

### Clarification Concerning Goal Setting

In setting overall goals, step two requires that recipients examine all evidence available in the jurisdiction to determine what adjustment, if any, is needed to the base figure. Section 26.45(d)(1) specifies information that must be considered when adjusting the base figure. Section 26.45(d)(2) lists additional information to consider, but uses the language "you may also consider." This permissive language may be misleading. A narrowly tailored program requires that all relevant information be considered. The IFR clarified that if the information is available, then it must be considered. Therefore, to avoid misleading language, we changed the wording in § 26.45(d)(2) to read, "If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete." There were no comments on this provision; therefore, we are not making any changes to this provision.

## II. Notice of Proposed Rulemaking Regarding Memorandum of Understanding With the Small Business Administration, Uniform Forms, and Other Provisions

There are three different matters addressed in this section. Part A addresses uniform forms. In the 1999 final rule, the Department stated that it would develop a uniform reporting form and a standard DOT application form for DBE eligibility. The Department did not want to delay the issuance of the 1999 final rule, so it reserved the date on which the uniform form requirements would go into effect. This document addresses both of these forms. Part B 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. Part C addresses substantive changes to several provisions of part 26, including personal net worth, retainage, proof of ethnicity, confidentiality, proof of economic disadvantage, and DBE credit for trucking firms.

### A. Forms

#### Uniform Reporting Form

In the February 1999 rule, the Department adopted the suggestion of having a single, uniform, nationwide form that all recipients must use to report to the DOT its awards or commitments and payments. We published a proposed format in the

NPRM. We received over eighty comments concerning the format and content of the proposed uniform reporting form, all of which were considered and addressed in drafting the final form. Several versions of the form were generated to account for the various comments and suggestions provided, and the Department believes that the final form compiles the necessary information needed by the Department to safeguard the program's integrity and ensure the goals of the program are met. The Final Form and its instructions are in Appendix B of this document.

Many commenters made suggestions about the format and style of the reporting form. The basic formatting remains the same as in the NPRM because of its brevity and its capacity to capture the required information sought by the Department in a single page. One particular goal was to minimize the burden on recipients in compiling the information, as well as reducing the amount of paperwork required. Some terms and phrasing used in the form were changed to be consistent with that used in the current final rule.

The Instructions Sheet that accompanies the reporting form explains more fully what is required in each field on the form, and instructs recipients on how to derive specific numbers and percentages that are required to be provided. It is essential that recipients completing this form consult the Instructions Sheet.

One commenter questioned the distinction between race conscious and race neutral goals. These concepts are explained in some detail in part 26, and this rulemaking does not change any of the concepts in the 1999 final rule that established part 26. Another commenter requested clarification as to the category of "Other" in the ethnicity breakdown portion of the form. Firms may qualify as DBEs on a case-by-case, individual basis, even though their owners are not members of a group presumed to be disadvantaged (*e.g.*, a firm owned by a white male who makes an individual showing of disadvantage). The "Other" category would be used to report this type of scenario. We also added new category for "Non-Minority Women" to the final form to account for women-owned DBEs participating in the program, and to guard against the potential for double counting women-owned DBEs where the female owner is also a minority. As a result, the category "Caucasian" was removed from the final form.

Many commenters were concerned that the "Awards or Commitments this Reporting Period" section did not match

up with the later section on "Actual Payments on Contracts Completed This Reporting Period." All dollar amounts are to reflect only the Federal share of such contracts. The Department realizes that many awards or commitments last over an extended period of time, and therefore will be likely to extend over multiple reporting periods. The Departments intends that these sections would not match up and that the respective numbers would most likely be different.

The purpose of the Actual Payments section is to capture a "snap shot" of the present reporting period as concerns monies actually paid to DBEs, as opposed to monies that are only committed or awarded to DBEs but have not necessarily been paid yet. This data will provide a more accurate picture of the level of DBE participation that is completed at any given time. The new categories added to these sections will depict more fully the level of DBE participation. More importantly, it should be stressed that while several commenters noted that the tracking of such information is not currently done, it is crucial that recipients maintain records of committed DBE goals and actual payments by contract because this data allows recipients (and the Department) to determine the recipient's actual success in meeting contract and overall DBE goals. Failure to track such data would defeat the purpose of goal-setting and undermine the integrity of the program.

We received twenty-eight comments regarding the reporting frequency. The Department currently has authority to require quarterly reporting. While the FHWA and the FTA do require quarterly reporting, the FAA requires only annual reporting. Not surprisingly, most of the comments objecting to semi-annual reporting came from airport authorities, while many State DOTs favored semi-annual reporting. Although our goal is uniformity we also want to decrease our recipients' burdens. Therefore, all recipients are required to use the standard reporting form. Recipients of funds from the FHWA and FTA will be required to report semi-annually, but FAA recipients will continue to report annually.

Reports are due to a recipient's operating administration (OA) on June 1 and December 1 each year. The June 1 report should include information from October 1 through March 31. The December 1 report should include information from April 1 through September 30. We believe that these dates will assist recipients in setting goals, which are due by August 1 each year. A couple of commenters requested