

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
TITLE 49 OF THE CODE OF FEDERAL REGULATIONS, PART 26**

## ***INTERSTATE CERTIFICATION REQUEST***

The purpose of the interstate certification policy is to make the Ohio UCP DBE certification process easier on DBEs certified in a home state other than Ohio. The DBE program is a national program, and administrative obstacles to certification undermine important program objectives.

**PLEASE NOTE:** Applicants to provide to Ohio a complete copy of their application form, all supporting documentation, and other information submitted to the firm's home state or other States wherein the firm is certified.

**To complete this document:**

1. Enter the Company Information in Section 1.
2. Check the box for documents in Section 2.
3. Provide supporting documents as required.
4. Sign and date the Declaration.
5. Submit the entire document with supporting documents to your certifying agent.

### **SECTION 1: COMPANY INFORMATION**

|   |                    |                                     |                  |
|---|--------------------|-------------------------------------|------------------|
| 1. Legal name of business:                              |                    | 2. Other names used by business:    |                  |
|   |                    |                                     |                  |
| 3. Website ( <i>if have one</i> ):                      |                    | 4. Federal tax ID:                  |                  |
|   |                    |                                     |                  |
| 5. Company phone #:                                     | 6. Mobile phone #: | 7. Company fax #:                   |                  |
|   |                    |                                     |                  |
| 8. E-mail address:                                      |                    | 9. County (only if an Ohio company) |                  |
|   |                    |                                     |                  |
| 10. Street address of company ( <i>No P.O. box</i> ):   |                    | City:                               | State:      Zip: |
|   |                    |                                     |                  |
| 11. Mailing address of company ( <i>if different</i> ): |                    | City:                               | State:      Zip: |
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## SECTION 2: DECLARATION

**ANY MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.**

### All Applicants

- A copy of your certification application as submitted to your home state
- A copy of your home state certification document (certificate or letter)
- A copy of supporting documents submitted to your home state
- A copy of any annual affidavits of change submitted to your home state

### INTERSTATE CERTIFICATION REQUEST DECLARATION

I declare, that as an owner, I have full knowledge of the operation of my firm and that to the best of my knowledge and belief, the information previously submitted to my home state to support my firm's certification as a Disadvantaged Business Enterprise, confirms that I remain economically disadvantaged.

I declare under penalty of law that I have submitted all of the information required by 49 CFR 26.85(c). This information is complete and, in the case of the requirements of § 26.85(c)(1), is identical to the information which served as the basis for my home state certification. Further, I declare under penalty of perjury that all facts in my most recent on-site report remain true and correct.

I declare that the firm meets the Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by the SBA rules) over the firm's previous three fiscal years do not exceed DBE program limit.

|   |  |
|---|--|
| Legal name of business:                             |  |
| Firm's Gross Income for the previous calendar year: |  |
| Home State:   |  |

This form must be signed each owner of the applicant firm. Use additional forms if necessary.

I recognize and accept the statements above governing the consideration of this declaration and the maintenance of my firm's certified status. I agree to provide written notice to the Ohio Unified Certified Program (UCP) of any material change in the information contained in the original application within 30 days of such change (e.g., ownership, address, telephone number, etc.). By my signature, I declare that I have read and understand this statement and that I have the authority to sign this declaration and that the responses, foregoing statements, and accompanying documents are true, complete, and correct and include all materials requested under penalty of perjury under the laws of the United States; and further that a material or false statement or omission made in connection with the application is sufficient cause for denial of certification, revocation of a prior approval, initiation of suspension or debarment proceedings, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable federal and state laws.

Authorized Representative

Print Name and Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*OFFICE USE ONLY*  
*Due Date*  
*Certifying Agent*  
*Certifying Agency*

*Date Reviewed*

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## Ohio Unified Certification Program Interstate Certification Process

The Ohio UCP Interstate Certification Policy is based on 49 C.F.R. §26.85

### Purpose

The purpose of the interstate certification policy is to make the Ohio UCP DBE certification process easier on DBEs certified in a home state other than Ohio. The DBE program is a national program, and administrative obstacles to certification undermine important program objectives.

### Objectives

The fundamental objectives of the DBE program are used as guidance in setting objectives for this policy

- (1) facilitating the ability of DBE firms to compete for DOT-assisted contracting,
- (2) reducing administrative burdens and costs on the small businesses that seek to pursue contracting opportunities in other states, and
- (3) fostering greater consistency and uniformity in the application of certification requirements—while maintaining program integrity.

The Ohio UCP, in concurrence with USDOT notes that the ultimate purpose of the interstate certification rule is to facilitate certification of currently certified firms in other jurisdictions. Accordingly, interstate certification is not automatic reciprocity in the sense that Ohio must honor the other states' certification decisions without review. Rather, the rule creates a rebuttable presumption such that a firm certified in its home state (State A) is eligible to be certified in other states in which it applies. Thus, the Ohio UCP certifier's review is limited to specifically enumerated items in the rule. The rule creates a bright-line distinction between applications for interstate certification and applications for initial certification.

### Instructions for the DBE applicant firm

Firms must be certified in their home state (State A) before seeking certification in Ohio under the rule. A DBE firm must present a copy of its certification notice from its home state to the Ohio UCP (State B) and request interstate certification. **Ohio may not require the certified DBE to submit a new uniform certification application as if it were seeking certification for the first time.**

How Ohio processes requests for certification from an out-of-state DBE

The Ohio UCP Agency receiving a request for interstate certification (State B) must respond in one of two ways.

1. Accepted: Accept the certification afforded to a DBE from its home state and certify the firm after confirming that the firm's certification is valid in its home state. Verification can be done by reviewing State A's electronic DBE/ACDBE directory or by obtaining written confirmation from State A. If the Ohio UCP certifier chooses this option, it is not appropriate for a certifier to ask the DBE to produce its home state on-site report or additional information; OR
2. Not Accepted: Section 26.85(c) permits Ohio to choose not to accept State A's certification of a firm. In this instance, the firm must provide to Ohio a copy of its certification letter from the home state, a complete copy of its application form with all supporting documents actually provided to State A, and any other, nonduplicative information it has submitted to any other state related to its certification. The term "supporting documents" is not a reference to the Uniform Certification Checklist. Instead, it refers to those supporting documents that the DBE previously submitted to State A as part of its initial certification application package including its current annual affidavit. For example, tax returns provided with a DBE's initial application to State A must be provided, but Ohio will not request from the DBE more recent tax returns than those in State A's (or another state's) files.

### When an Interstate Certification Request is Accepted

If Ohio accepts another state's certification, pursuant to §26.85, Ohio recognizes all aspects of that certification. Since part of a DBE firm's State A certification includes that DBE being recognized under one or more NAICS codes, Ohio must, therefore, recognize the out-of-state DBE's NAICS Codes that were assigned to the DBE by its home state.

The DBE may seek certification in Ohio in additional NAICS codes it believes apply to the work it may perform already or seek to perform in the future. The Ohio UCP will process this request for an expansion or augmentation of the DBE firm's request for newly assigned NAICS codes as 49 C.F.R. §26.71(n) provides.

### When an Interstate Certification Request is Not Accepted

A DBE firm may submit electronically the information that §26.85(c) requires it to provide. Ohio certifiers do not require paper copies of all documents or original signatures previously filed with State A or another state and does not require firms applying for interstate certification to generate new documents (beyond those provided to State A or another state).

A DBE firm is not required to submit additional information beyond the information identified in the rule. Stated differently, Ohio does not require a DBE to supplement its home state certification package or on-site materials. Ohio makes decisions on whether to certify a DBE from another state based on our evaluation of the information delineated in the rule. In the context of interstate certification, requests for information is limited to those items listed in §26.85(c).

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## Timing

Based on the information provided by the DBE and by the home state, Ohio has 60 days to notify the DBE that the request for interstate certification is granted or that there is good cause to believe the home state's certification of the firm is erroneous or should not apply in its state. The notice of denial must conform to the requirements of 49 C.F.R. §26.85(d)(4).

## Individually evaluated

The Ohio UCP notifies each DBE firm requesting interstate certification that each request will be carefully reviewed so that an Ohio UCP certifier is making a choice on a case-by-case basis whether to exercise one of the two options listed above.

The Ohio UCP will work with neighboring states to develop regional certification consortia or reciprocity agreements when possible.

## Database

The Ohio UCP is required to enter the details concerning a firm's certification or decertification into the database maintained by the Departmental Office of Civil Rights as required by §26.85(f)(1) so that colleagues in other jurisdictions can use this information as specified in the rule. This data entry should be done as promptly as possible and in any case within 30 days of the action. As a certifying agency, you must check the database at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list. You must then consider the information to determine what, if any, action should be taken with respect to the DBE or applicant.

## Denials

Under §26.85(d)(2), the interstate certification rule creates a rebuttable presumption that a firm certified in its home state (State A) is eligible to be certified in other states in which it applies. In situations where Ohio chooses to ask the DBE to provide all of the information required by §26.85(c)(1-4), the intent is that Ohio will use this information to make sure nothing submitted by the firm raises a good cause reason for denial.

The Ohio UCP Agency may only deny a DBE applying for interstate certification if the Agency has good cause to believe that State A's certification of the firm is erroneous or should not apply in Ohio. There are five reasons set out in the rule that may constitute good cause to deny a request for interstate certification. Based on the regulatory record and the purpose and intent of the interstate certification provision, we interpret the words "may include" in section 26.85(d)(2) as words of containment (not open ended) that limit the basis for denial to one or more of the delineated reasons. These are the only five reasons on which Ohio may base its good cause determination.

In its denial, the Ohio UCP Agency must articulate the specific reason or reasons that are enumerated in the rule and provide its rationale for specifying such reason or reasons for denying the firm's request for interstate certification, which must be communicated to the firm. The firm has the opportunity to respond as spelled out in the rule. The Ohio UCP Agency's reasons for denial must be specific enough so that the firm can respond with information and arguments focused clearly on the particular issues identified. The reasons should not be conclusory or broad but rather, specific, fact-based reasons.

The rule (§26.85(d)(2)) permits the Ohio UCP Agency to deny a request for interstate certification based on a determination that the home state's certification was factually erroneous or inconsistent with the requirements of 49 C.F.R. Part 26. Mere interpretive disagreements about the meaning of a regulatory provision or a factual conclusion or inferences do not form a ground for denial. Rather, the Ohio UCP Agency would have to cite information in the home state's certification material or other material submitted by the DBE that directly contradicts a provision in the regulatory text or simply gets wrong a critical fact.

A failure of the State A materials to contain a recent (i.e., less than three years old) on-site report, or items that State B normally requests for initial certification applications, does not make the State A determination "factually erroneous" or "inconsistent with the requirements" of the Regulation.

## DBE Challenge of Denial

Once appropriate notice has been afforded to the firm, the DBE bears the burden, under §§26.61(b) and 26.85(d)(4)(iii), of demonstrating that it meets the certification requirements with respect to the particularized issues in the notice. The firm may elect to respond in writing, request an in-person meeting with the a qualified (knowledgeable about the rule) representative of the Ohio UCP Agency not involved in the original decision to discuss the Ohio UCP Agency's objections to the firm's eligibility, or both. If a meeting is requested, Ohio must schedule a meeting within 30 days of receiving the DBE's request. The DBE may agree to have its in-person meeting conducted by telephone. The Ohio UCP will keep a record of either the in-person meeting or telephone discussions with the firm.

If the Ohio UCP finds the DBE has not met its burden of proof with respect to the issues clearly identified in the notice of denial, the recipient must then issue a written decision under §26.85(d)(4)(v), one that also complies with the requirements of §26.86(a), which the DBE may appeal to the Department under §§26.85(d)(4)(vii) and 26.89.

The Ohio UCP Agency, in the notice required by 49 C.F.R. §26.85(d)(4), will set a not less than 30-calendar-day time limit by which the DBE must submit a written response to the determination and/or request a meeting. This time period may be increased depending on the circumstances and complexity of each case. The notice will set forth the consequences if the DBE does not act within the time period your determination will become final and the DBE may appeal to the Department).

For further discussion of the USDOT general views on the interstate certification provisions, please see the preamble to the final rule establishing this regulation: Office of the Secretary, "Disadvantaged Business Enterprise: Program Improvements," 76 Fed. Reg. 5083, 5087-89 (Jan. 28, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-28/pdf/2011-1531.pdf>

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