

Manual—United States, 1997 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Provisions

This rule is not a significant regulation under either Executive Order 12866 or DOT Regulatory Policies and Provisions. The rule 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. It would also reduce burdens on contractors and recipients through the use of new uniform forms.

Regulatory Flexibility Act Analysis

The Department certifies that this rule will not have significant economic effects on a substantial number of small entities. While the rule affects small entities, it does not have a significant economic impact on anyone.

Paperwork Reduction Act

This rule 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, DBE final rule. The Uniform Semi-Annual Report of DBE Awards or Commitments and Achievements form is contained in Appendix B. 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 expired July 31, 2001. Because the reporting requirement has been reduced to semi-annually, the burden has been reduced.

Firms applying for DBE certification must provide information to recipients to allow them to review the firm's continuing eligibility. The 1999 DBE final rule also called for 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 Uniform Certification Application form is contained in Appendix F.

This rule provides forms for the Unified Certification Program for recipients. UCP certifying agencies are responsible for maintaining a directory of certified DBE firms. Instead of the hundreds that used to be required, now only 52 consolidated directories will exist. Additionally, recipients must submit DBE programs to be approved by the Department, including calculations of overall goals. As they complete this requirement, recipients may temporarily expend more hours than in the past on information-related tasks.

Federalism

The Department has determined that this final rule will 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 recordkeeping requirements.

Issued this 4th day of June, 2003, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

■ For the reasons set forth in the preamble, the Department amends 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. In 49 CFR part 26, the term “Standard Industrial Classification” is revised to read “North American Industrial Classification System” wherever it occurs. The acronym “SIC” is revised to read “NAICS” wherever it occurs.

■ 3. Amend § 26.5 by adding, in alphabetical order among the existing definitions, a definition of “DOT/SBA MOU Memorandum of Understanding or MOU” after “DOT-assisted contract and

a definition of “SBA certified firm” after “Small Business Administration”, and by revising the definition of “Primary industry classification”, 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.

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Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

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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.

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■ 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 30 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 30 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