

alternative reporting deadlines for recipients that use local fiscal years or calendar years. This will be permitted on a case-by-case basis if approved by the concerned OA.

The form will be made available electronically in PDF format, but at this time recipients cannot submit the forms electronically. The reporting form must be submitted to the OA from which the recipient received Federal funds. For example, a recipient of Federal Highway funds must submit a report to the FHWA. If a recipient received funds from more than one OA, it must submit a report to each OA. TVMs will continue to report to the recipient and not DOT directly.

Finally, recipients are required to retain information relating to basic program data for three years.

Uniform Certification Application Form

In the February 1999 final rule the Department said that it planned to create a single, uniform, nationwide form that all recipients must use without modification for DBE eligibility. We published a proposed format in the NPRM. We received over eighty-eight comments concerning the format and content of the proposed uniform application, all of which were considered and addressed in drafting the final form. Several changes were made to the proposed form that the Department believes makes the form more streamlined and user-friendly, yet comprehensive enough to supply recipients with the necessary information to make determinations as to applicants' qualifications for the DBE program. The Final Form is in Appendix F of this document.

Many commenters made suggestions about the format and style of the application. These suggestions were considered and incorporated into the final form to the extent possible. Much of the basic formatting remains the same because the goal was to keep the form manageable, easy to read, and easy to follow for applicants who must fill out the form, while simultaneously being accessible and practical for the multitude of recipients required to accept the form. Our major concern was keeping the application within a reasonable limit, regarding both length and content, in order to prevent the form from becoming too unwieldy and burdensome.

Other commenters posed questions or sought clarification of certain terms used in the application or of the applicability of certain sections of the application to specific groups or types of contractors and businesses. These questions and queries are addressed in

both the form and in its accompanying Instructions Sheet. The form itself uses simplified language and the Instructions Sheet explains more fully the type of information or documents sought in each section of the application.

Although recipients must use the uniform application form without modification, we recognize that some recipients have additional statutory and/or regulatory requirements. Therefore, recipients, with the written consent of the cognizant OA, may (1) supplement the uniform application form with a one to two page attachment containing the additional information collection requirements, and (2) require applicants to submit additional supporting documents not already listed in or required by the uniform application. Additionally, with written consent of the OA, a recipient may translate the forms into a second language (e.g., Spanish or Chinese) to assist their applicants. We reiterate that the form should be streamlined, however, and that additional information should be sought during the on-site review process rather than during the application process.

B. Memorandum of Understanding

There has been some confusion as to the scope of the Memorandum of Understanding (MOU) between the Small Business Administration (SBA) and the DOT. While the intent of the MOU is to streamline the certification process for firms who apply for the SBA's 8(a) BD or SDB programs and the DOT's DBE program, absolute reciprocity is impossible. The programs share many common requirements, but there are some significant differences. Therefore, we are clarifying that the MOU does not alter any program requirements; applicant firms must meet the program requirements for which they are applying. For example, an SBA-certified firm applying for DBE certification must meet the DOT statutory gross receipts cap, currently set at \$17,420,000 (65 FR 52470 (August 29, 2000)). An SBA-certified firm must also undergo an on-site review before receiving DBE certification.

Because the SBA is not required to issue regulations prior to implementing the MOU, it has already established procedures to implement the agreement. If a DBE firm contacts the SBA requesting to be certified for SBA's Small and Disadvantaged Business program, the SBA would follow procedures similar to those set forth in this document.

Some commenters supported the MOU and the proposed regulations without change. Others did not object to

the MOU in its entirety, but rather focused on a few main issues. One of the primary issues was the degree of reciprocity. Under this rule, recipients must accept a firm's application package submitted to the SBA in lieu of requiring the applicant firm to fill out the recipient's own application. The certifying agency may ask the applicant firm for additional information and an on-site review will be required. If the SBA conducted an on-site review, the DOT recipient may rely on SBA's report in lieu of conducting its own on-site review. Several commenters mentioned the importance of conducting their own on-site review because the certifying agency can actually see the firm and can ask additional questions. We agree that the on-site review is important, and that is why the recipient may accept the SBA's report of the on-site review, but is not required to do so.

Under the 1999 final rule, a recipient receiving an application from an SBA-certified firm had three choices. It could (1) accept the SBA certification decision, subject to the recipient's own on-site review; (2) use the firm's SBA application package in lieu of requiring completion of the recipient's own application form (the recipient would still have to complete an on-site review), but make its own decision; or (3) disregard the SBA materials and require the recipient to undergo the recipient's full application process from scratch. The MOU, as implemented by this rule, removes the third option. Under today's final rule, recipients will have to choose one of the first two options when an SBA-certified firm files an application.

If the recipient chooses the second option, it should be aware of one important constraint on its discretion. If the SBA has looked at an application package and determined that a firm is a small business owned and controlled by socially and economically disadvantaged persons, it would not be appropriate for the DOT recipient to disagree with the SBA's conclusion in the absence of additional information that leads to a different conclusion. That is, the recipient could not make a different decision based solely on a judgment of the same exact information on which SBA based its decision. Doing so would be contrary to the language and intent of the MOU. However, if the DOT recipient (typically in the course of the on-site review) discovers additional information from which it could reasonably conclude that the SBA-certified firm is not an eligible DBE, it could decline to certify the firm.

In any case, § 26.83(k) requires a recipient to make a decision within ninety days of receiving all the required