

## The Importance of Annual No Change Affidavits for Disadvantaged Business Enterprises

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Every year on the anniversary date of your Disadvantaged Business Enterprise (DBE) certification, the regulations requires that you company file an “affidavit of no change.” 49 C.F.R. § 26.83(j). This affidavit must be completed by the firm’s owner(s) and requires that you provide a copy of your firm’s most recent federal business tax return. A copy of Pennsylvania’s affidavit is available here: <https://www.dotsbe.pa.gov/PAUCPHelp/PA%20UCP%20Annual%20Affidavit.pdf>

The requirement of the filing of the “affidavit of no change” is very strict, and the United States Department of Transportation (USDOT) will not accept any excuses. You should calendar the due date in multiple places, along with calendaring reminders to provide sufficient notice to complete the affidavit.

The USDOT almost always upholds the decisions of certifying agencies when a firm is decertified for failure to submit the requested affidavit, no matter what the excuse:

- Certifying agency sent reminders via email and letter, along with follow up reminders. Firm claimed that a fire occurred in its building and its mail was misplaced as an excuse for noncompliance. The USDOT found that the fire did not excuse the failure to file the affidavit, because the firm was “under a continuing obligation to provide the certifying agency with its annual affidavit and accompanying material.” In re: Polished Clean Janitorial Services, Inc., 16-0111, Feb. 15, 2017.
- Claiming that your firm never received the reminder letter or follow up notices does not excuse the firm’s failure to submit the no-change affidavit, as the firm has a duty to submit the affidavit. The reminder is just a courtesy. In re: M&O Construction, 14-0107, February 20, 2015.
- Waiting for tax information because your firm is changing accountants is not an excuse for failing to file the affidavit. In re: Atrium, Inc., 14-0091, February 20, 2015.
- Firm has a duty to provide the annual affidavit without prompting or notice from the certifying agency. In re: CK Franklin, LLC, 14-0128, February 26, 2015.
- Firm cannot blame a former employee whose responsibility was to maintain the certification for failing to submit the affidavit. In re: SUPRA Office Solutions, 14-0111, March 19, 2015.
- Change in corporate banking account status and lack of work is not an excuse for a failure to file the required affidavit. In re: Austin Construction Group Corp., 14-0150, April 21, 2015.
- A firm must also file the requested documentation along with the affidavit of no change. The company’s financial crisis does not excuse the lack of documentation. In Re: WJL Equities Corp., 14-0102, February 26, 2015.
- Requested extension on tax returns was not an excuse for not filing the affidavit. In re: Caridigm, Inc., 16-0003, May 27, 2016.

The only time that a failure to submit a no-change affidavit was revised by the USDOT was when the certifying agency decertified the firm for failure to submit a no-change affidavit before that affidavit was due. In re: Berona Engineers, 13-0239, July 1, 2013.

To reiterate – there is no wiggle room. Your affidavit of no change is due by the anniversary of your certification.

If you are decertified for failure to submit the required affidavit, you may reapply for certification in the future.

If you have any questions on this topic, or any other topics related to Disadvantaged Business Enterprises, please feel free to contact me.

*Danielle Dietrich is an attorney at Tucker Arensberg's that assists business owners with their legal needs. She is licensed to practice law in Pennsylvania, Ohio and West Virginia. Danielle can be reached via email: [ddietrich@tuckerlaw.com](mailto:ddietrich@tuckerlaw.com), telephone: 412-594-5605 or on Twitter at @DLDietrich.*