

time to complete installation and minimize the harm that may affect small entities due to the shorter deadline.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

26. None.

B. Comment Due Dates and Filing Procedures

27. We invite comment on the issues and questions set forth in the FNPRM of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may comment on or before May 23, 2001, and reply comment on or before May 30, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24,121, May 1, 1998.

V. Ordering Clauses

28. Pursuant to the authority contained in sections 1–4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and §§ 0.91, 0.291, 1.3, and 1.411 of the Commission's rules, this Further Notice of Proposed Rulemaking and Order is adopted.

29. The deadline for the implementation of non-recurring services in Funding Year 3 of the schools and libraries universal support mechanism for all applicants is extended from June 30, 2001 to September 30, 2001.

30. Applicants in Funding Year 3 may extend existing contracts for non-recurring services until September 30, 2001, without having to comply with the Commission's competitive bidding requirements.

31. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission

Magalie Roman Salas,

Secretary.

[FR Doc. 01–11514 Filed 5–7–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket OST–2000–7639]

RIN 2105–AC88

Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs; Memorandum of Understanding With the Small Business Administration; Uniform Forms and Other Revisions

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT or the Department) is proposing revisions to the Department's regulations for its Disadvantaged Business Enterprise (DBE) program (49 CFR part 26). In its final DBE rule the Department reserved publication of a uniform reporting form and a uniform certification application form for a later date. This document proposes those forms. In addition, this document proposes implementation procedures for a Memorandum of Understanding (MOU) between DOT and the U.S. Small Business Administration (SBA). The MOU streamlines certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's DBE program for small and disadvantaged businesses. Finally, this document proposes substantive changes to several provisions, including: Personal net worth, retainage, the size standard, proof of ethnicity, confidentiality, proof of economic disadvantage, and DBE credit for trucking firms.

DATES: Comments should be received no later than June 7, 2001. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons should send comments to Docket Clerk, Docket No. OST–2000–7639, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC 20590. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above

address from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Laura A. Aguilar, Attorney, Office of Environmental, Civil Rights, and General Law, Department of Transportation, 400 7th Street, SW., Room 10102, Washington, DC 20590, phone numbers (202) 366–0365 (voice), (202) 366–9170 (fax), (202) 755–7687 (TDD), laura.aguilar@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1999, the Department published a final rule revising its Disadvantaged Business Enterprise (DBE) program. The new regulations (49 CFR part 26) replaced 49 CFR part 23, except for the airport concessions regulations. In shaping the final rule, the Department responded to 600 comments on its December 1992 Notice of Proposed Rulemaking (NPRM), and 300 comments on its May 1997 Supplemental Notice of Proposed Rulemaking (SNPRM). The Department also participated in the Clinton Administration's review of affirmative action programs and listened carefully to Congressional debate during the reauthorization of the Department's DBE program in the Transportation Equity for the 21st Century (TEA–21). The final rule also incorporates requirements set forth in the Supreme Court's June 1995 decision in *Adarand v. Peña*. The result is a narrowly tailored program that provides a "level playing field" for small socially and economically disadvantaged businesses.

There are three different parts addressed in this document. The first part addresses uniform forms. In the final rule, the Department stated that it would develop a single reporting form and a standard DOT application form for DBE eligibility. The Department did not want to delay the issuance of the final rule, so it reserved the date on which the uniform form requirements would go into effect. This document addresses both of these forms. The second part addresses the implementation of a Memorandum of Understanding (MOU) between the DOT and the Small Business Administration (SBA). The MOU streamlines certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs and DOT's DBE program. The final part proposes substantive changes to several provisions, including: personal net worth, retainage, proof of ethnicity,

confidentiality, proof of economic disadvantage, and DBE credit for trucking firms.

A. Forms

1. Reporting Form

In the preamble to the February 2, 1999, final DBE rule, the Department adopted the suggestion of having one standard reporting form. We believe it will reduce administrative burdens for recipients, particularly those who receive funds from more than one DOT operating administration (OA). We are now addressing the format and substance of the uniform reporting form. We are also proposing that recipients report DBE program data to the concerned OA semi-annually. The concerned OA is the DOT agency from which the recipient received Federal funds. See § 26.21(a). For example, a recipient of Federal Highway funds must submit a report to the Federal Highway Administration (FHWA). If a recipient receives funds from more than one OA, it must submit a separate report to each OA. Finally, we are proposing a three-year retention requirement for basic program data. We are requesting comment on the content and format of the standard form. To assist commenters in formulating responses, we are publishing a proposed form in the NPRM that would become appendix B to 49 CFR part 26.

The proposed reporting form requires that information concerning both awards or commitments and attainments of DBE participation be reported. The rule requires recipients to have a mechanism to verify that the work committed and awarded to DBEs is actually performed by DBEs. See 49 CFR 26.37(b). The preamble to the final rule explains that recipients should keep a running tally of the extent to which, on each contract, performance matched promises. However, we recognize that in many instances the awards and commitments reported will not correspond to the attainments reported on the same form within a single fiscal year. For example, if a contract is awarded to a DBE in January 2001, the award would be reflected in the report for that period. However, the contract would likely not be completed for many years. Therefore, the actual achievement section in that report could not reflect the achievements on that contract. Instead, the report will reflect attainments on contracts completed during the reporting period. It is essentially a "snap-shot" of a recipient's progress towards the participation of DBEs in its DBE program and not a determinative factor as to whether or

not DBE goals are being met and programs are successful.

In the attainments section, recipients would report the actual number and dollar amounts of payments made to DBEs during the reporting period. This section is also in keeping with the mandate of 49 CFR 26.55(a), which specifies "(w)hen a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals."

Currently, Federal Aviation Administration (FAA) recipients submit annual reports while Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) recipients submit quarterly reports. The December 1992 NPRM proposed that recipients report DBE program data quarterly to the appropriate OA. Again, the appropriate OA is the DOT agency (FAA, FHWA and/or FTA) from which the recipient receives Federal funding. The OA's believe that quarterly reporting is often too burdensome for recipients. This is especially true for smaller recipients with only one contract over a long period of time. Requiring quarterly reports in that instance would result in unnecessary repetition of information. Therefore, we are proposing semi-annual reporting. This will allow the Department to adequately monitor the extent to which recipients are meeting DBE goals while not overly burdening smaller recipients with redundant reporting requirements.

Reports would be due to a recipient's OA on June 1 and December 1 each year. The June 1 report would include information from October 1 through March 31. The December 1 report would include information from April 1 through September 30. Since the majority of recipients set goals based on a fiscal year, we believe that these dates will assist them in setting their overall goals which must be submitted to the OA by August 1 of each year.

In keeping within the parameters suggested by commentators during the SNPRM, we are proposing that recipients retain information relating to basic program data for three years.

2. Uniform Application Form

In the preamble to the final rule, the Department adopted a single, uniform, nationwide form that all recipients must use without modification for DBE eligibility. We are now addressing the substance of the uniform application form and requirements. Although recipients must use the uniform application form without modification, we recognize that some States have additional statutory and/or regulatory requirements. Therefore, recipients may

supplement the uniform application form with a one to two page attachment containing the additional certification requirements. We are requesting comment on the content of the standard form. To assist commenters in formulating responses, we are publishing a proposed form in this NPRM that would become appendix F to 49 CFR part 26.

In developing the proposed form, we started with FHWA's Region 5 Certification Application. We asked a few recipients who receive financial assistance from FHWA, FAA, and FTA to comment on the content and format of the application. We are attempting to balance the need for a complete form and the desire to simplify the application. We urge commenters to think about what must be contained in the application and what may be reserved for an on-site review.

We are working closely with representatives from the SBA in developing a uniform application form to be used by both agencies. The MOU is designed to streamline the application process for SBA's 8(a) BD and SDB programs and DOT's DBE program. We believe that having a joint uniform application form will make it easier for small businesses to apply for certification for programs from both agencies. It is our hope that with the comments received on the proposed form in appendix F will be able to issue the joint DOT/SBA certification application form in the final rule.

B. Memorandum of Understanding

1. Background

The SBA's 8(a) BD and SDB programs and DOT's DBE program share many common certification requirements. Therefore, on November 23, 1999, the former Secretary of Transportation, Rodney Slater, signed a Memorandum of Understanding (MOU) with Aida Alvarez, the former Administrator of the SBA, the purpose of which is to develop common application procedures that will streamline the certification process for the respective programs. This streamlined process is designed to reduce administrative costs and to provide more opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals. It also establishes procedures for the efficient transfer of information among SBA, DOT, and DOT recipients, and for the consideration of certification appeals.

We are issuing this NPRM to amend 49 CFR part 26 to establish new or revised responsibilities for DOT recipients created by the MOU. The

MOU and these proposed changes do not alter the program requirements. For example, women are not presumed disadvantaged in SBA's programs. Therefore a woman-owned DBE will still have to show disadvantage to qualify for SBA's 8(a) BD and SDB programs. Similarly, an SBA-certified firm must still undergo an on-site review before receiving DBE certification.

The current DBE regulations allow recipients the flexibility to accept certifications for 8(a) BD or SDB-certified firms in lieu of conducting its own certification process or to require the firm to go through part or all of its own application process. See 49 CFR 26.67 (c). Under the MOU, recipients would be required to accept and recognize 8(a) BD and SDB certifications in lieu of requiring the applicant firm to fill out the recipient's own application. However, the applicant firm must still meet all the part 26 requirements. For example, a firm must meet the DOT statutory gross receipts cap, currently \$17,420,000, see 65 FR 52470 (August 29, 2000). Based on the information gained from the on-site review, including documentation that the firm meets DOT eligibility criteria, a DOT recipient may deny certification to a firm that the SBA certified.

As stated in the previous section, we are working with representatives from the SBA in developing a joint certification application form. We anticipate that the joint application form will contain a main section with common requirements and have three additional parts for 8(a) BD, SDB and DBE certification. The applicant would need to complete the main section of the application only once. Then the applicant would fill out the program specific part for each program for which the applicant is applying. We believe that the joint application form will simplify the application process for new applicants.

For SBA-certified firms seeking DBE certification, we are proposing the following procedures. An SBA-certified firm may submit its certification package to the applicable DOT recipient or it may request that the SBA forward the certification package to the DOT recipient. Pursuant to the MOU, the SBA will forward the package to the DOT recipient within thirty days after receipt of the firm's request. If necessary, the recipient may request additional information from the applicant or from the SBA. If requested from the SBA, the additional information will be transferred within 45 days after receipt of the request. The recipient will then make an

independent certification decision based on the SBA application package, any additional information provided and an on-site review. If the SBA conducted an on-site review, the DOT recipient may rely on SBA's report of the on-site review in lieu of conducting its own on-site review. 49 CFR 26.83(k) requires a recipient to make decisions on applications of certification within 90 days of receiving from the applicant firm all information required under part 26. If a firm applies for DBE certification pursuant to the MOU, the recipient is required to make a decision within 90 days of receiving all the required information, whether it is from the applicant or the SBA.

Recipients are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state unless there is a report of a "home state" on-site review on which the recipient may rely. This helps the problem of costly out-of-state visits.

If a recipient denies certification to a firm certified by the SBA, it must notify the SBA in writing. The notification must include the reason for denial. A recipient may simply send a copy of the denial letter to the SBA. Similarly, when a recipient decertifies a firm certified by the SBA, it must notify the SBA in writing. Again, the notification must include the reason for denial. A copy of the denial letter is sufficient notification.

An SBA-certified firm that is denied DBE certification or whose eligibility is removed by a DOT recipient is entitled to the same appeal rights as DBE firms. Such a firm may make an administrative appeal to the Department pursuant to part 26. The Department will notify the SBA, in writing, when DOT takes an action on an appeal that results in or confirms a loss of DBE eligibility to any SBA-certified firm. The notice will include the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

If a DBE-certified firm is seeking SBA certification, it may request, in writing, that the applicable DOT recipient forward a copy of its application to the SBA. If a recipient receives such a request, it must forward the application package to the SBA within 30 days of receiving the request. Under the MOU, the recipient will be required to pay the copying and transmittal fees. We are requesting comment on the impact this will have on recipients. If the SBA requests additional information, the recipient must forward the requested information within 45 days of receiving the request.

Recipients would also be required to provide appropriate assistance to SBA-certified firms, including information pertaining to the DBE application process, filing locations, required information and status of the application.

C. Additional Changes

1. Personal Net Worth

Section 26.67 requires each individual whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth (PNW), with appropriate supporting documentation. The Department received a number of questions about what documentation is appropriate for recipients to require in ascertaining the PNW of owners of DBE firms. In the preamble to the final rule correction (see 49 FR 34569 (June 11, 1999)), the Department recommended using the SBA's form as a model. SBA requires completion of a two-page form, supported by two years of personal and business tax returns. The Department wanted to remain flexible while encouraging recipients to use forms that are not unduly lengthy, burdensome or intrusive. The Department did not require recipients to use the SBA form verbatim but encouraged them to use a form of similar length and content, including collecting and retaining two years of an individuals' personal and business tax returns.

The final rule explicitly requires that the personal financial information be kept confidential. Nevertheless, the Department has continued to receive comments concerning the intrusiveness of collecting personal tax returns. We understand the justifiable privacy concerns associated with collecting personal income tax information. However, we must also ensure that the integrity of the program is maintained. Recipients must have a tool to ensure that non-disadvantaged persons do not participate in the program.

Therefore, we are proposing an alternative option with regard to supporting documentation. Recipients must still require an individual whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$750,000. Applicants could still submit a signed, notarized statement of PNW, with appropriate documentation. Alternatively, the applicant could submit a signed, notarized statement from a certified public accountant (CPA) attesting that the CPA has examined his or her personal net worth pursuant to

§ 26.67(a)(2)(iii) and determined that his or her personal net worth does not exceed \$750,000. This second option would eliminate the need for the applicant to provide personal income tax information to the DOT recipient for purposes of PNW.

Under either method, the determination of an individual's PNW should follow certain requirements specified in the final rule. For example, the rule requires that an individual's ownership in the applicant firm be excluded. With the exception of one proposed change discussed below, the requirements remain the same. However, we are making the wording and format of the current language clearer and easier to read.

We are proposing a change with respect to vested pension plans, Individual Retirement Accounts, 401(k) accounts, and other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences. We are proposing that PNW would include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time. An alternative method would be to exclude such assets from the personal net worth calculation. We are requesting comment on this issue.

2. Retainage

As the Department noted in the preamble to the February 1999 final rule, delays in payment have long been one of the most significant barriers to the competitiveness, and in some cases the viability, of small subcontractors. One of the delays in payment about which subcontractors have been most concerned is payment of retainage. Often, subcontractors have told us, they finish all their work on a contract months or years before the end of the project on which the prime contractor is working, but the prime contractor does not pay them fully until after the recipient has paid retainage to them at the end of the entire project. To help surmount this barrier, the final rule requires prime contractors to pay retainage to subcontractors promptly after the subcontractors satisfactorily complete their work.

Many states and other recipients have responded very creatively to this provision, taking such steps as making incremental payments to contractors or eliminating retainage altogether. Where recipients have not taken such steps, however, prime contractors have complained that the requirement to pay subcontractors fully before the recipient

pays retainage to the prime contractor is a financial hardship on prime contractors.

In order to address the prime contractors' concerns, without diminishing the benefit of the existing provision to subcontractors, the Department is proposing to require recipients to take one of three approaches. First, a recipient could eliminate retainage entirely, neither retaining funds from prime contractors nor permitting prime contractors to hold retainage from subcontractors. Second, a recipient could decide not to retain funds from prime contractors, but give prime contractors discretion to hold retainage from subcontractors. In this case, the recipient would require prime contractors to pay subcontractors in full after satisfactory completion of the subcontractor's work. Third, the recipient could hold retainage from prime contractors, but make incremental inspections and approvals of the prime contractor's work at various stages of the project (sometimes called "mini-finals"). The recipient would pay the prime contractor the portion of the retainage based on these approvals. The prime contractor, in turn, would be required to promptly pay all retainage owed to the subcontractor for satisfactory completion of the approved work. None of these three approaches is new. All are being employed successfully by DOT recipients today.

We are defining "prompt" as no later than thirty days. Based on our experience in program review thirty days was the most common length of time suggested by recipients. We think that this is a sensible amount of time. We seek comment on these approaches and on any other ideas commenters may have concerning this matter.

3. Size Standard

One of the purposes of the DBE rule is to make it possible for small firms to grow. This includes the opportunity for subcontractors to become able to compete as prime contractors. To be able to perform prime contracts, companies often need to be larger and have more resources than they had as subcontractors. Frequently, firms who are attempting to grow will perform both prime contracts and subcontracts. This may create a dilemma for DBE firms in some cases. In order to work as prime contractors, firms may need to grow beyond the limits of the SBA size standards applicable to their subcontracting field. If they do, then recipients may decertify them because they are no longer small businesses. A number of firms have expressed the concern that this situation penalizes

success and impedes achievement of an important objective of the DBE program.

We emphasized in the preamble to the final rule and a recent Question and Answer that recipients should not totally decertify a firm because it exceeds the size standard for one or more of its activities. Under § 26.65(a), if a firm meets the size standard for one type of work (e.g., as a general contractor), it should continue to be certified and receive DBE credit for that type of work, even if it has exceeded the size standard for another type of work (e.g., as a specialty subcontractor). In that case, of course, the firm could not remain eligible and receive DBE credit for this type of activity.

The Department seeks comment on whether we should make any modifications of the rule to address further the situations of firms that work as both prime contractors and subcontractors.

4. Proof of Ethnicity

We are proposing minor modifications to § 26.61(c) and § 26.63(a) to address concerns raised by both DBEs and recipients regarding issues related to group membership. There have been a few documented instances of individuals attempting to fraudulently participate in the DBE program by falsely asserting to be a member of one of the groups benefiting from the rebuttable presumption of social and economic disadvantage as outlined in § 26.67(a). For this reason, many recipients seek to obtain evidence of group membership that goes beyond an oral statement or "checking off a box on a form." At the same time, recipients are concerned that if they request additional evidence from some individuals but not others, they could be accused of discrimination in the certification process. In response to both of these concerns, we are proposing that recipients obtain a signed and notarized statement of group membership from all persons who claim to own and control a firm applying for DBE certification and whose ownership and control are relied upon for DBE certification.

A signed, notarized statement should be considered sufficient proof of ethnicity. The recipient should not ask for additional evidence unless it has a well founded reason to doubt the veracity of the owner. We emphasize that great care must be taken in looking behind the individual's assertion of membership in one of the groups designated in § 26.67(a). As a recipient, if you have reason to believe that the owner of a firm seeking certification has misrepresented his/her group membership, then further information

can and must be collected. However, you must inform that person, in writing, of your reasons for doubting his or her statement and your need for additional documentary evidence. Such instances should be the exception, not the rule. It is our expectation that requiring a written record justifying the need for additional information will help to reduce the number of unnecessary requests.

Even where additional documentation is necessary, care should be taken to ensure that particular ethnic group members are not forced to meet a higher level of proof than members of other groups. For example, many recipients accept a driver's license or a birth certificate as adequate proof of group membership. These forms of identification always indicate gender and sometimes indicate the race of the holder, however they often do not designate whether or not an individual is Hispanic or Native American. In some instances, members of these groups have been required to provide not one, but several types of additional proof of ethnicity simply because their driver's license did not indicate their race. Such actions could constitute a violation of the nondiscrimination provisions of 49 CFR parts 21 and 26 and of Title VI of the Civil Rights Act of 1964.

A driver's license or a birth certificate may be adequate types of proof of ethnicity. However, in cases where the required proof does not indicate specific races, such as Hispanic or Native American, the applicant should only be required to provide the same level of proof as members of other groups. For example, if a birth certificate is adequate for one group, then only a single piece of evidence may be required from members of other groups. Such single piece of evidence might include naturalization papers, Indian tribal roll, tribal voter registration certificate, a letter from a community group, educational institution, religious leader, or government agency stating that the individual is a member of the claimed group, or a letter from the individual setting forth specific reasons for believing himself/herself to be a member of the designated group.

5. Confidentiality

A common complaint of DBEs is that there are insufficient protections for the confidentiality of their business information. When DBEs submit significant amounts of information to recipients for certification purposes, firms are concerned that, through state Freedom of Information Act (FOIA) requests or discovery in state or Federal court proceedings, their confidential

information will be released to the public. We believe that this concern is justified, and we believe that the concern that confidential documents may become public can act as a deterrent to program participation by some potential DBEs. For this reason, we are amending the confidentiality section of the regulation to parallel the existing, tighter confidentiality provision of § 26.67 concerning personal net worth information. Under the proposed provision, recipients would not be authorized to release confidential business information in any circumstance without the submitter's written consent.

6. Economic Disadvantage

In appendix E to part 26, "Individual Determinations of Social and Economic Disadvantage", we are proposing to remove paragraph (B)(2) under "Economic Disadvantage". This paragraph requires that in the case of applications by individuals to be considered socially and economically disadvantaged, the applicant submit personal financial information for his or her spouse. This is inconsistent with the way the Department's personal net worth provisions under § 26.67 work in the case of applicants who are members of a group presumed to be economically and socially disadvantaged. In order to remove this inconsistency, we are deleting the paragraph in question.

7. Credit for Trucking Firms

In the final rule, after reviewing comments and the contrasting practices of a number of recipients, the Department decided to count credit for the participation of DBE trucking companies only with respect to trucks that DBEs themselves owned and operated. This was intended to prevent a situation in which, for example, a DBE trucking company owned only one truck or a few trucks and leased the services of a larger number of non-DBE truckers, claiming credit for them as well. The Department believed that this practice was contrary to the general principle that DBE credit should be counted only for work that DBEs themselves perform.

Since we issued the rule, a number of people have said to us that this provision works an unnecessary hardship on DBE trucking companies and is difficult for recipients to administer. Some have suggested, as a middle ground, allowing credit for twice the number of trucks actually owned by the DBE (i.e., if a DBE owned one truck, and leased another from a non-DBE, it could get credit for both). The Department seeks comment on whether

this provision should be modified and, if so, how.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Provisions

This proposed rule is not a significant regulation under either Executive Order 12866 and DOT Regulatory Policies and Provisions. The proposal will not impose any new costs on recipients or contractors. It simply would make administrative adjustments concerning existing provisions and assist contractors by implementing the SBA-DOT MOU.

Regulatory Flexibility Act Analysis

The Department certifies that this proposed rule, if made final, would not have significant economic effects on a substantial number of small entities. While the proposal affects small entities, it does not have a significant economic impact on anyone.

Paperwork Reduction Act

This proposed rule also contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (the PRA, 44 U.S.C. 3507(d)), the Department will submit these requirements to the Office of Information And Regulatory Affairs of the Office of Management and Budget for review.

As noted elsewhere in this preamble, the Department adopted the suggestion of having one standard reporting form in the February 2, 1999, final DBE rule. The proposed Uniform Semi-Annual Report of DBE Awards or Commitments and Achievements form is contained in Appendix B of this NPRM. At the present time, the Department has an information collection item approved under the Paperwork Reduction Act. This is for a quarterly DBE data report from recipients to DOT (OMB No. 2105-0510). This approval expires July 31, 2001. Under the NPRM, the frequency of reporting would change from four times a year to twice a year, which would reduce the burden involved.

The February 2, 1999, final DBE rule also adopted a single, uniform, nationwide certification application form. Part 26 requires firms applying for DBE certification to provide information to recipients to allow them to make eligibility decisions. Currently, an applicant firm may be required to fill out different applications for FAA, FHWA and FTA recipients. The Department believes that requiring one uniform application will reduce the paperwork burden. The proposed Uniform Certification Application form

is contained in appendix F of this NPRM.

Individuals and organizations may submit comments on the information collection elements of this NPRM by September 5, 2001 and should direct them to the DOT docket specified at the beginning of the NPRM. According to OMB's regulations implementing the PRA (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person need not respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information will be published in the **Federal Register** after it is approved by OMB.

Federalism

The Department has determined that this proposed rule, if made final, would not have Federalism impacts sufficient to warrant preparation of a Federalism assessment.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant-programs—transportation, Mass transportation, Minority businesses, Reporting and record keeping requirements.

Issued this 26th day of April, 2001, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 49 CFR part 26 as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for 49 CFR part 26 continues to read as follows:

Authority: 23 U.S.C. 324; 41 U.S.C. 2000d, *et seq.*; 49 U.S.C. 1615, 47107, 47113, 47123; Pub. L. 105-178, sec. 1101(b), 112 Stat. 107, 113.

2. Amend § 26.5 by adding a definition of "DOT/SBA MOU Memorandum of Understanding or MOU" after "DOT-assisted contract" and by adding a definition of "SBA certified firm" after "Small Business Administration" to read as follows:

§ 26.5 What do the terms in this part mean?

* * * * *

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of

Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

* * * * *

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

* * * * *

3. Amend § 26.11 by adding paragraph (a) to read as follows:

§ 26.11 What records to recipients keep and report?

(a) You must use the reporting form provided in Appendix B to this part without change or revision.

* * * * *

4. Revise § 26.29 to read as follows:

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than thirty days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within a specific number of days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within a specific number of days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

5. Revise § 26.61 (c) to read as follows:

§ 26.61 How are burdens of proof allocated in the certification process?

* * * * *

(c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see § 26.67).

* * * * *

6. Revise § 26.63(a) to read as follows:

§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) of this part and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

* * * * *

7. Amend § 26.67 as follows:

a. Revise paragraph (a)(2);

b. Remove and reserve paragraph (c), the revision reads as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) * * *

(1) * * *

(2)(i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$750,000.

(ii) You must require each individual who makes this certification to support it with the individual's choice of either of the following:

(A) A signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive; or

(B) A signed, notarized statement from a certified public accountant (CPA) attesting that the CPA has examined the individual's personal net worth and determined, consistent with the provisions of this section and generally accepted accounting standards, that the individual's personal net worth does not exceed \$750,000.

(iii) In determining an individual's net worth, you or the individual's CPA must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;
(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) For an Alaska Native, include assets and income from sources other than an Alaska Native Corporation but exclude any of the following that the individual receives from any Alaska Native Corporation: Cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

(D) Do not use a contingent liability to reduce an individual's net worth.

(E) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided*, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

* * * * *

8. Amend § 26.83 by revising paragraph (c)(7)(i) to read as follows:

§ 26.83 What procedures do recipients follow in making certification decisions?

* * * * *

(c) * * *

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for

supplementing the form by requesting additional information not inconsistent with this part.

* * * * *

9. Add a new § 26.84 to read as follows:

§ 26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?

(a) When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, you must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly, or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

(b) If necessary, you may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of your written request.

(c) Before certifying a firm based on its 8(a) BD or SDB certification, you must conduct an on-site review of the firm (see § 26.83(c)(1)). If the SBA conducted an on-site review, you may rely on the SBA's report of the on-site review. In connection with this review, you may also request additional relevant information from the firm.

(d) Unless you determine, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of subpart D of this part, you must certify the firm.

(e) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state(s) in which you operate unless there is a report of a "home state" on-site review on which you may rely.

(f) You are not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that you use in your DOT-assisted programs or airport concessions.

10. Redesignate § 26.85 as § 26.86. In newly redesignated § 26.86, redesignate paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and add a new paragraph (b) to read as follows:

§ 26.86 What rules govern recipients' denials of initial requests for certification?

* * * * *

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The

notification must include the reason for denial.

* * * * *

11. Add a new § 26.85 to read as follows:

§ 26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?

(a) Upon receipt of a signed, written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within thirty days of receipt of the request.

(b) If necessary, the SBA may make a written request to the recipient for additional materials (e.g., the report of the on-site review). You must provide a copy of this material to the SBA within forty-five days of the additional request.

(c) You must provide appropriate assistance to SBA-certified firms, including providing information pertaining to the DBE application process, filing locations, required documentation and status of applications.

12. Amend § 26.87 by redesignating paragraphs (h) through (j) as paragraphs (i) through (k) and by adding a new paragraph (h) to read as follows:

§ 26.87 What procedure does a recipient use to remove a DBE's eligibility?

* * * * *

(h) When you decertify a DBE firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

* * * * *

13. Amend § 26.89 by revising paragraphs (a)(1) and (f)(7) to read as follows:

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

* * * * *

(f) * * *

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an

appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

* * * * *

14. In § 26.109, revise paragraph (a)(2) to read as follows:

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) * * *

(1) * * *

(2) Notwithstanding any provision of Federal or state law, you must not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

* * * * *

15. Add Appendix B to part 26 to read as follows:

BILLING CODE 4910-62-P

Appendix B to Part 26—Uniform Reporting Requirements Form

UNIFORM SEMI-ANNUAL REPORT OF DBE AWARDS OR COMMITMENTS AND ACHIEVEMENTS												
U.S. Department of Transportation 400 7th Street SW Washington, DC 20590												
1. Submitted to (check one)		<input type="checkbox"/> FHWA <input type="checkbox"/> FTA <input type="checkbox"/> FAA		FAA RECIPIENTS ONLY								
2. Reporting Period (check one)		<input type="checkbox"/> Report due June 1 (for period Oct. 1-Mar. 31)		14. AIP Numbers								
3. Federal fiscal year in which reporting period falls		<input type="checkbox"/> Report due Dec. 1 (for period April 1-Sept. 30)		15. Airport Codes if Separate Goals								
4. Name of Recipient		FY _____										
5. Street Address of Recipient												
6. City, State, ZIP of Recipient												
7. Phone number of Recipient												
8. Annual DBE Goal		RC _____ %		RN _____ %		TOTAL _____ %						
AWARDS OR COMMITMENTS THIS REPORTING PERIOD (total contracts and subcontracts awarded or committed during reporting period)				A	B	C	D	E	F	G	H	I
				Total Dollars	Total Number	Total to DBEs (dollar amount)	Total to DBEs (number)	Total to DBEs RC (dollar amount)	Total to DBEs RC (number)	Total to DBEs RN (dollar amount)	Total awarded DBEs RN (number)	Percentage of total dollars to DBEs
9. Prime contracts awarded this period												
10. Sub contracts awarded or committed this period												
DBE AWARDS OR COMMITMENTS THIS REPORTING PERIOD—BREAKDOWN BY ETHNICITY & GENDER				Total DBE (number)				Female (number)				
11. Black American												
Hispanic American												
Native American												
Sub-Continent Asian-American												
Asian-Pacific American												
Caucasian												
Other												
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD				Total completed (contract amount)	Total completed (number)	Total paid to DBEs (dollar amount)	Total paid to DBEs (number)	Total paid to DBEs RC (dollar amount)	Total paid to DBEs RC (number)	Total paid to DBEs RN (dollar amount)	Total paid to DBEs RN (number)	Percentage of total dollars to DBEs
12. Prime contracts completed this period												
13. Sub contracts completed this period												
16. Submitted by (print name) _____ (Signature) _____												
17. Phone number () _____												

UNIFORM SEMI-ANNUAL REPORT OF DBE AWARDS OR COMMITMENTS AND ACHIEVEMENTS (INSTRUCTIONS)

1. Indicates the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA.
 2. Reporting period that the data on this form covers. If report is due June 1, the data should cover October 1 - March 31. If report is due December 1, the data should cover April 1 - September 30.
 3. Federal fiscal year into which the covered reporting period falls.
 4. Name of the recipient.
 5. Street address of the recipient.
 6. City, State and ZIP of the recipient.
 7. Telephone number of the recipient.
 8. The annual DBE goal established by the recipient for the Federal fiscal year indicated in item (3) and submitted to the OA indicated in item (1). The overall goal is reported (TOT%) as well as the breakdown for race conscious (RC%) and race neutral (RN%). The race conscious goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is the primary example of a race conscious measure in the DBE program. The race neutral goal portion should be on programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
- 9(A). The total dollar amount for all prime contracts assisted with DOT funds that were awarded during the reporting period indicated in item (2). The totals and amounts in items (9A)-(13I) should include all types of prime contracts awarded and all types of sub contracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts should be rounded to the nearest dollar.
- 9(B). The total number of all prime contracts assisted with DOT funds that were awarded during the reporting period indicated in item (2). See explanation in item (9A) for project types to include.
- 9(C). From the total dollar amount awarded in item (9A), the dollar amount awarded to certified DBEs during the reporting period indicated in item (2). See explanation in item (9A) for project types to include.
- 9(D). From the total number of prime contracts awarded in item (9B), the number awarded to certified DBEs during the reporting period indicated in item (2). See explanation in item (9A) for project types to include.
- 9(E). From the total dollar awarded in item (9C), the dollar amount awarded to certified DBEs using race conscious (RC) methods. See the definition of (RC) in item (8) and explanation in item (9A) of project types to include.
- 9(F). From the total number of prime contracts awarded in item (9D), the number awarded to certified DBEs using race conscious (RC) methods. See the definition of (RC) in item (8) and the explanation in item (9A) of project types to include.
- 9(G). From the total dollar amount awarded in item (9C), the dollar amount awarded to certified DBEs using race neutral (RN) methods. See the definition of (RN) in item (8) and the explanation in item (9A) of project types to include.
- 9(H). From the total number of prime contracts awarded in item (9D), the number awarded to certified DBEs using race neutral (RN) methods. See the definition of (RN) in item (8) and the explanation in item (9A) of project types to include.
- 9(I). Of all prime contracts awarded this reporting period, the percentage going to DBEs. Dividing the dollar amount from item (9C) by the dollar amount from item (9A) derives this percentage. Round percentage to the nearest tenth of a percent.
- 10(A)-10(I). Items (10A)-(10I) are derived the same way as items (9A)-(9I), except that calculations should be based on sub contracts rather than prime contractors. Unlike prime contracts, which may only be awarded, sub contracts may be awarded or committed.
11. For all DBEs awarded prime contracts and awarded or committed sub contracts in items (9A)-(10I), break the data down by total dollar amount as well as the number of all contracts going to each ethnic group or gender. The TOTAL line for Male (dollar amount) and Female (dollar amount) should equal the sum of (9C) and (10C). The TOTAL line for Male (number) and Female (number) should equal the sum of (9D) and (10D).
- 12(A)-13(I). The instructions for these items are identical to those for items (9A-9I) except that here, report only money actually paid to certified DBEs during the reporting period. This section does not cover awards or commitments of contracts. Rather, it tracks actual payments made to DBEs for qualified prime and sub contracting work as defined in item (9A).
14. If this is an FAA recipient, list AIP numbers. If more than six, attach a separate sheet. For items 16-17, this form may be duplicated and the individual forms filled in separately for each airport where separate goals have been established.
 15. If this is an FAA recipient, list airport codes where there are separate goals. If more than six, attach a separate sheet.
 16. Print and sign the name of the person preparing this form.
 17. Phone number of person preparing this form.

16. In Appendix E, under Economic Disadvantage, remove and reserve section (B)(2).
17. Add a new Appendix F to read as follows:

Appendix F to Part 26—Uniform Certification Application Form

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26**

UNIFORM CERTIFICATION APPLICATION

Note: the instruction page will be drafted after the form is completed.

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice under 18 U.S.C. 1001.

ROADMAP FOR APPLICANTS

① **Should I apply?**

Your firm must meet the following requirements to qualify as a DBE under the DOT DBE program:

- Disadvantaged owners are U.S. citizens or legal permanent residents.
- Firm's annual gross income does NOT exceed \$17.420 million (averaged over 3 years).
- Firm is at least 51% owned and controlled by socially and economically disadvantaged individuals.
- Firm meets SBA small business size in the primary industry group (13 CFR part 121).
- Firms owned by ANCs, Indian Tribes, and Native Hawaiian Organizations meet the small business size requirements and are controlled by socially and economically disadvantaged individuals.
- Firms and owners meet the requirements of part 26 concerning licenses and credentials.
- Firm must be for-profit.

Note: Firms must undergo an on-site review.

② **Is there an easier way to apply?**

If you are currently certified as an 8(a), or SDB firm, you may be eligible for a streamlined certification application process pursuant to a Memorandum of Understanding (MOU) between DOT and the SBA. Under the MOU, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to submit an entirely new application. You must still meet the requirements for the DBE program.

③ **What documents must I submit with this application?**

The following documents must be attached to your application. *Missing documents or incomplete information will delay the processing of your application.*

All Applicants

- Work experience resumes that include places of ownership/employment and corresponding dates.
- Personal Net Worth statement or statement from CPA.
- Social & economic disadvantage statement.
- Entire copy of personal tax returns for the last 3 yrs, if applicable.
- Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*).
- Signed loan agreement and security agreements.
- Description of real estate and proof of ownership listed.
- List of equipment leased and signed lease agreements.
- List of construction equipment and/or vehicles owned and titles/proof of ownership.
- Signed leases for office/storage space.
- End of Year Balance Sheets and Income Statements for the past 3 years (*or life of firm if less than 3 years*). A new business must provide a current Balance Sheet.
- Copies of relevant licenses.
- DBE/MBE/WBE, SBA 8(a) or SDB certifications or denials and decertifications.
- Bank Authorization and Signatory cards.
- Schedule of salaries paid to all officers, managers, owners or directors of the firm (W-2s).

Sole Proprietorship

- Assumed name, fictitious name or other registration certificate from appropriate governmental agency.

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements.
- Assumed name, fictitious name, or other registration Certificate from appropriate governmental agency, if applicable.
- Partnership tax returns for last 3 years.

Corporation or LLC

- Official Articles of Incorporation (*signed by the state official*).
- Both sides of all Corporate Stock Certificates and Stock.
- Transfer Ledger.
- Entire copy of corporate tax returns for the last 3 yrs.
- Shareholders' Agreement.
- Minutes of all stockholders and Board of Directors meetings.
- Corporate By-laws and any amendments.

NOTE: The specific state or recipient to which you are applying may have additional requirements.

④ **Where can I find more information?**

U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html>

Section 1: CERTIFICATION INFORMATION

1. Prior/Other Certifications.

(a) Is your firm currently certified for any of the following programs? <i>(If Yes, attach a copy of your certification(s)).</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has this firm's home state conducted an on-site visit? <input type="checkbox"/> Yes, on ___/___/___ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	Stop! You may not have to complete this application. Ask about the streamlined application process under the SBA/DOT MOU.
(b) Has your firm applied for certification for any program listed in 1(a) in the past? <input type="checkbox"/> Yes, on ___/___/___ <input type="checkbox"/> No If Yes, identify: Other names your company has used: Identification and certification numbers:		
(c) Has this firm or any of its owners, Board of Directors, officers or management personnel been denied certification or decertified before by any agency in any state, local or Federal entity? <input type="checkbox"/> Yes, on ___/___/___ <input type="checkbox"/> No If Yes, identify State and name of agency:		

Section 2: GENERAL INFORMATION

2. Contact Information.

Contact person:		Legal name of firm:		
Phone #:	Cell #:	Fax #:		
E-mail:		Web site <i>(if firm has one)</i> :		
Street address of firm: <i>(No P.O. box no.)</i>				
Mailing address of firm:		City:	County/Parish:	State: Zip:

3. Business Profile.

Primary nature of business/NAICS code:		Federal tax ID:
Federal identification number or Applicant's Social Security number:		
This firm was established on ___/___/___		I(we) have owned this firm since: ___/___/___
Did the business exist under a different type of ownership prior to the date indicated above? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, Explain.		
Method of acquisition <i>(check all that apply)</i> : <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i> _____		
Has this firm operated under a different name during the past five years? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain.		
Has this firm applied for reorganization under Chapter 11 and/or liquidation under Chapter 7, within the last 3 years? <i>(If Yes, provide court papers)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No		
Type of firm <i>(check all applicable)</i> : <input type="checkbox"/> Sole proprietorship <i>(provide a copy of the assumed name certificate)</i> <input type="checkbox"/> Partnership <i>(provide copies of all partnership agreements and the assumed name certificate)</i> <input type="checkbox"/> Corporation <i>(provide Articles of Incorporation, copies of the stock certificates (both sides), Stock Transfer Ledger, Shareholders' Agreement, all minutes of the shareholders' meetings and Board of Directors' meetings, the Corporate Bylaws and Bylaws Amendments (if applicable), the Corporate Bank Resolution and Bank Signature Cards)</i> <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other		
Number of employees: Permanent Full-time ___ Temporary Full-time ___ Seasonal Full-time ___ Permanent Part-time ___ Temporary Part-time ___ Seasonal Part-time ___		
Where do you obtain seasonal employees?		
Does your firm directly pay, in its own name, all its employees? <input type="checkbox"/> Yes <input type="checkbox"/> No		

If No, explain	
Specify the gross receipts of the firm for the last 3 years: Year ending _____ Total receipts \$ _____ (Attach copies of full tax returns for each year)	Year ending _____ Total receipts \$ _____ Year ending _____ Total receipts \$ _____

Section 3: OWNERSHIP

4. Identify all individuals or holding companies with any ownership interest. List their cash, equipment and/or real estate and/or other investment in the firm; and attach the documentation of the source of these investments. (Attach work experience resumes of each person; If more than two owners, attach a separate sheet)

First Person

Name:		Title:		Home Phone #:	
Home Address (street and number):			City:	State:	Zip:
Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female		Ethnic group (Attach proof of status):			
U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> African American <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Caucasian <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Asian Indian <input type="checkbox"/> Other Ethnic Group (explain) _____			
Legal permanent resident: <input type="checkbox"/> Yes <input type="checkbox"/> No					
Number of years owned:		Initial investment to acquire ownership interest in firm:	Type	Dollar Value	
Percentage owned:			Cash	\$	
Familial relationship to other owners:			Real Estate	\$	
			Equipment	\$	
			Other		
Shares of Stock:	Number	Percentage	Class	Date acquired	Method Acquired
Additional contributions made by anyone since the business was started/acquired:					

Second Person

Name:		Title:		Home Phone #:	
Home Address (street and number):			City:	State:	Zip:
Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female		Ethnic group (Attach proof of status):			
U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> African American <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Caucasian <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Asian Indian <input type="checkbox"/> Other Ethnic Group (explain) _____			
Legal permanent resident: <input type="checkbox"/> Yes <input type="checkbox"/> No					
Number of years owned:		Initial investment to acquire ownership interest in firm:	Type	Dollar Value	
Percentage owned:			Cash	\$	
Familial relationship to other owners:			Real Estate	\$	
			Equipment	\$	
			Other		
Shares of Stock:	Number	Percentage	Class	Date acquired	Method Acquired
Additional contributions made by anyone since the business was started/acquired:					

Section 4: CONTROL

5. Identify officers & Board of Directors. (Attach work experience resumes of each person; If additional space is required, attach a separate sheet)

	Name	Title/Date Appointed	Ethnicity	Gender
Company Officers	1.			
	2.			

	3.			
	4.			
	5.			
Board of Directors	1.			
	2.			
	3.			
	4.			
	5.			

6. Identify management personnel who control the firm in the following areas. (Attach work experience resumes, including dates, of employment at each company, for each person; If more than two persons, attach a separate sheet)

	Name	Title	Ethnicity	Gender
Financial Decisions (responsibility for check signing, acquisition of lines of credit, surety bonding, supplies, etc.)	1. 2.			
Estimating, bidding, and negotiating (cost estimates, bid preparation and submission, negotiations or contract execution)	1. 2.			
Hiring/firing of management personnel	1. 2.			
Field/Production Operations Supervisor (site supervision/scheduling, project management services)	1. 2.			
List all field supervisors	1. 2.			
Office management	1. 2.			
Marketing/Sales	1. 2.			
Purchasing of major equipment	1. 2.			

7. Identify persons or firms who provide the following services.

	Name of firm	Name of person	Address	Phone No.
External management or technical/computer service				
Accountant				
Attorney				
Principal suppliers	1. Materials or equipment supplied _____ 2. Materials or equipment supplied _____			

8. Identify those union(s), business(es), or professional associations (s) in which the owner (s) or management personnel have membership.

Name of union, business or professional	Address	Phone No.
---	---------	-----------

association		
1.		
2.		
3.		

9. **Attach a list of equipment and/or vehicles within your firm's possession or under your control** (*indicate separately*), office space (*owned or leased*) and storage space (*owned or leased*), including signed leasing agreements.

10. Financial Information.

(a) Banking Information Name of bank: _____ Phone No: () _____ Name of officer: _____ Address of bank: _____ City: _____ State: _____ Zip: _____
(b) Bonding Information: If you have bonding capacity, identify: Name of agent or broker _____ Phone No: () _____ Address of agent/broker: _____ City: _____ State: _____ Zip: _____ Bonding limit: Aggregate limit \$ _____ Project limit \$ _____
(c) Attach copies of year end balance sheet and profit and loss (income) statements for the last 3 years, or if business has been in operation for less than one year, provide a current balance sheet, a projected profit and loss statement for the next 12 month period and a projected balance sheet for the end of that period.

11. **Identify all sources, amount and purposes of money loaned to the firm, including name of person or firm securing the loan, if other than owner.** (*Attach copies of all loan agreements*)

Name of Source	Address of Source	Amount
1.		
2.		
3.		

12. **List current licenses** (*e.g. contractor, engineer, architect, ICC, etc.*). (*Attach copies of licenses*)

Name of Individual or Firm	Name of License	Expiration Date	License Number
1.			
2.			
3.			

13. **Does your firm have key personnel insurance?** Yes No
(*If Yes, attach a list of the persons named and the value*)

14. **List the 3 largest contracts completed by this firm in the past 3 years.**

Name of owner/contractor	Name/location of project	Type of work performed
1.		
2.		
3.		

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15. List all active jobs this firm is currently working on. (If additional space is required, attach a separate sheet)

Name of prime contractor and project number	Location of project	Type of work	Date project began	Anticipated completion date
1.				
2.				
3.				

Section 5: AFFILIATION

16. Affiliation with other businesses.

(a) Affiliate companies:											
(b) Do any of the people listed in question 4, 5 or 6 perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Person: _____ Title: _____ Business: _____ Function: _____											
(c) Do any of the people listed in questions 4, 5 or 6 own or work for other firms that have a business relationship with yours? (E.G., ownership interest, shared office space, financial investments, equipment leases or personal sharing) <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Firm: _____ Person: _____ Business relationship: _____											
(d) Whether affiliated or not, is the applicant firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Firm's name: _____ tax ID number: _____ Explain nature of shared facilities: _____											
(e) At present or in the past 5 years: If you answered Yes to any of these questions, identify on a separate piece of paper any relevant names, addresses, dates, and explanations.	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Has this firm been a subsidiary of any other firm?</td> <td style="padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">Has this firm consisted of a partnership in which one or more of the partners are other firms?</td> <td style="padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">Has any other firm owned 5% or more of this firm?</td> <td style="padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">Has this firm had any subsidiaries?</td> <td style="padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">Has this firm owned 5% or more of any other firm?</td> <td style="padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	Has this firm been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Has this firm consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Has any other firm owned 5% or more of this firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Has this firm had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Has this firm owned 5% or more of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Has this firm been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No										
Has this firm consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No										
Has any other firm owned 5% or more of this firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No										
Has this firm had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No										
Has this firm owned 5% or more of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No										

Section 6: OTHER

17. Are you a trucking firm? Yes No

(If Yes, attach proof of ownership of a fully operational truck and trailer. Documentation should include insurance and titles)

18. Are you a regular dealer? Yes No

(If Yes, attach proof of warehouse, product lines carried, and distribution equipment)

AFFIDAVIT OF CERTIFICATION

A 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 PEALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions in are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I declare under penalty of perjury that the foregoing is true and correct.

Signature of owner, officer or partner _____ Date(mm/dd/yy) _____

I declare under penalty of perjury that the information provided in this application and supporting documents relating to my disadvantaged status and me is true and correct.

Print Name: _____ Signature _____ Date _____

Print Name: _____ Signature _____ Date _____

Print Name: _____ Signature _____ Date _____

Print Name: _____ Signature _____ Date _____

Print Name: _____ Signature _____ Date _____

NOTARY CERTIFICATE

STATE OF _____

} SS:

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____, 20 _____.

Signature of Notary Public _____ Printed/typed name of Notary Public

County of residence _____ Date commission expires _____

AFFIDAVIT OF SOCIAL AND ECONOMIC DISADVANTAGE

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

SOCIAL DISADVANTAGE

I hereby certify under penalty of perjury that I am a member of one of the following groups:

- African American
 Hispanic
 Native American
 Caucasian
 Asian Pacific
 Asian Indian
 Other Ethnic Group (*explain*) _____

And that I have held myself out as a member of that group and have acted as a member of that group.

I further certify that I am an owner of the company seeking DBE certification and that I have experienced social disadvantage due to the effects of discrimination based upon my (check all that apply)

- race
 ethnicity
 gender
 other (*explain*)

Print Name: _____ Signature _____ Date _____

PERSONAL FINANCIAL STATEMENT

I hereby certify under penalty of perjury that my personal net worth does not exceed \$750,000.

Print Name: _____ Signature _____ Date _____

This statement is supported by (check one)

- A signed, notarized statement of personal net worth, with appropriate supporting documentation.
 A signed, notarized statement from a certified public accountant (CPA) attesting that the he/she has examined my personal net worth and determined, consistent with the provisions of §26.67(a)(2) and generally accepted accounting standards, that my personal net worth does not exceed \$750,000.

NOTARY CERTIFICATE

STATE OF _____

} SS:

COUNTY OF _____

Subscribed and sworn to before me this _____ day of _____, 20 _____.

Printed/typed name of Notary Public _____

Signature of Notary Public _____

County of residence _____ Date commission expires _____