

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



<i>Operational Procedure</i>	Number: CUCP-006
	Effective Date: October 30, 2018
	Supersedes: N/A

Title	California Unified Certification Program (CUCP) Informal Reconsideration Hearing Procedure
Purpose	The purpose of this procedure is to allow Disadvantaged Business Enterprise (DBE) certified firms the opportunity to appeal a CUCP certifying agency's proposal to remove DBE eligibility for reasons such as denial or removal of North American Industry Classification System (NAIC) and Work Category Codes as required by the U.S. Department of Transportation (U.S. DOT), a firm is over the size standard or personal net worth cap, etc.
Description	<p>A firm may request an in-person informal reconsideration hearing (hearing) or may provide information and arguments in writing.</p> <p>A Reconsideration Scheduler shall be appointed by the CUCP Executive Committee. The scheduler could be from any of the certifying agencies. The Reconsideration Scheduler is responsible for the reconsideration logistics.</p> <p>If the Reconsideration Scheduler has questions or concerns, he/she shall contact the Chair of the Operations Committee. If the Operations Chair is unavailable, the Reconsideration Scheduler shall contact the Chair of the CUCP Executive Committee.</p> <p>Note: The entire reconsideration process should be completed within 90 calendar days of the firm's request, unless there are extraordinary circumstances.</p> <p><u>In-Person Hearing:</u></p> <ol style="list-style-type: none"> 1) The certifying agency issues a Proposal to Remove or Denial letter to a firm, which gives the firm the opportunity to appeal. 2) The firm contacts the CUCP certifying agency to request reconsideration within 30 calendar days from the date of the Proposal to Remove or Denial letter.

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- 3) The certifying agency shall promptly e-mail the firm's request for a hearing to the Reconsideration Scheduler.
- 4) The Reconsideration Scheduler shall promptly e-mail the firm a letter (see Attachment A) asking if it wants an in-person hearing or if it wants to submit information and arguments in writing.
- 5) The firm is given seven (7) business days to respond to the Reconsideration Scheduler with their decision.
- 6) The reconsideration panel (panel) shall consist of at least two certifying agency members who were not a part of the original action. Certifying agency members must have completed the CUCP mandatory training required to become a certifying member prior to serving on a panel.

When identifying panel members, the Reconsideration Scheduler will take into consideration the firm's geographic location and keep the panel's rotation as balanced as possible. **Note: Airport certifying members will not be included in the rotation unless the firm is an Airport Concession DBE (ACDBE). ACDBE reconsideration hearings should follow the same procedures as DBE reconsideration hearings.**

- 7) The panel members will decide who takes the lead.
- 8) The Reconsideration Scheduler will call or e-mail the firm to let the firm know the date, time, and location of the hearing to ensure the firm's majority owner(s) availability. The Reconsideration Scheduler will ask who will be in attendance and let the firm know the majority owner(s) is the main person who should speak on behalf of the firm. (Other firm representatives who have relevant information may share it with the panel.)
- 9) The Reconsideration Scheduler will inform the panel members via e-mail who, from the certifying agency and the firm, will be attending the hearing. **Note: Consultants may not represent the certifying agency.**

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- 10) The Reconsideration Scheduler will then e-mail the firm a confirmation letter (see Attachment B) and copy the panel members and certifying agency. This letter requires the firm to submit all written documentation five (5) business days before the hearing. The Reconsideration Scheduler will forward the documents to the panel members.
- 11) The Reconsideration Scheduler will arrange for a transcriber to attend the hearing. The certifying agency will be billed for the transcription services. If there is more than one hearing on a specific day, each respective certifying agency will be billed. For cost details, contact the Reconsideration Scheduler. **Note: Certifying agencies have the option of scheduling their own transcription service, but must let the Reconsideration Scheduler know ahead of time.**

The primary purpose for the transcript is to comply with the regulations (49 CFR Part 26). When a firm appeals to the U.S. DOT, a copy of the transcript from the informal reconsideration hearing must accompany a copy of the file sent to the U.S. DOT.

- 12) The Reconsideration Scheduler will request the relevant documents pertaining to the Proposal to Remove or Denial letter from the certifying agency and will forward the certifying agency's documents via e-mail to the panel members no later than 14 calendar days before the hearing. **(Note: If a panel member requests additional documents from the DBE file, the Reconsideration Scheduler will promptly contact the certifying agency.)**
- 13) When the hearing begins, the lead panel member will use the Hearing Outline (see Attachment C) which will detail specifics of the hearing, some of which are below:
 - a) The certifying agency representative(s) and firm representative(s) will be present (e.g., video conference teleconference, etc.) for the opening remarks. The firm representatives will be asked to temporarily leave the room.

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- b) The certifying agency representative(s) will make a presentation to the panel and the panel members have an opportunity to ask questions (*to be given approximately 15 minutes*). The representative(s) is excused (*the lead panel member notes the time the representative is excused*). **(Note: The certifying agency may have legal counsel observe the hearing if they choose.)**
- c) The firm representative(s) is asked to return to the hearing room. The majority owner(s) shall make a presentation to the panel and the panel members have an opportunity to ask questions (*to be given approximately one hour*). **(Note: No other evidence may be submitted by the firm after the hearing.)**
- d) The lead panel member informs the firm representative(s) they will receive a written determination within 30 calendar days of the hearing. The firm representative(s) is then excused (*the lead panel member notes the time the attendees are excused*).
- e) The lead panel member will conclude the hearing. The panel members will discuss the case and decide to either uphold or overturn the certifying agency's decision.

14) The panel members shall make a final determination and ensure the determination letter is mailed to the firm with a copy to all parties involved, including the Reconsideration Scheduler, no later than 30 calendar days from the date of the hearing.

In-Writing Reconsideration:

- 1) The certifying agency issues a Proposal to Remove or Denial letter, which gives a firm the opportunity to appeal the certifying agency's determination. The firm's request for a hearing must be made within 30 calendar days from the date of the Proposal to Remove or Denial letter.
- 2) The firm contacts the CUCP certifying agency to request reconsideration.
- 3) The certifying agency shall promptly e-mail the firm's request for reconsideration to the Reconsideration Scheduler.

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- 4) The Reconsideration Scheduler shall promptly e-mail the firm a letter (see Attachment A) asking if it wants an in-person hearing or if it wants to submit information and arguments in writing.
- 5) The firm has seven (7) business days to respond to the Reconsideration Scheduler with their decision.
- 6) The Reconsideration Scheduler will contact two certifying agencies who have not recently participated in a reconsideration process.
- 7) Once the panel members are selected, they will schedule a conference call within 30 calendar days of being informed of the reconsideration. One of the panel members will inform the Reconsideration Scheduler of the date/time of the teleconference. **(Note: Panel members will work as a team on in-writing hearing requests, so no lead needs to be designated.)**
- 8) The Reconsideration Scheduler will then e-mail the firm a confirmation letter (see Attachment D) and copy the certifying agency and blind copy the panel members. The confirmation letter will let the firm know when they must submit their written information and arguments to the Reconsideration Scheduler, which will be 20 calendar days from the date of the confirmation letter.
- 9) Once the Reconsideration Scheduler receives the firm's documents, he/she will immediately forward the documents via e-mail to the panel members.
- 10) The Reconsideration Scheduler will work with the certifying agency to obtain the relevant documents pertaining to the Proposal to Remove or Denial letter. The certifying agency shall promptly scan and e-mail the documents to the Reconsideration Scheduler who will then forward the documents to the panel members no later than five (5) calendar days prior to the designated teleconference between the panel members. **(Note: If a panel member needs additional documents from the DBE file, the Reconsideration Scheduler will contact the certifying agency.)**
- 11) The panel will determine whether they will uphold or overturn the certifying agency's decision based on the evidence submitted and shall ensure the determination letter is mailed to the firm with a copy to all parties involved, including the Reconsideration Scheduler, no later than 30 calendar days from the hearing date.

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	The Reconsideration Scheduler shall provide the CUCP Executive Committee with a "Quarterly Reconsideration Hearing Update."
Impact	Absent these procedures, the CUCP certifying agencies will not be complying with 49 Code of Federal Regulations Part 26, which could jeopardize certifying agencies' federal funding.


JANICE SALAIS, Executive Committee Chair
California Unified Certification Program

11/01/18
Date


DR. IRMA LICEA, Vice Chair
California Unified Certification Program

11/1/18
Date