

information, including any additional information requested, whether it is from the applicant or the SBA.

This issue that appears to have caused the most concern is the requirement that recipients copy and transmit to the SBA a copy of the applicant firm's application package when a DOT-certified firm applies to the SBA for certification. A majority of the commenters argued that the copy requirement would place an administrative and financial burden on recipients. That is why we are allowing recipients to charge a reasonable fee (e.g., comparable to what would be charged for a Freedom of Information Act or open records law request) for the photocopying to defray some of the costs. A few commenters suggested that it would be more of a burden to collect the fees. Therefore, whether to impose copying and transmittal fees will be left entirely up to the recipient. We do not believe that there will be a large demand from DBE-certified firms requesting SBA certification, so we do not believe that this provision will have a significant economic effect. The Department will monitor the situation and will make future alterations as needed.

A few commenters questioned the definition of "application package." Two commenters stated that it would be easier to copy and transmit the entire file rather than the actual application. That way there would be no need for the SBA to request additional information from the recipient. We agree. By "application package" we mean the application and any information relied upon in making the certification decision.

Several commenters also addressed the time limits prescribed in the NPRM. Some claimed that the time limits were too short, while others said that they are too long. We believe that while an expedited process would be desirable, lack of resources will make shorter deadlines unworkable. We believe that the time frames set forth in the NPRM are reasonable. Therefore, recipients are required to forward the application package to the SBA within thirty days after the firm's request. If additional information is requested, it must be transmitted within forty-five days after receipt of the request. In implementing this provision, we intend to provide some flexibility during the first several months as recipients adjust to the requirement. Again, the Department will monitor the situation and make changes if warranted. There is some concern that some application packages are outdated and unreliable. We agree that transmitting irrelevant and outdated information would be wasteful;

however, if an applicant firm has a current, valid certification, and then all of the information relied upon for that certification may be relevant.

There were several comments regarding the notification requirement. If a recipient denies certification to a firm certified by the SBA, or if it decertifies a firm it knows to be certified by the SBA, it is required to notify the SBA in writing. The notification must include the reason for denial. Two commenters believe that the denial/decertification letter is sufficient notification to the SBA, and we agree. A recipient may simply send a copy of the denial or decertification letter to the SBA. One commenter asked how it would know whether the firm is SBA certified. Typically, an applicant will submit this information in an application package or decertification proceeding. A recipient could also query an on-line database of firms the SBA has certified at <http://pro-net.sba.gov>.

C. Additional Changes

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 (64 FR 34569 (June 28, 1999)), the Department recommended using the SBA's form as a model. The 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 Department has not found anything more appropriate than the SBA form, however. In the interest of uniformity, this final rule will mandate use of the SBA PNW form in conjunction with the new uniform application form. A copy is included in Appendix F.

The final rule explicitly requires that personal financial information be kept confidential. Nevertheless, the

Department has continued to receive comments concerning the intrusiveness of collecting personal tax returns. In the 2001 NPRM, the Department proposed an alternative option with regard to the necessary supporting documentation to prove PNW in order to address these concerns. The proposal still called for recipients to require individuals whose ownership and control are relied upon for DBE certification to certify that he or she has a PNW not exceeding \$750,000 by allowing applicants to submit a signed, notarized statement of PNW with appropriate documentation. In the alternative, the proposed option was to allow the applicant to submit a signed, notarized statement from a certified public accountant (CPA) attesting that the CPA had examined his or her PNW pursuant to § 26.67(a)(2)(iii) and determined that his or her PNW does not exceed \$750,000. This option was intended to eliminate the need for the applicant to provide personal income tax information to the DOT recipient as supporting documentation for purposes of proving PNW.

The Department received numerous comments concerning the proposed alternative documentation for establishing an applicant's PNW. Many commenters supported the proposed option of allowing applicants to submit a CPA's affidavit as to PNW instead of filing personal income tax information. A majority of the commenters in favor of the proposal highlighted the fact that such an option would be less intrusive and would protect the privacy and confidentiality interests of applicants in their personal economic and financial information. Furthermore, some commenters noted that this option would alleviate the burden of the application process on applicants and would reduce the amount of paperwork associated with the DBE program, thereby facilitating the entire process. One commenter also felt that CPAs are better situated to evaluate financial statements because of their academic and professional training.

A roughly equal number of commenters felt quite differently about the issue. An overwhelming majority of recipients opposed the proposal to allow the submission of a CPA's affidavit in lieu of an individual applicant's personal income tax return or other such documentation in order to prove PNW. Many commenters felt that it was very important for the recipients themselves to verify the PNW of each applicant, and that to allow a simple affidavit of a CPA would unduly inhibit their ability to do so, and would prevent the recipients from closely tracking the eligibility of applicants through their