81 through 26.91. 49 CFR 26 Subpart E.~~

Alternatively:

~~For Purposes [the purposes of the]~~ In addition to the terms defined in G.S. 136-28.4, ~~rules~~ Rules in this Section, the following terms shall ~~[apply.] apply~~ apply for purposes of this Section:

- (1) Disadvantaged Business Enterprise shall have the same meaning as ~~shown~~ provided in 49 C.F.R. § 26.5(2), 49 CFR 26 Subpart A. The following terms shall have the same meaning as "Disadvantaged Business Enterprise:
  - (a) Disadvantaged Minority-owned Business;
  - (b) Disadvantaged Women-owned Business;
  - (c) Minority Business Enterprise; and
  - (d) Women Business Enterprise.
- ~~(2) Minority shall be defined in accordance with G.S. 136-28.4.~~
- ~~(3) Women shall be defined in accordance with G.S. 136-28.4.~~
- ~~(4)~~ Disadvantaged Minority-owned Business/Business Enterprise shall have the same meaning as a Disadvantaged Business Enterprise as ~~shown [provided] in [49 C.F.R. § 26.5(2).] 49 CFR 26 Subpart A.~~
- ~~(5)~~ Disadvantaged Women-owned Business/Business Enterprise shall have the same meaning as a Disadvantaged Business Enterprise as ~~shown [provided] in [49 C.F.R. § 26.5(2).] 49 CFR 26 Subpart A.~~
- ~~(6)(2)~~ The Department's Unified Certification Program (UCP) is responsible for certification of Disadvantaged Business Enterprises in accordance with ~~shall have the same meaning as shown [provided] in 49 C.F.R. §§ 26.81 through 26.91. 49 CFR 26 Subpart E.~~

*Please add 136-284.4 to your History Note.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1102 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1102 DEFINITIONS**

4 For ~~Purposes~~ the purposes of the ~~rules~~ Rules in this Section, the following terms shall ~~apply~~ apply:

- 5 (1) Disadvantaged Business Enterprise shall have the same meaning as ~~shown~~ provided in 49 C.F.R. §  
6 26.5(2). ~~49 CFR 26 Subpart A.~~
- 7 (2) Minority shall be defined in accordance with G.S. 136-28.4.
- 8 (3) Women shall be defined in accordance with G.S. 136-28.4.
- 9 (4) Disadvantaged Minority-owned Business/Business Enterprise shall have the same meaning as a  
10 Disadvantaged Business Enterprise as ~~shown~~ provided in 49 C.F.R. § 26.5(2). ~~49 CFR 26 Subpart~~  
11 ~~A.~~
- 12 (5) Disadvantaged Women-owned Business/Business Enterprise shall have the same meaning as a  
13 Disadvantaged Business Enterprise as ~~shown~~ provided in 49 C.F.R. § 26.5(2). ~~49 CFR 26 Subpart~~  
14 ~~A.~~
- 15 (6) The Department's Unified Certification Program (UCP) shall have the same meaning as ~~shown~~  
16 provided in 49 C.F.R. §§ 26.81 through 26.91. ~~49 CFR 26 Subpart E.~~

17  
18 *History Note:* Authority G.S. 143B-348;  
19 Eff. April 30, 1997;  
20 Amended Eff. February 1, 2008;  
21 Readopted Eff. April 1, 2019.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1103

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

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The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

*Overall, I think that this Rule could be much more clear. By this Rule do you mean something like*

- (a) In order to be certified by the Department as a disadvantaged business enterprise, a minority business enterprise or women business enterprise shall submit a Unified Certification Application and supporting documentation to the Department (and whatever your address is or however you want it submitted) Please also provide the requirements of the form (or provide some sort of cross-reference to what those are) and what the supporting documentation is.*
- (b) Upon receipt of the application, the Department shall review the application in accordance with the certification standards and procedures set forth in 49 CFR 26.61 through 26.91.*

*Paragraphs (a) and (b) appear to be saying the same thing in two different ways. Please review and revise as necessary. It appears to me that (a) is unnecessary since you've said that the Department is responsible for certification in (b).*

*In (c), is the Application something that you all are responsible for creating? If so, please provide the substantive requirements in rule. What is the "required supporting documentation"?*

*In (c) and (d), are certification review and an eligibility determination different? If not, are both of these necessary? Also, what specific part and subpart of the CFRs are you referring with "49 CFR 23 and 26?"*

*Overall, by this Rule do you mean something like*

- (c) In order to be certified by the Department as a disadvantaged business enterprise, a minority business enterprise or women business enterprise shall submit a Unified Certification Application and supporting documentation to the Department (and whatever your address is or however you want it submitted) Please also provide the requirements of the form (or provide some sort of cross-reference to what those are) and what the supporting documentation is.*

Amber May  
Commission Counsel

Date submitted to agency: February 27, 2019



*(d) Upon receipt of the application, the Department shall review the application in accordance with the certification standards and procedures set forth in 49 CFR 26.61 through 26.91.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1103 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1103 CERTIFICATION OF FIRMS**

4 (a) The Department's Unified Certification Program shall be responsible for the certification of all Disadvantaged  
5 Business Enterprise, Minority Business Enterprise, and Women Business Enterprise program participants.

6 (b) Any Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise firms  
7 wishing to participate in the goals programs of the Department shall be certified by the Department.

8 (c) The Department shall conduct a certification review after it receives a completed Unified Certification Application  
9 and required supporting documentation. The certification review shall be conducted in accordance with the 49 C.F.R.  
10 §§ 23 and 26. ~~49 CFR 23 and 26.~~

11 (d) Eligibility shall be in accordance with the 49 C.F.R. §§ 26.61 through 26.91. ~~49 CFR 26 Subparts D and E.~~

12  
13 *History Note: Authority G.S. 136-28.4; 143B-348;*

14 *Eff. April 30, 1997;*

15 *Amended Eff. February 1, 2008;*

16 *Readopted Eff. April 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1104

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

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In reviewing these Rules, the staff recommends the following technical changes be made:

*In (a), you've said "review" and in (b), you've said "recertify"? Was the different language intentional?*

*If it was intentional, what is meant by "review" in (a)? What is actually being required here? It is possible that providing a specific cross-reference as requested next will aid in clarity in the terms.*

*In (a) and (b), what specific part and subpart of the CFRs are you referring with "49 CFR 23 and 26?"*

*What is the overall intent of this Rule? Is it simply to say that each entity must be recertified every three years? If so, I think this Rule could be much more simple and (a) may be unnecessary.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1104 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1104 RENEWAL OF CERTIFICATION**

4 (a) Each firm certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business  
5 Enterprise shall review its certification annually. The annual review shall be conducted in accordance with the 49  
6 C.F.R. §§ 23 and 26.~~49 CFR 26.~~

7 (b) Each firm certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business  
8 Enterprise shall be recertified every three years in accordance with the 49 C.F.R. §§ 23 and 26.~~49 CFR 26.~~

9  
10 *History Note: Authority G.S. 143B-348;*

11 *Eff. April 30, 1997;*

12 *Amended Eff. February 1, 2008;*

13 *Readopted Eff. April 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1105

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

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The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

*On line 5, what specific part and subpart of the CFRs are you referring with "49 CFR 23 and 26.61 through 26.91? Please provide some additional information. I will note that I don't see 26.61-26.91 being related exclusively to eligibility requirements, so I don't understand the cross-reference.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1105 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1105 CHANGE IN OWNERSHIP OR CONTROL**

4 Any time a firm certified with the Department has a change of ownership, control, business size, type of work, or  
5 other factors that affect the firm's ~~eligibility~~ eligibility, as set out in 49 C.F.R. §§ 23 and 26.61 through 26.91, ~~49 CFR~~  
6 ~~26 Subparts D and E~~ as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business  
7 Enterprise, the firm shall inform the Department in writing within 30 days of the change.

8  
9 *History Note: Authority G.S. 143B-348;*

10 *Eff. April 30, 1997;*

11 *Amended Eff. February 1, 2008;*

12 *Readopted Eff. April 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1106

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

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The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

*What are "standards of eligibility"? I don't see this language anywhere in either 49 CFR 23 or 26. Please use consistent terminology.*

*On line 5, what specific part and subpart of the CFRs are you referring with "49 CFR 23 and 26? Please provide some additional information. I think that you mean 49 CFR 26.87, but I did not see a similar provision in 49 CFR 23. I think it's probably there, but the same language is not used and it is buried (which lends itself to the need for clarity in your Rule.)*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1106 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1106 DECERTIFICATION**

4 If the Department finds a firm in non-compliance with the standards of eligibility, that firm shall be decertified in  
5 accordance with 49 C.F.R. §§ 23 and 26. ~~49 CFR 23 and 26.~~

6  
7 *History Note: Authority G.S. 143B-348;*

8 *Eff. April 30, 1997;*

9 *Amended Eff. February 1, 2008;*

10 *Readopted Eff. April 1, 2019.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1107

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In reviewing these Rules, the staff recommends the following technical changes be made:

*In*

*Please add 136-28.4 to your History Note.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1107 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1107 APPEALS OF DENIAL OF CERTIFICATION**

4 (a) Any Minority Business Enterprise firm or Women Business Enterprise firm denied certification or decertified  
5 may file an appeal of that action to the Department's DBE/UCP Program Manager. ~~State Contractor Management~~  
6 ~~Engineer~~ as follows:

7 (1) The appeal shall be received by the Department within 30 calendar days of the notice of denial.  
8 Upon receipt of the appeal, the ~~State Contractor Management Engineer~~ DBE/UCP Program  
9 Manager shall schedule a hearing for the firm with the Department's Disadvantaged Business  
10 Enterprise, Minority Business Enterprise, Women Business Enterprise Appeals Committee.

11 (2) If the denial of certification or decertification is upheld by the Department's appeals committee, the  
12 Minority Business Enterprise firm or Women Business Enterprise firm may file a written appeal to  
13 the Secretary of Transportation within 30 days of the committee's decision.

14 (3) If the denial of certification is upheld by the Secretary of Transportation, the decision shall be final.

15 (b) Any Disadvantaged Business Enterprise firm denied certification or decertified may file an appeal of that action  
16 as follows:

17 (1) The Disadvantaged Business Enterprise firm may file an appeal to the Department's DBE/UCP  
18 Program Manager. ~~State Contractor Management Engineer~~. The appeal shall be received by the  
19 Department within 30 calendar days of the notice of denial. Upon receipt of the appeal, the ~~State~~  
20 ~~Contractor Management Engineer~~ DBE/UCP Program Manager shall schedule a hearing for the firm  
21 with the Department's appeals committee.

22 (2) The Disadvantaged Business Enterprise firm may file a written appeal within 90 days of notice of  
23 appeal directly to the U.S. Department of Transportation, Office of Civil Rights in accordance with  
24 Parts 23 and 26 of Title 49 of the Code of Federal Regulations, the 49 CFR 26.

25 (3) The appeals may be filed simultaneously.

26  
27 *History Note: Authority G.S. 143B-348;*  
28 *Eff. April 30, 1997;*  
29 *Amended Eff. February 1, 2008;*  
30 *Readopted Eff. April 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1108

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

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In reviewing these Rules, the staff recommends the following technical changes be made:

*In (a), please delete or define “ready, willing, and able”, on lines 4 and 6. Do you mean something like “eligible in accordance with...” (whatever the specific cfr is)?*

*In (a), line 8, On line 5, what specific part and subpart of the CFRs are you referring with “49 CFR 23 and 26”? Please provide some additional information.*

*I also don’t understand what this is referring to overall. Is this the “aspirational goal” in accordance with 136-28.4(b1)? Please provide some additional information for purposes of clarity.*

*In (b), who is the contractor? How do they come in here? Does the state contract with a contractor, but the contractor is responsible for contracting out work with eligible firms? Again, I think that perhaps some overall, general information, maybe in .1101, may be helpful in understanding what is going on here.*

*In (b), please delete or define “necessary” and “reasonable” Why not just say “the contractor shall ensure...”*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1108 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1108 GOALS**

4 (a) The Department shall perform an analysis to determine the availability of ready, willing and able Disadvantaged  
5 Business Enterprise, Minority Business Enterprise, and Women Business Enterprise firms relative to all businesses  
6 ready, willing and able to participate in Department projects. Goals for ~~disadvantaged business enterprises, minority~~  
7 ~~business enterprises, and women business enterprises~~ Disadvantaged Business Enterprise, Minority Business  
8 Enterprise, and Women Business Enterprise firms shall be established in accordance with 49 C.F.R. §§ 23 and 26 ~~49~~  
9 ~~CFR-26~~ and G.S. 136-28.4(b1). The goal or goals shall be prescribed in the project proposal as a percent of the bidder's  
10 construction bid price.

11 (b) The Contractor shall exercise all necessary and reasonable steps to ensure that eligible firms participate in at least  
12 the percentage of the contract as required by the project proposal.

13  
14 *History Note: Authority G.S. 136-28.4; 143B-348;*  
15 *Eff. April 30, 1997;*  
16 *Amended Eff. February 1, 2008;*  
17 *Readopted Eff. April 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1109

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

**NOTE:** *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

*On line 5, what specific part and subpart of the CFRs are you referring with "49 CFR 23"? Please provide some additional information.*

*Lines 5-6, I don't see a reference to "counting" in 136-28.4. Please review and revise.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1109 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1109 COUNTING PARTICIPATION TOWARD MEETING THE GOAL**

4 Participation of Disadvantaged Business Enterprise, Minority Business Enterprise, and Women Business Enterprise  
5 firms for federally funded and non-federally funded projects shall be counted in accordance with ~~49 CFR 26 Subpart~~  
6 ~~€ 49 C.F.R. §§ 23 and 26.41 through 26.55~~ and G.S. 136-28.4.

7  
8 *History Note: Authority G.S. 136-28.4; 143B-348;*

9 *Eff. April 30, 1997;*

10 *Amended Eff. February 1, 2008;*

11 *Readopted Eff. April 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1110

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

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The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

*Who is the contractor? If you have addressed this elsewhere, no need to do it here also.*

*On line 4, what is "non-attainment"? What does this mean? What are the consequences of non-attainment?*

*On line 4, goals established by what and whom? In accordance with Rule .1108 or in the proposal?*

*On line 5, what specific part and subpart of the CFRs are you referring with "49 CFR 23"? Please provide some additional information.*

*Lines 5-6, I don't see a reference to "good faith requirements" in 136-28.4. Please review and revise.*

*Also, why must they comply with the good faith requirements? Is this for continued eligibility? Overall, I think that some additional information would be helpful for purposes of clarity.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1110 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1110 NON-ATTAINMENT OF GOALS**

4 A contractor who does not meet the goals established shall be considered in non-attainment and shall comply with  
5 good faith requirements set forth in ~~49 CFR 26 Subpart C~~ 49 C.F.R. §§ 23 and 26.41 through 26.55 and G.S. 136-  
6 28.4.

7  
8 *History Note: Authority G.S. 136-28.4; 143B-348;*

9 *Eff. April 30, 1997;*

10 *Amended Eff. February 1, 2008;*

11 *Readopted Eff. April 1, 2019.*



## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1111

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

**NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.**

The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

*In (a), please change "goal(s)" to "goals"*

*In (a), again, goals established by what and whom?*

*In (a), what is meant by "may be replaced"? Does this mean that their contract will be void? I'm not sure that I understand what's going on here.*

*Also, how will it be determined whether they will be "replaced"?*

*In (b), please define "eligible firms." Do you mean in accordance with one of your rules and a specific cfr?*

*On line 7, did you intend to leave out 49 CFR 23?*

*Also, please verify that the cross-reference to 49 CFR 26.41-26.55 is correct. Is the intent here to say that if a firm has to be replaced, then the replacement has to comply with these rules and make a good faith effort in accordance with 49 CFR 26.41-26.55? If so, why not just say that.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1111 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1111 PERFORMANCE RELATED REPLACEMENT OF ELIGIBLE FIRMS**

4 (a) Certified firms who are utilized to meet the goal(s) established and who are not performing their contractual  
5 obligation may be replaced.

6 (b) Performance related replacement of eligible firms for federally funded projects and non-federally funded projects  
7 shall meet the requirements of 49 C.F.R. §§ 26.41 through 26.55. ~~49 CFR 26 Subpart C.~~

8  
9 *History Note: Authority G.S. 136-28.4; 143B-348;*

10 *Eff. April 30, 1997;*

11 *Amended Eff. February 1, 2008;*

12 *Readopted Eff. April 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Department of Transportation

RULE CITATION: 19A NCAC 02D .1112

**DEADLINE FOR RECEIPT: Thursday, March 14, 2019**

***NOTE: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of these Rules prior to the Commission's next meeting. The Commission has not yet reviewed these Rules and therefore there has not been a determination as to whether these Rules will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

*In (a), please change "goal(s)" to "goals"*

*In (b), line 6, what specific part and subpart of the CFRs are you referring with "49 CFR 23"? Please provide some additional information.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May  
Commission Counsel  
Date submitted to agency: February 27, 2019

1 19A NCAC 02D .1112 is readopted as published in 33:12 NCR 1331-1332 as follows:

2  
3 **19A NCAC 02D .1112 REPLACEMENT OF A FIRM REMOVED BY DECERTIFICATION**

4 (a) Certified firms who are utilized to meet the goals(s) established and become decertified may be replaced.

5 (b) Replacement of a firm removed by decertification for federally funded projects and non-federally funded projects  
6 shall meet the requirements of 49 C.F.R. §§ 23 and 26.81 through 26.91. ~~49 CFR 26 Subpart E.~~

7  
8 *History Note: Authority G.S. 136-28.4; 143B-348;*

9 *Eff. April 30, 1997;*

10 *Amended Eff. February 1, 2008;*

11 *Readopted Eff. April 1, 2019.*