

Compliance with Requirements for Timely Processing of Certification Applications
(Posted - 4/25/2018)

What steps should a UCP take to ensure compliance with the regulatory requirements for the timely processing of all in-state applications for certification?

- Timely processing of a firm's application for certification is critical to ensuring that qualified Disadvantaged Business Enterprises (DBEs) and Airport Concession DBEs (ACDBEs) do not face delays in competing for federal-aid contracts or for concession opportunities. To ensure that applications are processed timely, UCPs are encouraged to develop and implement application-tracking processes and/or systems that certification staff can use to identify and record key dates and milestones in the application review process, such as the date it receives a certification application, notes on documents or information that may be missing, and dates when the UCP requests additional information from an applicant.
- A recipient or UCP must advise each applicant within 30 days from receipt of the application whether the application is complete and suitable for evaluation, and if not, what additional information or action is required. *See* 49 C.F.R. § 26.83(1). The date of receipt triggering the 30-day review period should be recorded as the date the UCP physically or electronically receives the certification application, not the date the UCP first reviews the application.
- An application is considered complete when a UCP has received the Uniform Certification Application Form¹ in addition to the information required from the form's checklist of required documents.
- If the UCP's staff determines that an application is not complete, it should, within 30 days from receipt of the application, under 49 C.F.R. § 26.83(1), record the date on which it reached that determination for tracking purposes and notify the applicant about the additional information or actions that are required to complete the application. Upon receipt of additional information, the UCP, within a reasonable amount of time, not to exceed 30 days, should again determine whether the application is complete, record the date, and so notify the applicant.
- Once the UCP's staff determines that the application is complete, it should record the date of that determination for tracking purposes and notify the applicant that its application is complete. After the UCP receives all the information required under 49 C.F.R. part 26, the UCP must make decisions on applications for certification within

¹ Applicants are required to use the Uniform Certification Application Form found in 49 C.F.R. Part 26, Appendix F. *See* 49 C.F.R. § 26.83(c)(2).

90 days.² *See* 49 C.F.R. § 26.83(k). It is not appropriate to use the date of the on-site review as the trigger date for the 90-day review period. We strongly recommend that a UCP not undertake an on-site review until it has confirmed receipt of a complete application and reviewed the application and all the supporting documents.

- For in-state applications, the 90-day deadline does not prevent certifying staff from requesting the applicant to provide additional information at a later time, as may be required to clarify information or to answer reasonable questions that may arise during the review process. *See* 49 C.F.R. § 26.83(c)(4). Requests for such supplemental information, however, should not result in resetting the UCP’s 90-day deadline, as long as the UCP receives the information within a reasonable time. Should the applicant not respond to such reasonable requests for additional information in a timeframe that affects the UCP’s ability to complete its review by the ‘deadline, we recommend documenting the reasons for delay and including the documentation in the applicant’s file. We caution UCPs and recipients against prolonging the certification process unnecessarily through repeated requests for additional information, once the applicant has submitted enough data to make an informed decision possible.

What steps should a UCP take to ensure compliance with the regulatory requirements for the timely processing of all interstate requests for certification?

- In the context of interstate certification, when a recipient or UCP chooses not to accept an interstate applicant’s home state certification under section 26.85(b), an applicant is only required to submit the information and documents set forth in 49 C.F.R. § 26.85(c) (hereinafter, “the § 26.85(c) information”).
- Once a UCP receives the section 26.85(c) information from the applicant, the UCP has 60 days to determine if the applicant qualifies for certification or whether the UCP has “good cause” to challenge the home state’s certification decision as defined in 49 C.F.R. § 26.85(d)(2). *See* 49 C.F.R. § 26.85(d)(3)-(4).
- Since the 60-day deadline is triggered only after an applicant has submitted all necessary information, it is important that a UCP document when it has received all the section 26.85(c) information from the applicant. The date of receipt should be recorded as the date the UCP physically or electronically receives the application, not when the UCP first reviews the application. As with in-state certification, UCPs are encouraged to develop and implement application-tracking processes and/or systems that certification staff can use to identify key dates and milestones in the application review process, including the date it receives the section 26.85(c) information from the applicant.

² Pursuant to 49 C.F.R. § 26.83(k), a recipient may extend the 90-day period up to 60 days “upon written notice to the firm, explaining fully and specifically the reasons for the extension.”

- We recommend that a UCP considering a request for interstate certification set a date not to exceed 30 days from the date it receives the section 26.85(c) information to inform the applicant that its application is complete.
- In the context of interstate certification when a recipient or UCP chooses not to accept an interstate applicant's home state certification under section 26.85(b), the UCP must ask the home state for a copy of its onsite review report within 7 days after receiving the applicant's section 26.85(c) information. The home state then has 7 days in which to provide the on-site review. If the applicant's home state has not provided the site visit report within 14 days after a timely request has been made, the 60-day review requirement may be suspended until receipt of the site visit report, and the UCP must provide to the applicant, no later than 30 days after receipt of the section 26.85(c) information, written notification of the reason for the delay. *See* 49 C.F.R. § 26.85(e).

What recourse does an applicant have if a UCP does not make a timely decision on the firm's application for certification?

- A UCP's failure to make a decision by the applicable deadline is deemed a constructive denial of the application, and the firm may appeal the matter to the Departmental Office of Civil Rights under 49 C.F.R. § 26.89. *See* 49 C.F.R. § 26.83(k).

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.