approved or accepted training in passenger safety, cargo safety, and hull integrity as specified in Section A–V/2 paragraph 5 of the STCW Code.

(b) Personnel required to be trained in accordance with paragraph (a) of this section must hold documentary evidence of successful completion of training as proof of meeting these requirements.

(c) Personnel required to be trained in accordance with paragraph (a)(3), (a)(4), or (a)(5) of this section must provide, at intervals not exceeding 5 years, evidence of maintaining the standard of competence.

(d) The Coast Guard will accept onboard training and experience, through evidence of 1 year of relevant seagoing service within the last 5 years, as meeting the requirements of paragraph (c) of this section.

(e) Personnel serving onboard small passenger vessels engaged in domestic, near-coastal voyages, as defined in § 15.105(g)(1) of this subchapter, are not subject to any obligation for the purpose of this STCW requirement.

Dated: September 22, 2026.

R. C. Compher,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2026–19652 Filed 9–24–26; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 23 and 26

[Docket No. DOT–OST–2025–0897]

RIN 2105–AF33

Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Program Revisions

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT or the Department).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT or Department) is finalizing amendments to its Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) program regulations. With few modifications, this final rule follows the interim final rule (IFR) published on October 3, 2025, which eliminated race- and sex-based presumptions that DOT determined to be unconstitutional. This action completes the transition to a system of individualized determinations of social and economic disadvantage to ensure program constitutional compliance and addresses administrative challenges identified by stakeholders during the public comment period.

DATES: This rule is effective September 25, 2026.

Electronic Access and Filing

This document, the IFR, all comments received, and all background material may be viewed online at *www.regulations.gov* using the docket number listed above. Electronic retrieval assistance and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

FOR FURTHER INFORMATION CONTACT: Allen Gutierrez, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590 at (202) 738–6263 or *allen.gutierrez@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Department issues this final rule to finalize, with few modifications, the October 3, 2025 IFR.[1] The IFR was a direct response to legal developments, including Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing;* Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity;* recent developments in case law; the Attorney General's March 21, 2025 memorandum to all Federal agencies, *Implementation of Executive Orders 14151 and 14173; Eliminating Unlawful DEI Programs in Federal Operations;*[2] and the Solicitor General's conclusion that the DBE program's presumptions violate the U.S. Constitution in a June 2025 letter advising the Speaker of the House that the U.S. Department of Justice (DOJ) would no longer defend the presumptions.[3] The Solicitor General's conclusion and letter concern litigation about the race- and sex-based presumptions of the DBE program. In that litigation, on September 23, 2024, the U.S. District Court for the Eastern District of Kentucky determined that the DBE program's statutory race- and sex-based presumptions likely do not comply with the Constitution's promise of equal protection under the law.[4] The Court held that the Government may only use a racial classification to ''further a compelling government interest'' and may only use race in a ''narrowly tailored fashion.'' It held that although courts have identified a compelling government interest in ''remediating specific, identified instance[s] of past discrimination that violated the constitution or a statute,'' the Government did not present evidence of such discrimination by DOT against each of the groups covered by the DBE program's presumptions. The Court held, moreover, that the presumptions were not narrowly tailored because Congress used an unexplained ''scattershot'' approach in identifying the covered groups, and because the presumptions had no ''logical end point.'' The Court also held that the sex-based presumptions failed heightened scrutiny. Accordingly, the Court issued a preliminary injunction that prohibited DOT from mandating the use of presumptions with respect to contracts on which the two plaintiff entities bid. Following these developments, DOT determined that the race- and sex-based presumptions of the DBE and ACDBE programs were unconstitutional.

In light of this determination, the Department removed these presumptions, requiring all firms to demonstrate disadvantaged ownership through an individualized personal narrative (PN) process. The Department expects that the minor modifications made in this final rule will have no additional economic impacts beyond those described in the regulatory analysis supporting the IFR, which is available in the docket for this rulemaking. This final rule adopts, with minor clarifications, the regulatory framework established by the IFR. The Department's economic analysis supporting the IFR, including the Regulatory Impact Analysis published on October 3, 2025, remains valid and applicable to this final rule. As this final rule makes no substantive changes to the IFR's policy framework, there are no additional economic impacts beyond those previously analyzed. The minor

[1] 90 FR 47982.

[2] Memorandum from the Attorney General for All Federal Agencies, *Implementation of Executive Orders 14151 and 14173; Eliminating Unlawful DEI Programs in Federal Operations* (March 21, 2025), available at *https://www.justice.gov/ag/media/1409556/dl?inline.*

[3] Letter from Solicitor General D. John Sauer to Hon. Mike Johnson (June 25, 2025), *https://www.justice.gov/oip/media/1404871/dl?inline.*

[4] *Mid-America Milling Co.* v. *U.S. Dep't of Transp.,* No. 3:23–cv–00072, 2024 WL 4267183 (E.D. Ky. Sept. 23, 2024).

clarifications contained in this final rule—such as replacing ''similarly situated'' with ''non-disadvantaged individuals with comparable qualifications'' and establishing specific reevaluation deadlines—are administrative refinements that do not alter the compliance costs or burden hours estimated in the IFR. Accordingly, the Department incorporates the economic analysis performed for the IFR. This final rule responds to the 637 public comments the Department received in its docket for the rulemaking.

II. Background

Congress authorized the DBE program in 1983 and has since reauthorized the DBE program numerous times, having most recently authorized the program in Section 11101(e) of the Infrastructure Investment and Jobs Act (Pub. L. 117–58) (November 15, 2021). Congress codified the ACDBE program in 1987. See 49 U.S.C. 47107(e).

The DBE program requires recipients of DOT highway, transit, and airport funding to set goals for participation by contractors that are small businesses owned and controlled by socially and economically disadvantaged individuals. The ACDBE program imposes similar requirements on airport concessionaires. Congress mandated by statute that DOT ''presume'' that members of specific groups (*e.g.,* Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and women) were socially and economically disadvantaged. Other individuals did not benefit from that statutory presumption. This meant that two individuals with comparable qualifications may have faced different standards for entering the program, based solely on their race, ethnicity, or sex.

On October 3, 2025, the Department issued an IFR (90 FR 47979) that immediately eliminated the use of these presumptions, based on the Department's determination that the presumptions were unconstitutional. The IFR required all firms—both applicants and currently certified firms—to prove social and economic disadvantaged ownership through an ''individualized determination'' as described in 49 CFR 26.67. This shift was necessary to ensure that the program is lawful.

The Department received 637 public comments on the IFR from a range of stakeholders, including DBE firms, prime contractors, State departments of transportation, airports, transit authorities, trade associations, and advocacy groups. The Department has made minor changes in this final rule to clarify some provisions in response to comments received during the comment period. The following sections provide a comprehensive analysis of these comments and the Department's responses.

III. Discussion of Public Comments and Final Rule

Stakeholders expressed divided views on the IFR, its compliance with the rulemaking process required by the Administrative Procedure Act (APA), its removal of the rebuttable presumption, its provisions concerning the content of PNs, the reevaluation of currently certified firms, and the goal setting process to be used by recipients of DOT financial assistance. Some commenters took an explicit position either supporting or opposing the IFR, and a substantial group of commenters also asked a variety of questions about how to implement its provisions.

1. Removal of the Presumptions

Comments

Support for the IFR

Several advocates argued that the elimination of race- and sex-based presumptions is necessary to align the DBE and ACDBE programs with the Constitution. They contended that awarding contracts based on group identity rather than merit violates the Equal Protection Clause of the 14th Amendment and the Due Process Clause of the 5th Amendment. These commenters frequently cited the U.S. Supreme Court's decision in *Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College (SFFA),*[5] and the U.S. District Court's preliminary injunction in *Mid-America Milling,*[6] as legal mandates for the Department's action to eliminate the presumptions.

Commenters, principally prime contractors and non-DBE subcontractors, argued that the previous regulatory framework distorted market competition by favoring specific demographic groups regardless of individual circumstances, effectively operating as a subsidy that displaced merit-based firms and leading to the hiring of more costly and less competent businesses. Some individual engineers and business owners commented that the prior rules discouraged non-DBE firms from pursuing public work because they felt excluded by what they characterized as quotas or set-asides that did not prioritize qualifications or value.

One advocacy group summarized both legal and policy objections to the presumptions, saying that assuming all members of certain groups are disadvantaged is ''grossly overinclusive.'' It supported the new standards to ensure resources go to businesses that ''actually demonstrate need'' relative to their peers, rather than relying on ''proxies'' that may allow wealthy or well-connected individuals to qualify.

In addition, some commenters asserted that the IFR would reduce waste and fraud within the program. These commenters argued that the presumptions allowed individuals to bypass scrutiny, enabling ''pass-through'' entities or firms owned by wealthy individuals to secure contracts intended for the truly disadvantaged. One construction trade association noted that the goals established under the prior program failed to increase genuine participation and instead created bureaucratic inefficiencies that harmed the industry. Another supporter of the IFR opined that there was a need to ''dismantle'' the DBE program.

Opposition to the IFR

Most commenters, including not only numerous individual small business owners but also advocacy groups and most trade associations and recipients commenting, strongly opposed the IFR's removal of the presumptions. An advocacy group and a trade association argued that the removal of presumptions ignored the legislative record and empirical evidence, including disparity studies covering many years, demonstrating that systemic discrimination against women and minority groups persists in transportation contracting. They and many of the individual small business commenters asserted that the DBE program was Congress's specific remedy for these documented barriers and that the IFR undermines the program's ability to level the playing field by placing new, undue burdens on small DBE and ACDBE firms.

Many commenters argued that the Department misapplied *SFFA,* noting that the decision addressed university admissions rather than government contracting, where the Government has a distinct, compelling interest in ensuring public funds do not finance private discrimination. Others contended that the IFR is an *ultra vires* act that effectively nullifies statutory provisions enacted by Congress via Executive Order and DOT action,

[5] 600 U.S. 181 (2023).

[6] *Mid-America Milling Co.* v. *U.S. Dep't of Transp.,* No. 3:23–cv–00072, 2024 WL 4267183 (E.D. Ky. Sept. 23, 2024).

violating the separation of powers doctrine.

Stakeholders also expressed deep concern regarding the economic impact of the rule. Many small business owners stated that the immediate suspension of goals and the requirement for individualized narratives would cause irreparable financial harm, forcing firms to lay off employees or cease operations. One comment estimated that tens of thousands of firms could go out of business as a result. Commenters emphasized that the ''race-neutral'' approach ignores the reality that economic power in the transportation contracting field is dominated by large, established white-owned firms. The IFR effectively would eliminate minority participation, one commenter added. Many business owners said that it was only the DBE program as it existed prior to the IFR that enabled them to start and grow successful businesses.

DOT Response

The Department acknowledges the variety of perspectives regarding the IFR. The Department agrees with commenters who stated that the IFR is necessary to ensure the DBE and ACDBE programs comply with the Constitution. As noted in the preamble to the IFR, DOJ and DOT have concluded that the race- and sex-based presumptions previously used in these programs are unconstitutional considering recent Federal court cases, including *SFFA* and *Mid-America Milling.* There is simply no room under constitutional law for a presumption that someone is disadvantaged just because they are a woman or a member of a minority group. The Department has no compelling justification in authorizing race- and sex-based presumptions under the DBE or ACDBE program. Participation in the DBE and ACDBE programs requires clear, individualized evidence that a firm's owner is socially and economically disadvantaged, without reliance on unconstitutional race- and sex-based presumptions.

Regarding comments that the IFR ignores persistent discrimination, the Department emphasizes that the IFR does not end the DBE or ACDBE programs, nor does it deny that discrimination exists. Rather, it modifies the certification standards to require individualized evidence of discrimination that caused actual social and economic harm. This ensures that the program benefits those who have truly faced discrimination and economic hardship, regardless of presumptions related to their race or sex.

The Department disagrees with the assertion that the IFR constitutes an *ultra vires* act. The Department is responsible for administering its programs in a constitutional manner. When a statutory provision is determined to be unconstitutional, the agency must take action to cease implementation of that provision. The IFR preserves the statutory goal of assisting socially and economically disadvantaged individuals but removes the unconstitutional method—group-based presumptions—used to identify them.

2. Administrative Procedure Act (APA) and Legal Authority

The Department determined that the race- and sex-based presumptions violate the Constitution, asserting that this conclusion provided ''good cause'' under the APA to publish the IFR without prior notice and comment.

Comments

The Department received comments challenging the way the IFR was promulgated, as well as the underlying legal rationale for eliminating the former rule's presumptions of disadvantage.

Good Cause Exception and Notice-and-Comment Rulemaking

Many commenters argued that the Department violated the APA by bypassing the notice-and-comment rulemaking process. They contended that the Department failed to demonstrate ''good cause'' under 5 U.S.C. 553(b)(B), arguing that no contingency existed to justify immediate implementation without public input. This was particularly true, commenters said, due not only to the alleged adverse effects of the IFR on thousands of small businesses but also to the variety of implementation provisions that could have benefited from public comment before going into effect. Several commenters noted that the court cases cited by the Department, such as the *SFFA* decision and the *Mid-America Milling* preliminary injunction, occurred months or even years prior to the IFR, thereby negating the claim that notice-and-comment was ''impracticable.'' Moreover, some comments asserted that *SFFA* dealt with student admissions to universities, a very different subject matter area from federally assisted contracting and therefore was not on point.

A few comments asserted that the IFR constitutes a ''major rule'' with significant economic impact, requiring a transition period and congressional review under the Congressional Review Act (CRA). One legal organization argued that the ''good cause'' exception is a narrow safety valve intended for acute safety emergencies, not for policy shifts driven by litigation risk or executive preference.

Some commenters also made policy arguments against an immediately effective IFR. A letter-writing campaign from over 150 engineers said that they, contractors, and public agencies depend on stable and clearly communicated Federal requirements to plan and design safe, compliant projects. Sudden regulatory changes on this scale, the letters said, can cascade through multiple stages of project delivery, risking adverse consequences for the projects.

Many commenters opposing the IFR asked that the Department withdraw the IFR, reinstate the pre-October 3, 2025 rule, and issue a notice of proposed rulemaking (NPRM) seeking comment on changes in the program before imposing the changes.

Conversely, some commenters supported the immediate effectiveness of the rule, agreeing that continuing to enforce race- and sex-based presumptions would perpetuate unconstitutional discrimination.

DOT Response

For the reasons stated in the IFR, the Department maintains that ''good cause'' existed to issue the IFR without prior notice and comment. Agencies are authorized by 5 U.S.C. 553(b)(B) to publish a final rule without first seeking public comment on a proposed rule ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' DOT notes, moreover, that the IFR solicited public comments, and that it has fully evaluated those comments in issuing this final rule, and thus the Administrative Procedure Act's rulemaking requirements have been satisfied.

3. Constitutional and Statutory Authority

Comments

Commenters expressed divergent views on the constitutionality of the DBE and ACDBE programs and the Department's authority to amend them via the IFR.

Several commenters, including a State attorney general and some advocacy organizations, supported the Department's determination that the race- and sex-based presumptions are unconstitutional. These commenters argued that the Supreme Court's decision in *SFFA* clarified that remedying generalized societal discrimination is not a compelling interest sufficient to justify racial classifications. They contended that the DBE program lacks the ''logical end point'' required by strict scrutiny and relies on ''outdated stereotypes'' rather than individualized evidence. Supporters emphasized that the Government has an obligation to stop enforcing unconstitutional provisions immediately.

As noted above, commenters opposing the IFR argued that it is based on a misapplication of case law. They asserted that *SFFA* addressed higher education admissions and did not overrule the long line of appellate precedents (*e.g., Midwest Fence Corp.* v. *Dep't of Transp.;*[7] *Western States Paving Co.* v. *Wash. State Dep't of Transp.;*[8] *Adarand Constructors, Inc.* v. *Slater*[9]) that specifically upheld the constitutionality of the DBE program as a remedy for discrimination in contracting. Commenters noted that the *Mid-America Milling* decision resulted in the issuance of a preliminary injunction from a single district court, applicable only to specific parties, and argued that the Department acted prematurely by applying this ruling nationwide before a final judgment or appellate review.

Furthermore, numerous commenters argued that the IFR is an *ultra vires* act that violates the separation of powers. They contended that the DBE program's presumptions are mandated by statute (*e.g.,* the Infrastructure Investment and Jobs Act, 49 U.S.C. 47113) and that the Executive Branch lacks authority to repeal legislation through regulation or Executive Order without congressional action, and that the IFR was arbitrary and capricious for APA purposes because it failed to consider reliance interests of affected parties and did not consider less burdensome alternatives.

DOT Response

Regarding the comments on statutory authority and *ultra vires* acts, the Department acknowledges that the presumptions were codified by Congress. However, the Executive Branch has an obligation to ensure that all laws are implemented in a manner consistent with the Constitution. The Department rejects the assertion that *Mid-America Milling* or *SFFA* is irrelevant; these cases reflect the current jurisprudence on equal protection, which prohibits the Government from utilizing race- or sex-based classifications unless it is to further a compelling governmental interest and it is used in a narrowly tailored fashion, which the current presumptions fail to satisfy. The IFR preserves the statutory DBE program to the maximum extent possible by shifting to an individualized model of disadvantage, thereby saving the program from total invalidation while curing its constitutional defects.

Regarding the comments on reliance interests, the Department acknowledges that businesses, individuals, and public agencies that benefited from the DBE program's presumptions of disadvantage may have expected the DBE program to continue in its prior form. However, reliance on a program does not justify continuing to operate unconstitutional presumptions of disadvantage within the program. The final rule allows firms to continue participating in the program by demonstrating eligibility through individualized evidence of discrimination that caused actual economic harm. This approach preserves the constitutional aspects of the DBE program and mitigates any effects on reliance interests. To the extent that the immediate suspension of goals implicates commenters' reliance interests, any effects will be mitigated by firms making required submissions and Unified Certification Programs (UCPs) completing the recertification process as soon as possible. Immediate suspension of goals is necessary to remedy the unconstitutional aspects of the DBE program.

4. Implementation and Transition Period

Comments

The Department received a significant number of comments expressing concern over the immediate effective date of the IFR and the operational disruptions caused by the transition to the new certification standards.

A wide range of stakeholders, including trade associations, transit agencies, and individual business owners, argued that the immediate effective date of the IFR caused severe market disruption. As noted above, over 150 comments were submitted by professional engineers, who emphasized the importance of regulatory predictability for those responsible for safe and efficient infrastructure delivery. They warned that immediate implementation of the regulation without clear guidance would cause administrative confusion, diverting their attention from the core mission of protecting public safety.

Recipients and industry groups requested urgent clarification regarding the status of contracts executed prior to the IFR's effective date. Commenters asked whether recipients must stop counting DBE participation on active projects toward their overall goals or if they must modify existing contracts to remove DBE requirements. Some noted confusion regarding whether the IFR requires the termination of DBE subcontractors who lose certification during the reevaluation process, warning that such actions would lead to litigation and project delays.

Other commenters pointed out inconsistencies in implementation, noting that while some States allowed existing contracts to proceed, others issued stop-work orders or paused payments pending Federal guidance. An association of general contractors requested a ''safe harbor'' for active contracts to prevent administrative bottlenecks and protect contractors from liability due to the sudden regulatory change.

DOT Response

The Department acknowledges the challenges posed by the transition period. The Department thanks the professional engineering community for highlighting that safe and efficient infrastructure delivery depends on regulatory predictability. However, the immediate effective date was necessary to bring the program into constitutional compliance.

In response to the confusion and fears expressed by small businesses, prime contractors, and certifying agencies following the publication of the IFR, the Department has issued Frequently Asked Questions (FAQs) guidance available at *https://www.transportation.gov/mission/civil-rights/disadvantaged-business-enterprise/october-2025-interim-final-rule.* The FAQs clarify how the regulatory changes to goal-setting, counting, and termination operate in practice.

5. Business Consequences

Comments

The Department received starkly contrasting comments regarding the economic consequences of the IFR. Although certified DBEs characterized the rule as an existential threat that will force widespread business closures, other contractors and industry stakeholders viewed it as a necessary correction to a market distorted by unconstitutional preferences.

A substantial number of DBE-certified firms reported that the immediate

[7] 840 F.3d 932 (7th Cir. 2016).

[8] 407 F.3d 983 (9th Cir. 2005).

[9] 228 F.3d 1147 (10th Cir. 2000).

suspension of goals and the uncertainty of the reevaluation process have placed them in immediate financial peril. Many commenters described the IFR not merely as a regulatory modification, but as a ''de facto suspension'' of the program that has frozen their revenue streams. Small business owners stated that without the enforcement of contract goals, prime contractors immediately ceased soliciting their participation or canceled pending agreements, interpreting the IFR as a signal that DBE participation is no longer required.

Specific data points provided by commenters illustrate the severity of this ''market freeze.'' One DBE firm reported losing nearly $2 million in anticipated contracts immediately following the rule's publication, representing the entirety of their revenue projection for the coming year. A highway products supplier stated it has lost half of its revenue since the initial injunctions began and have received ''zero'' new contracts since the IFR took effect, warning that ''my business cannot survive this.'' Another construction equipment firm reported that the flow of bid invitations stopped completely within days of the rule taking effect, forcing the firm to suspend hiring plans and consider workforce reductions to avoid insolvency. Further, a construction firm owner reported that she had already let employees go because primes were no longer choosing her firm for subcontracts.

These stakeholders argued that they lack the generational wealth and capital reserves of larger, non-disadvantaged competitors. Consequently, they contend that the administrative pause and the removal of goals will inevitably lead to the collapse of thousands of small businesses that operate on thin margins, resulting in layoffs and economic damage to the communities they employ. A comment supporting the IFR acknowledged that the end of race- and gender-conscious goals in California in 1996 resulted in sharp reductions in minority- and women-owned business participation in State-funded contracts.

Some commenters, including non-DBE contractors, engineers, and policy organizations, expressed relief at the IFR, arguing that the previous system unfairly penalized merit-based businesses and distorted market competition. These stakeholders contended that the race- and sex-based presumptions operated as a subsidy that displaced more qualified and cost-effective firms.

Supporters of the IFR emphasized several key points regarding business survival and market fairness. Business owners who previously did not qualify for DBE status stated they had been excluded from public work despite paying above-average wages and hiring diverse workforces, simply because they did not fit the demographic criteria. They viewed the IFR as leveling the playing field so that engineers and contractors are chosen based on ''skill set and talent.''

On the topic of cost efficiency, long-time contractors argued that the historic DBE program inflated costs for taxpayers by forcing prime contractors to hire DBEs even when they were not the lowest bidder or the most qualified. One commenter cited data suggesting bid prices dropped by approximately 5.6 percent when similar preferences were removed in California for State-funded contracts, arguing that the IFR would result in better value for public funds. Finally, several commenters argued that the previous system encouraged fraud, citing instances of ''pass-through'' entities where spouses or relatives of wealthy contractors were listed as owners solely to secure DBE certification. These commenters asserted that the IFR would eliminate these ''sham'' businesses, thereby restoring integrity to the market.

DOT Response

The Department acknowledges that the changes it is making regarding eligibility for the DBE program may cause temporary losses to firms that have participated in the program under the former criteria. The IFR's eligibility criteria and PN process provide an avenue for firms to remain eligible by providing evidence of discrimination that caused actual social and economic disadvantage on an individual basis. We urge firms to take advantage of this on-ramp by providing PNs and other relevant information to recipients as soon as possible, and for recipients to process these submissions in an expedited manner, so that all eligible firms can participate in the program in the near future.

With that said, basing eligibility on race- and sex-based presumptions of disadvantage is unconstitutional. The only constitutionally permissible way for firm owners to establish disadvantage is through individualized evidence of discrimination that caused actual economic harm, as required by the Department's rule. If a firm owner that has participated in the program via the former presumptions cannot make this showing, participation in a program aimed at firms owned and controlled by socially and economically disadvantaged individuals is not possible.

The Department notes that alternative means for the participation of small businesses in DOT-assisted contracts, even those that are not eligible DBEs, are available. The Department encourages recipients to utilize DBE-neutral strategies, including Small Business Elements (SBE) under § 26.39, to foster small business participation both during the interim period before the reevaluation process is completed and in the future.

The Department also acknowledges the comments regarding market distortion and fraud, noting that the new individualized determination process is designed to ensure that only those business owners who have truly suffered social and economic disadvantage are certified, thereby addressing some of the concerns about program integrity while fulfilling the statutory mandate to assist disadvantaged firms.

Section-by-Section Analysis

The Department received numerous technical comments regarding specific regulatory amendments in the IFR. The following summary addresses comments organized by the relevant Code of Federal Regulations (CFR) sections.

6. Definitions (§§ 23.3 and 26.5)

Comments

Several commenters raised concerns regarding the revised definition of ''socially and economically disadvantaged individual.'' Commenters noted that the definition requires a certifier to find an individual disadvantaged on a ''case-by-case basis'' but criticized the lack of a clear standard for ''social disadvantage'' once the presumptions were removed. Some commenters argued that the requirement to compare one's status to ''similarly situated non-disadvantaged individuals'' is logically flawed, asserting that a disadvantaged individual is, by definition, not similarly situated to a non-disadvantaged one. Other commenters requested clarification on whether the phrase ''without regard to race or sex'' in the definition precludes any mention of race or sex in an owner's file, or if it simply prohibits using those characteristics as a standalone basis for eligibility.

DOT Response

The Department amended the definition to reflect the adoption of a constitutionally neutral process based on individualized evidence of actual social and economic disadvantage. This preamble discusses the ''similarly situated'' and ''without regard to race or sex'' issues below.

7. Reporting and Recordkeeping (§§ 26.11 and 23.27)

Comments

Commenters opposed the elimination of requirements to report the race and sex of DBE owners, arguing that without this data, the Department cannot monitor the program for discrimination or evaluate its effectiveness. Recipients asked for guidance on what data to submit in the Uniform Report during the transition, given that goals are suspended.

DOT Response

The Department has determined that collecting race and sex data for the purpose of administering presumptions is no longer relevant to the program's operation under the new race- and sex-neutral eligibility standards. Recipients should continue to report total ACDBE and DBE participation once counting resumes. The Department will issue further instructions on reporting mechanics going forward.

8. Goal Setting and Counting (§§ 26.45, 26.51, 26.55, and Part 23 Equivalents)

Comments

Recipients and contractors expressed frustration with the prohibition on setting contract goals and counting participation during the reevaluation period (§§ 26.51(h) and 26.55(i)). Commenters stated that this ''pause'' has led prime contractors to drop DBE subcontractors from teams.

Commenters questioned the continued relevance of disparity studies given the removal of race- and sex-based presumptions. One commenter argued that the IFR fundamentally alters the legal foundation for disparity studies, which are designed to measure discrimination against specific groups, not generic ''social disadvantage.''

Consultants and recipients noted that the new requirement in § 26.45(c)(3) for disparity studies to provide a ''detailed capacity analysis'' will increase costs and necessitate new economic modeling that many current studies do not include. Some stakeholders asked if existing disparity studies are now invalid and if recipients must commission new ''capacity analyses'' before resuming the program. Others asked for clarification on the requirement for ''detailed capacity analysis'' in disparity studies, noting that existing studies may not meet this undefined standard.

DOT Response

The Department understands that the transition to a new certification standard can be difficult for participants, but given the constitutional imperatives involved, we see no alternative to pausing the goal system until only firms that meet the new requirements can participate.

The Department disagrees that the IFR allows consideration of so-called systemic discrimination. The Department emphasizes that recipients must establish eligibility through individualized evidence of discrimination that caused actual economic harm. Recipients are not eligible if they use goals/disparity studies that are based on presumptions regarding race or sex or are otherwise based on generalized assertions of systemic discrimination.

Because the regulation now requires a strictly race- and sex-neutral approach to goal setting, the sole purpose of disparity studies in the DBE and ACDBE programs under this final rule is to ensure that recipients' goals properly account for availability and utilization of small businesses and the capacity of small, disadvantaged businesses relative to non-small businesses or small, non-disadvantaged businesses.

9. Consultation Requirements (§§ 26.45(g)(1) and 23.43))

Comments

The IFR amends § 26.45(g)(1) to remove the specific requirement to consult with ''minority and women's contractor groups.'' Policy centers and advocacy groups criticized this change, arguing that it silences the very communities the program is intended to help and obscures the reality of discrimination in the marketplace.

DOT Response

The Department removed specific references to minority and women's groups to align the regulations with the DBE-neutral and DBE-conscious framework of the IFR. However, recipients must still consult with organizations that have information concerning the availability of disadvantaged and non-disadvantaged businesses. This includes general contractor groups, community organizations, and other individuals and groups. Nothing in the rule prohibits recipients from consulting with organizations that serve disadvantaged businesses, including those serving particular constituencies, provided the overall consultation is comprehensive and focuses on obtaining relevant evidence regarding the availability of eligible firms. Indeed, the Department encourages such broad-based consultation.

10. Social and Economic Disadvantage Standards (§ 26.67)

Numerous commenters expressed concern regarding the requirement for all firms to submit a PN. Small business owners argued that drafting a PN proving systemic barriers and economic harm is burdensome, subjective, and requires legal or professional assistance they cannot afford. One commenter noted that the compliance costs disproportionately impact the very firms the program is meant to help. Certifying agencies commented that they lack objective criteria or a ''rubric'' to evaluate these narratives, fearing that without standardized guidance, determinations will be inconsistent across States.

''Without Regard to Race or Sex''

Comments

Stakeholders urgently sought clarification on the IFR's instruction that determinations must be made ''without regard to race or sex.'' Many commenters, including small businesses, advocacy groups, recipients, and trade associations, argued that this phrasing suggests owners cannot mention race or sex even as a factual cause of their individual disadvantage. An advocacy group argued that this prohibition conflicts with the very court decision, *Mid-America Milling,* the Department used to justify the rule. It contended that *Mid-America Milling* struck down the presumption of disadvantage based on group membership, but that the court did not rule that race or sex cannot be factual causes of disadvantage in individual cases. Moreover, a transit authority noted that *SFFA,* which forms an important basis for the Department's rationale for the IFR, explicitly stated that ''how race affected [an applicant's] life, be it through discrimination, inspiration, or otherwise'' fully complies with the equal protection requirements of the Constitution. Many of these commenters recommended that the ''without any consideration of race or sex'' language be replaced by language saying that individual determinations would be made ''without any presumption of disadvantage based on race or sex.''

Commenters opposing the IFR provision said that it was illogical for a PN being able to relate adverse personal experiences related to national origin, religion, language, sexual orientation, color, political affiliation, and a myriad of other possible sources of disadvantage while prohibiting an owner from mentioning a personal experience of explicit race or sex discrimination. One commenter asserted the rule's restriction on mentioning race and sex in PNs acted as a ''gag order'' forcing owners to ignore the reality of their experiences.

Many commenters asserted that binding certifiers to the specific nature of the discrimination experienced renders the ''individualized review'' impossible and effectively creates a ''presumption of non-disadvantage.'' Conversely, some commenters supported the strict removal of these factors, arguing that any consideration of race or sex violates the principle of colorblindness.

Other comments noted the IFR did not define what constituted ''race'' for purposes of the rule. A Native American commenter argued that American Indians were not a race, but rather a people identified by history and tribal identity. Other commenters pointed out that Hispanic Americans, while a group that was presumed disadvantaged under the pre-October 3 rule, have never been defined as a race. Some commenters asked whether the prohibition on considering ''sex'' would prevent owners from discussing discrimination based on sexual orientation or gender identity in their narratives.

DOT Response

The Department is amending § 26.67(a)(1) to replace the term ''systemic barriers'' with the term ''social barriers'' This change ensures the regulatory text remains consistent with the specific, individual experiences required in a PN.

The Department received comments expressing uncertainty regarding the meaning of the phrase ''without regard to race or sex'' in § 26.67. Several commenters interpreted this language as prohibiting applicants from discussing race- and sex-based discrimination in a PN or preventing certifiers from considering such experiences as part of an individualized determination. That was not the Department's intent. The Department intended the IFR to eliminate race- and sex-based presumptions of social and economic disadvantage, not to prohibit consideration of an applicant's individual experiences. Accordingly, the Department is revising the regulatory text to clarify that individualized determinations must be made without reliance on race- or sex-based presumptions of disadvantage. This clarification does not alter the substantive framework established by the IFR. Rather, it confirms that eligibility determinations must be based on individualized evidence concerning the applicant's own experiences and circumstances, including evidence of discrimination, social barriers, denied opportunities, or other factors that the applicant contends contributed to social and economic disadvantage. This ensures the PN establishes disadvantage through ''individualized proof regarding specific instances'' as required by § 26.67, rather than relying on unconstitutional group-based classifications. This clarification is also consistent with DOT Order 2100.9, *Ensuring Nondiscrimination and Equal Opportunity in Department of Transportation Policies, Programs, and Activities* (November 10, 2025), which requires that program eligibility determinations be based on individualized evidence rather than presumptions or classifications based on race or sex. The relevant inquiry is thus whether the applicant has established disadvantage through individualized evidence of discrimination that caused actual economic harm rather than through any presumption arising from membership in a particular group.

In addition, the Department recognizes that the term ''Hispanic'' does not denote a ''race.'' Individuals who may fit within the broad scope of that term may well encounter acts of discrimination based on such factors as language, accent, color, presumed or actual national origin, presumed legal status, etc. Such incidents could be cited in an owner's PN.

The ''Similarly Situated'' Standard

Comments

Stakeholders heavily criticized the requirement in § 26.67(a)(2) that a PN must establish economic disadvantage ''relative to similarly situated non-disadvantaged individuals.''

Several commenters argued that this standard is ''illogical and confusing'' because a disadvantaged individual is, by definition, not similarly situated to a non-disadvantaged individual. They asserted that if two individuals were truly similarly situated, neither would be disadvantaged, rendering the comparison impossible. Commenters also questioned why business owners must compare themselves to ''individuals'' rather than comparing their businesses to other businesses, calling this a ''fatal flaw'' in the context of commercial contracting. Commenters also asserted that owners lack access to the confidential financial data of competitors required to prove that a peer received more favorable terms, making the standard practically impossible to satisfy.

DOT Response

To address commenter concerns that the ''similarly situated'' standard is ''illogical'' or ''impossible'' to meet without access to proprietary data, the Department is replacing this term with ''non-disadvantaged individuals with comparable qualifications.'' This refinement clarifies that the evidentiary standard focuses on comparing the owner's professional credentials and work history (such as comparing two engineers who each hold a bachelor's degree in engineering, and certification in the same or similar North American Industry Classification System (NAICS) codes and similar experience in the field), rather than current financial outcomes.

With the removal of group-based presumptions, the terms ''disadvantaged'' and ''non-disadvantaged'' are no longer tied to specific group membership (racial, ethnic, or sex classifications). Any individual could be considered ''non-disadvantaged,'' just as any individual could potentially demonstrate ''disadvantage'' through an individualized showing.

The Department disagrees with commenters who characterize the ''similarly situated'' requirement as ''illogical.'' Rather, in a narrative context, the comparison is practical and makes sense. When an owner describes how a specific and identifiable attribute, characteristic, or personal circumstance negatively affected their business experience, the ''non-disadvantaged person with comparable qualifications'' is simply a peer who lacks that specific barrier. The rule essentially asks the owner to demonstrate: ''Because of [Attribute/Characteristic/Reason], I have faced barriers in my professional field that a peer with the comparable qualifications—who does not have [Attribute/Characteristic/Reason]—did not face.''

The DBE program evaluates the actual economic harm faced by business owners by determining how these disadvantages limit their competitiveness within the free enterprise system. Although the ultimate impact is on the business, the disadvantage stems from the individual owner's experiences with discrimination, bias, or other barriers. The PN must, therefore, establish how the individual owner's economic trajectory (including their work history and advancement) has been hindered relative to a peer with comparable qualifications.

This rulemaking does not require owners to obtain confidential, private financial data of their competitors to prove that they received less favorable outcomes. The rule only requires a narrative of the owner's disadvantage, not a financial audit of a competitor. The Department ensures that owners can establish economic disadvantage through a preponderance of the evidence without seeking the private financial data of competitors.

''Economic Disadvantage in Fact'' Provision

Comments

One policy organization noted that the IFR appears to omit the former provision at § 26.67(c)(2), which previously allowed recipients to deny certification to an individual whose personal net worth (PNW) fell below the regulatory cap but who nonetheless was not ''economically disadvantaged in fact.'' The commenter argued that removing this provision eliminates a critical safeguard that allowed certifiers to prevent wealthy individuals from qualifying for the program merely by manipulating their assets to meet the technical PNW threshold. The commenter recommended reinstating this provision to ensure the program serves only those with genuine economic need.

DOT Response

The Department agrees with commenters who noted that the use of the economic disadvantage in fact requirement is important to include as a safeguard against the fraudulent use of the program. Requiring that firms demonstrate economic disadvantage in fact is consistent with the Department's effort to amend the DBE and ACDBE programs to ensure that participation in these programs remains limited to individuals that are in fact socially and economically disadvantaged. Therefore, the final rule amends the regulation to ensure that economic disadvantage in fact remains a standalone requirement as part of DBE and ACDBE certification.

Specific Group Considerations

The Department received specific comments regarding the eligibility and processing of distinct groups that have historically interacted with the DBE and ACDBE programs through unique statutory or regulatory provisions, including Alaska Native Corporations (ANCs), Tribes, Native Hawaiian Organizations (NHOs), Small Business Administration (SBA) 8(a) participants, and Service-Disabled Veteran-Owned Small Businesses (SDVOSBs).

Alaska Native Corporations, Indian Tribes, and Native Hawaiian Organizations

Comments

The Department received detailed comments from ANCs, Tribal representatives, and advocacy groups arguing that their eligibility for the DBE program is derived from specific statutory mandates that are legally distinct from the race- and sex-based presumptions addressed in the IFR. One commenter noted that ANC eligibility is based on 43 U.S.C. 1626(e)(4)(C), which provides that ANCs and their subsidiaries are ''deemed'' to be socially and economically disadvantaged for purposes of Federal law.

Commenters asserted that this eligibility is a ''political classification'' based on the government-to-government relationship between the United States and sovereign Tribes, recognized in *Morton* v. *Mancari,*[10] rather than a racial classification subject to strict scrutiny. Consequently, these commenters argued that ANCs, as well as Tribally owned concerns and Native Hawaiian Organizations (NHO), should be exempt from the requirement to submit PNs. They requested immediate guidance confirming that these entities retain their certified status without undergoing the individualized narrative process required for other firms.

DOT Response

In order to maintain consistency with the SBA's treatment of Indian Tribes and NHOs legally recognized under Federal and State law, representatives of these firms are exempt from the reevaluation and narrative requirements. However, these firms and their representatives must comply with all other certification requirements (*e.g.,* business size, control, PNW) under § 26.63(c)(1). This is equally applicable to the ACDBE program, which follows the certification standards of § 26.63(c). See § 23.31(a). ANCs will continue to follow the § 26.63(c)(2) process for certification, which reflects their recognition as disadvantaged under the Alaska Native Claims Settlement Act.

The Department emphasizes that the process for Tribally owned concerns, NHO-owned, and ANC-owned firms is based on the fact that these businesses are owned by sovereign entities and not by individuals. Individuals who are Native American, Native Hawaiian, or Alaska Native and who are seeking ACDBE or DBE certification on behalf of their individually owned (not Tribally owned) business are required to submit a PN and must demonstrate both social and economic disadvantage.

[10] 417 U.S. 535 (1974).

SBA 8(a) Program Participants

Comments

Several commenters urged the Department to grant automatic reciprocity or a waiver of the PN requirement for firms currently certified under SBA's 8(a) Business Development Program (8(a)). Commenters noted that following the *Ultima Servs. Corp.* v. *U.S. Dep't of Agric.*[11] decision, the SBA already required SBA 8(a) participants to submit individual social disadvantage narratives.

These commenters argued that requiring these same firms to undergo a duplicative review by DOT recipients wastes administrative resources and imposes unnecessary burdens on small businesses that have already proven their disadvantage to a Federal agency. A commenter specifically recommended that the Department amend § 26.111 to extend DBE certification to SBA 8(a) firms automatically for the duration of their program term. Conversely, some commenters noted that the SBA's post-*Ultima* process allows owners to cite race as a contributing factor to their disadvantage and sought clarification on whether DOT would accept SBA-approved narratives given the IFR's ''without regard to race or sex'' language.

DOT Response

The Department declines to adopt automatic reciprocity for SBA 8(a) certified firms. Although the SBA 8(a) program and the DBE program share similar goals, they operate under different statutory authorities and regulatory standards.

The Department's IFR requires a PN to establish social and economic disadvantage based on ''individualized proof regarding specific instances of economic hardship, social barriers, and denied opportunities.'' § 26.67(a)(1). Because the SBA's evidentiary standards and certification procedures have diverged from the Department's requirements under the IFR, UCPs must evaluate whether a firm meets the specific standards of the DBE program. But the Department acknowledges that financial documentation or other evidence prepared for SBA certification may still be relevant; owners are encouraged to use such existing documentation to support their DBE or ACDBE reevaluation, provided it addresses the specific criteria in § 26.67.

[11] 683 F. Supp. 3d 745 (E.D. Tenn. 2023).

Service-Disabled Veteran-Owned Small Businesses

Comments

Multiple commenters advocated for the inclusion of SDVOSBs in the DBE program or suggested replacing the race-based presumptions with preferences for veterans. Commenters argued that veterans face significant employment and business barriers due to their service and disability, which constitutes a race-neutral form of social disadvantage. One commenter noted that they faced ''secondary'' disadvantage status behind race-based groups and that the elimination of those presumptions creates an opportunity to prioritize veterans.

DOT Response

The statutory definition of ''socially and economically disadvantaged individuals'' authorized by Congress for the DBE program does not automatically include veterans as a presumptive group. The IFR eliminates unconstitutional race- and sex-based presumptions and requires all applicants to establish social and economic disadvantage through individualized evidence. However, the Department emphasizes that under the new case-by-case standard in § 26.67, any individual—including a veteran—may qualify as socially and economically disadvantaged if the individual can demonstrate by a preponderance of the evidence, that he or she has faced chronic and substantial social disadvantage that has impeded business success. A service-connected disability could be part of the factual basis for such a claim of disadvantage, provided the owner meets the PNW cap and other eligibility criteria.

11. Privacy and Confidentiality of Information (§§ 26.109(a) and (b), 26.68(e))

The Department received comments regarding the protection of sensitive personal and financial information required under the new individualized certification standards, as well as conflicting comments advocating for the public disclosure of such information to ensure program integrity.

Comments

Several commenters expressed concern that the IFR's PN and PNW statement requirements significantly increase the volume of sensitive data held by UCPs, raising the risk of unauthorized disclosure. A trade association representing public transportation agencies noted that the influx of personally identifiable information (PII) creates potential disclosure risks under various State and Federal open records laws. This association urged the Department to clarify that UCPs must continue to safeguard PII in accordance with applicable laws to prevent the exposure of owners' private financial and personal histories.

Other commenters echoed this concern, with one accounting firm requesting explicit assurance from the Department that information submitted for reevaluation would be used solely for assessment purposes and treated as confidential. Another commenter described the requirement to divulge personal histories of discrimination as an ''invasion of privacy.'' Similarly, a supplier argued that requiring business owners to describe personal experiences of bias in writing raises serious privacy concerns and risks ''re-traumatizing'' individuals who must relive harmful experiences to justify their eligibility. This commenter warned that without clear confidentiality standards, the process might discourage qualified owners from participating.

Conversely, the Department received comments advocating for the public disclosure of certification documents to deter fraud. A public policy organization argued that the current lack of public transparency in the certification process allows for potential abuse. This commenter recommended that the Department amend the rule to require UCPs to post approved PNs and PNW documents publicly on their websites with sensitive identifiers redacted. They asserted that such transparency would allow competing contractors to review and challenge questionable certifications, thereby ensuring that only genuinely disadvantaged businesses receive DBE status. Another commenter supported this view, stating that the ability of other contractors to challenge a firm's status is the clearest way to keep the process honest, and objected to shielding this data from public review.

DOT Response

The Department acknowledges the privacy concerns raised by stakeholders regarding the submission of PNs and financial documentation. The IFR, while changing DBE eligibility standards, does not alter the Department's longstanding commitment to protecting PII. The Department reaffirms that UCPs are required to protect the confidentiality of personal and financial information permitted by Federal, State, and local law, consistent with the existing provisions of §§ 26.83(g) and 26.109(a)(2). Specifically, § 26.109(a)(2) provides that notwithstanding any provision of State or Federal law (*e.g.,* Freedom of Information Act (FOIA), 5 U.S.C. 522), certifiers must not release any information that may reasonably be construed as confidential business information without the submitter's written consent. This includes applications for certification and supporting information submitted in a PN as confidential information protected by this provision. To assist UCPs in maintaining compliance with Federal confidentiality standards, the Department may draft specific guidance regarding ensuring privacy of narrative information in the future.

Regarding the requests to mandate public posting of owner narratives and financial statements, the Department declines to adopt this recommendation. In addition to the part 26 provisions cited above, the Privacy Act and the FOIA generally protect personal financial information and personnel-like files from mandatory public disclosure to prevent unwarranted invasions of personal privacy. Publishing redacted PNW statements and PNs of discrimination would likely deter legitimate participation in the program due to privacy concerns, as noted by other commenters. The Department relies on the expertise of UCP certifiers and established oversight mechanisms, rather than public crowdsourcing, to verify eligibility, prevent fraud, and ensure program integrity.

12. The Reevaluation Process (§§ 26.111 and 23.81)

Comments

Commenters raised significant practical concerns regarding the reevaluation process. Stakeholders expressed deep concern regarding the requirement in § 26.111(c) for UCPs to complete reevaluations ''as quickly as practicable'' without a defined deadline. Commenters argued that this creates an indefinite period of uncertainty where firms that meet the revised eligibility requirements are technically certified but practically ineligible for goal credit, since the recipients' programs would not yet be allowed to operate or utilize DBE goals. Some objected to the provision stating that the decertification procedures of § 26.87 do not apply. They argued this strips firms of due process rights, such as notice and administrative hearing, before losing a property interest in their certification.

Commenters noted confusion regarding firms certified in multiple States. The FAQ guidance suggesting firms must go through the reevaluation process in their Jurisdiction of Original

Certification (JOC) and then reapply for certification was described as burdensome and contrary to the streamlining goals of the 2024 final rule. Comments suggested that once a firm was recertified in its JOC, all that the firm must do is notify other UCPs of that action to be recertified there. A frequent request from commenters in many categories was for the Department to provide standardized templates and checklists for the PN and the PNW statement. Commenters were concerned that without a DOT template, 53 different UCPs will develop 53 different standards, leading to chaos for interstate firms and inconsistent determinations.

State agencies and UCPs commented that they lack the staffing and resources to process thousands of PNs and PNW statements simultaneously. One recipient projected that while larger agencies might complete reviews in 60–90 days, smaller UCP members could require 6–12 months, creating a fragmented ''mosaic'' of compliance where eligibility depends on geography rather than merit. One commenter noted that without a deadline, some jurisdictions might delay reevaluation indefinitely, effectively ending the program in those areas. Similarly, a trade association expressed the concern that absent a deadline for the submission of PNs, current DBE firms that do not submit PNs could hold up the restart of the program for those who have already submitted their documentation. Commenters suggested that the Department should have allowed for a phased implementation or a ''grace period'' where existing certifications remained valid while the new standards were applied to applicants.

DOT Response

The Department agrees with commenters that an open-ended reevaluation process is untenable and that a definitive deadline is essential to prevent administrative paralysis and achieve programmatic finality. To monitor actively the timely completion of these reevaluations, to ensure uniformity of practice, and to reactivate the goal setting process, the Department is codifying specific deadlines and reporting requirements under 49 CFR 26.111(c), as well as establishing a clear close-out mechanism for non-responsive firms under § 26.111(d).

UCPs must complete their reevaluations no later than December 24, 2026. The Department believes that December 24, 2026 is sufficient time for UCPs to complete the reevaluation process, which has been in place since October 3, 2025. A one-time three-month extension may be granted by the Department for special circumstances, and only if requested in advance of the reevaluation deadline. To apply for this extension, the UCP must email the Department's Office of Small and Disadvantaged Business Utilization (OSDBU) at *DBEreevaluations@dot.gov.*

After completing a reevaluation, each UCP must promptly email OSDBU at *DBEreevaluations@dot.gov* and provide the following data:

1. *Firms Maintaining Certification:* The UCP must identify the total number of DBEs that remain certified following the reevaluation. In addition, the notice must include a declaration that the UCP serves as the JOC for all retained DBEs;

2. *Firms Removed for Ineligibility:* The UCP must state the total number of firms disqualified and removed from the program because the owner failed to meet the required disadvantage criteria; and

3. *Non-Responsive Firms:* The UCP must report the total number of DBE firms that were not processed during the reevaluation due to the owner's failure to respond to the notice requiring the submission of a PN with a PNW statement.

The Department reserves the right to review the UCP's reevaluation process, including auditing any underlying documentation associated with a reported firm, at its discretion.

Finally, under the newly added § 26.111(d), UCPs will issue a final written notice of nonresponse to any DBE that fails to submit its documentation by March 24, 2027. These firms will be granted a final 90-day grace period to comply. If they fail to submit the required documentation within this 90-day window, they will be automatically disqualified. By codifying a 90-day grace period, paragraph (d) resolves the administrative paralysis identified by commenters and achieves three essential goals: due process, administrative finality, and program resumption. First, it ensures due process by providing under-resourced small businesses with a definitive, clearly communicated window to submit their complex documentation, protecting vulnerable firms from sudden, unexpected removal. Second, it guarantees administrative finality by giving UCPs a uniform mechanism to remove non-responsive firms automatically without enduring protracted administrative proceedings. Third, it provides timelines to ensure that the DBE and ACDBE programs fully resume in compliance with the revised certification standards.

The reevaluation process does not involve a full-scale recertification of current DBE firms. Under the rule, certified firms must establish their owners' social and economic disadvantage through the PN process. If an owner makes this showing successfully, it will be retained in the certifier's program and in its directory without change. If a firm cannot do so successfully, it will be disqualified under the revised program.

Such a removal is not a decertification. A decertification involves a finding that one of the elements of eligibility (*e.g.,* business size, ownership, control) that a firm demonstrated to obtain certification in the first place was incorrect or overtaken by events, or that the firm failed to cooperate with the certification process (*e.g.,* failed to submit a timely annual Declaration of Eligibility). A disqualification under § 26.111 is different. It reflects that a firm failed to demonstrate that it met a new requirement established by this rule, the same requirement that first-time applicant now must meet. Consequently, the burden of proof and administrative due process provisions associated with decertifications (§§ 26.61 and 26.87) do not apply.

The Department understands that the terminology in § 26.111 created unintended ambiguity regarding the burden of proof applicable to reevaluations and enforcement-based removals. In order to cure the confusion regarding the burden of proof, the Department will amend §§ 26.111(a)(4) and 23.81(a)(4) by replacing the term ''decertified'' with ''disqualified'' and the term ''recertified'' with ''reevaluated'' thereby further clarifying that § 26.87 procedures do not apply.

The Department also adds language to §§ 26.111(d) and 23.81(d) to clarify that UCPs must follow due process protections outlined in § 26.86(a) for disqualification decisions. Any resulting disqualification letter must specifically detail the reasons for the decision and include verbatim appeal instructions exactly as they appear on the Department's web page.

The Department agrees with the commenters that requiring firms to ''reapply'' in other States after reevaluation by their JOC would be unnecessarily burdensome and contrary to the streamlining goals of the interstate certification process. Once the JOC reevaluates a firm under the updated standards, other States should automatically accept that decision upon simple notification, such as a letter or a screenshot showing the firm's status in the JOC's updated DBE directory. The receiving UCP must use this documentation to record and track whether the out-of-State firm has been retained by its JOC. To prevent bureaucratic gridlock, no further requirements may be imposed by UCPs. If a firm does not seek to reaffirm its interstate certification in another State within one year of the date it was reevaluated by its JOC, the firm must follow the regular § 26.85 interstate certification procedure as if it were seeking interstate certification for the first time in that State.

Consistent with the objective of minimizing bureaucratic delays, the Department notes that during the reevaluation process, UCPs are not permitted to refuse Uniform Certification Applications (UCA) from firms seeking certification as a DBE or ACDBE, or pause applications that were already in process. Nothing contained in the IFR or the final rule provides UCP certifiers with the authority to deny the acceptance of UCAs during the reevaluation process. Small businesses that were not certified previously who meet the new disadvantaged criteria should not be locked out of a program designed to assist them. Any pause or refusal in processing UCAs prevents new competition and limits the newly reconstituted pool of DBEs that prime contractors need to meet future goals. The Department intends to keep the regulatory intent of the program alive, and therefore, new applications should be entertained by the UCP.

Certifiers are expected to process applications using the new individualized criteria. New firms will be subject to the same requirements as those presently in the program. They must submit a PN and a current PNW statement. They must also complete the revised UCA and submit all other required program documentation. The Department maintains that a ''grace period'' allowing continued use of the race- and sex-based presumptions would be legally indefensible given the Department's determination that those presumptions are unconstitutional. We agree that consistency among UCPs with respect to firms certified in multiple States is vital, but it does not believe that exact templates are appropriate for the PN, as the requirement mandates an individualized presentation of unique facts and circumstances that may not fit a rigid ''fill-in-the-blank'' format. However, the Department will consider issuing guidance materials to assist owners and UCPs in understanding the evidentiary standards required. UCPs are strongly encouraged to use these Department-issued resources to ensure a uniform standard of review and uniformity of practice.

13. Regulatory Impact Analysis and Paperwork Reduction Act

Comments

The Department received detailed comments regarding the economic analysis underlying the IFR, specifically challenging the estimated costs, the calculation of paperwork burdens, and the consideration of regulatory alternatives.

Several commenters challenged the Department's determination that the IFR is not a ''major rule'' under the CRA. These commenters asserted that the rule would result in an annual effect on the economy of $100 million or more. One trade association argued that the Department's own Regulatory Impact Analysis (RIA) estimates compliance costs at approximately $91.9 million, and when combined with the unquantified costs of market disruption, delayed projects, and lost business opportunities, the total impact clearly exceeds the $100 million threshold.

Commenters also criticized the Department's cost-benefit analysis as ''circular and arbitrary,'' arguing that the Department failed to quantify the benefits of the rule or explain why quantification was impossible. They contended that asserting ''constitutional compliance'' as a benefit that automatically outweighs nearly $100 million in direct costs lacks evidentiary support and violates the principles of sound regulatory analysis under Executive Order 12866.

Commenters specifically attacked the methodology used to estimate the information collection burden under the PRA. One commenter noted that the Department's estimate of 820,000 burden hours was based on ''the average of three stakeholder responses,'' arguing that a sample size of three is statistically invalid for a population of over 40,000 firms. Small business owners stated that the Department underestimated the time required to compile a PN and supporting documentation, with some estimating it would take significantly longer than the Department's projection, forcing them to hire outside consultants. State agencies (UCPs) also commented that the IFR failed to account for the administrative cost to States for hiring additional staff or contractors to process the sudden influx of reevaluation submissions.

DOT Response

Several commenters challenged the cost-benefit analysis underlying the IFR, asserting that the Department failed to quantify benefits or justify compliance costs. The Department has reviewed these comments and affirms that the IFR's economic analysis was sound at the time of publication and remains valid. The cost estimates are based on the best available data, including Bureau of Labor Statistics (BLS) wage rate information and estimates derived from stakeholder input consistent with standard Paperwork Reduction Act (PRA) methodology as outlined in Section H.

The compliance costs identified in the IFR's approximately $95 million [12] in one-time transitional costs—reflect the burden of transitioning from the prior presumption-based system to an individualized determination system. Those costs are accrued upon the IFR's effective date and are attributable to the IFR, not this final rule. This final rule imposes no additional compliance obligations and therefore has no independent economic impact that would qualify it as a major rule.

Regarding the PRA burden estimates, the Department relied on the best available data, given the need for immediate action. The reevaluation process is a one-time event for existing firms, not a recurring annual cost at this magnitude. The Department acknowledges that some firms may choose to hire consultants to assist with the PN but emphasizes that the PN is a statement of the owner's own experiences, not a technical or legally complex document to be written by consultants or legal experts. The Department also points out that some DBE applicants already retain consultants to assist with their applications, further reducing any marginal cost of consultants to comply with this rule. The Department will monitor the actual burden during the implementation phase and adjust future Information Collection Requests (ICR) as necessary.

14. Alternatives Considered

Numerous commenters suggested that the Department should have considered less disruptive alternatives to the immediate elimination of presumptions.

[12] The aggregate economic impact of this rulemaking—encompassing both the interim final rule and this final rule—consists of approximately $95 million in one-time transitional costs, primarily reflecting certification narrative burdens on DBE/ACDBE firms ($91.9 million) and UCP reevaluation costs ($3.4 million), plus recurring annualized costs of approximately $1.8 million associated with ongoing reporting and program administration. These quantified costs are more than offset by the unquantifiable benefits of constitutional compliance, including elimination of ongoing litigation risk, restoration of equal protection principles in federally assisted contracting, and improved program integrity through individualized determinations of disadvantage.

Comments

Many stakeholders recommended that the Department transition the DBE program to a race-neutral Small Business Enterprise (SBE) model, similar to the existing SBE element in § 26.39, which would eliminate the need for complex social disadvantage narratives while still aiding small firms. One commenter proposed transitioning to a ''microbusiness'' participation requirement defined by employee count and gross receipts. Several commenters argued the Department should have allowed existing certifications to remain valid until their natural expiration date, applying the new standards only to applicants to avoid market shock.

DOT Response

The Department considered these alternatives but determined that they would not fulfill the statutory and constitutional mandates. The statutes authorizing the DBE and ACDBE programs (*e.g.,* the Infrastructure Investment and Jobs Act) specifically require the Department to assist ''socially and economically disadvantaged individuals.'' Although the Department encourages SBE participation, converting the entire program to a generic SBE model would ignore the statutory requirement to address social disadvantage, which persists independently of business size. The IFR preserves the statutory focus on social disadvantage but requires individualized proof rather than group presumptions. The Department rejected the option to ''grandfather'' existing certifications because doing so would allow the Government to continue utilizing race- and sex-based presumptions that it has determined are unconstitutional. The Department cannot knowingly perpetuate a constitutional violation for the sake of administrative convenience. Immediate reevaluation was necessary to cure the constitutional defect.

15. Airport Concession DBE (ACDBE) Specific Issues (Part 23)

Comments

ACDBE stakeholders, including airports, trade associations, and law firms representing concessionaires, raised concerns about the long-term nature of concession leases. They noted that unlike construction contracts, concession agreements often span many years, and abrupt disqualifications could place concessionaires in breach of contract regarding ACDBE participation requirements.

DOT Response

The Department recognizes the unique structure of airport concessions. Like part 26, existing concession agreements are not required to be modified by the IFR. However, participation by ACDBEs that are disqualified cannot be counted toward future ACDBE goals. The Department advises airport sponsors to work with concessionaires to navigate the reevaluation period without penalizing firms for regulatory changes outside their control, provided the concessionaire acts in good faith.

Separately, the Department is making a technical correction to change the heading of § 23.35 back to ''Personal net worth,'' which was retitled in error.

Conclusion

After careful consideration of the public comments received in response to the IFR, the Department affirms that the immediate removal of race- and sex-based presumptions from the DBE and ACDBE programs is necessary to ensure these programs comply with the equal protection guarantee of the Constitution. The Department acknowledges the significant concerns raised by stakeholders regarding the administrative burden of the reevaluation process, the temporary suspension of contract goals, and the potential for market disruption affecting small businesses. However, the Department concludes that these transitional challenges do not outweigh the Government's overriding obligation to eliminate unconstitutional racial and sex classifications. The regulatory amendments implemented by the IFR, as modified in this issuance, remain in effect with the minor modifications described above.

IV. Regulatory Analyses and Notices

A. Executive Order 12866, 13563, and DOT Policies and Procedures

This final rule is a significant regulatory action under Executive Order 12866, *Regulatory Planning and Review,* as supplemented by Executive Order 13563, *Improving Regulation and Regulatory Review.* Accordingly, the Office of Management and Budget (OMB) has reviewed it under that Executive Order.

This final rule confirms the regulatory amendments implemented in the IFR with only minor modifications, such as clarifying IFR concepts like ''similarly situated,'' ''economically disadvantaged in fact,'' and deadlines for the reevaluation process. This rule is needed because the Department's prior DBE regulations, which presumed social and economic disadvantage based on race and sex, were determined to be unconstitutional, necessitating regulatory action to replace presumption-based eligibility with an individualized determination process.

The Department analyzed the IFR in a regulatory impact analysis. The Department's economic analysis for the IFR, available in the rulemaking docket (DOT–OST–2025–0897), analyzed the costs and benefits of transitioning from race- and sex-based presumptions to an individualized determination system. That analysis remains the operative economic assessment for the IFR. The Department received comments questioning specific methodological choices, including the sample size for burden hour estimates and the comparison with SBA 8(a) program burden calculations. After review, the Department concludes that its methodology is appropriate. The policy rationale articulated in the IFR—that constitutional compliance benefits outweigh transitional compliance costs—applies with equal force to this final rule, which merely confirms the IFR with clarifying amendments.

The IFR came into force immediately upon publication in 2025. Since then, recipients have already begun the reevaluation process and some firms have already submitted personal narratives for this purpose. Since the IFR is in effect, the appropriate baseline for the costs and benefits of this final rule is today's conditions, after the IFR has taken effect, rather than before it did. Since this final rule is no more than a clarification and response to comments of the IFR and therefore has no new economic impacts beyond those of the IFR, it has negligible economic impact on its own.

B. Executive Order 14192 (''Unleashing Prosperity Through Deregulation'')

The IFR and this final rule cumulatively will be considered one Executive Order 14192 deregulatory action because the unquantified benefits associated with constitutional compliance, elimination of ongoing litigation risk, restoration of equal protection principles in federally assisted contracting, and improved program integrity through individualized determinations of disadvantage outweigh the quantified costs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency must conduct and publish for public comment a regulatory flexibility analysis. Because the Department is not required to publish a proposed rulemaking for this action, an analysis under the RFA is not required.

D. Executive Order 13132 (''Federalism'')

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, *Federalism,* and the rule satisfies the requirements of the Executive Order. This final rule does not impose any requirement that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, (2) imposes substantial direct compliance costs on State and local governments, or (3) preempts State law.

E. Executive Order 13175 (''Consultation and Coordination With Indian Tribal Governments'')

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments.* Because this rulemaking does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with the base year of 1995). This rulemaking would not result in annual State expenditures exceeding the minimum threshold. The Department has determined that the requirements of the Title II of the Unfunded Mandates Reform Act of 1995 therefore do not apply to this rulemaking.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1D available at *https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts.*

Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). The purpose of this rulemaking is to amend the Department's DBE and ACDBE regulations. Section 9(f) of DOT Order 5610.1D states that a DOT Operating Administration can use the categorical exclusions developed by another Operating Administration. This action is covered by the categorical exclusion listed in FTA implementing procedures, ''[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . .'' 23 CFR 771.118(c)(4). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

H. Paperwork Reduction Act

The PRA of 1995 (Pub. L. 104–13, 49 U.S.C. 3501, 3507) requires Federal agencies to obtain approval from OMB before undertaking a new collection of information imposed on ten or more persons, or continuing a collection previously approved by OMB that is set to expire.

This rule contains one additional modification to an information collection requirement that was previously approved beyond the information collections identified in the IFR, which is the MAP–21 DBE data collection described below. The modifications to this collection are burden reductions compared to the MAP–21 previously approved DBE data collection and are parallel to the changes identified in the IFR for ACDBEs identified as ''ACDBE Annual Report of percentages of ACDBEs in various categories.'' The MAP–21 data collection does not impose any additional reporting burdens beyond those that existed prior to the IFR.

To ensure that the methodology for calculating cost burdens is consistent with the most recent information collections for the DBE and ACDBE programs, the Department is adjusting the cost burden information for the burdens identified in the IFR. The time burdens remain unchanged from the IFR. The Department is also modifying the time and cost estimate under another existing information collection, the Moving Ahead for Progress in the 21st Century Act (MAP–21) data collection for DBEs, given that it is a parallel requirement to the information collection entitled ''ACDBE Annual Report of percentages of ACDBEs in various categories.'' The revised methodology for adjusting the costs for the updated cost estimates in this final rule appears below, along with an updated chart and itemized list of collection instruments modified by the IFR and final rule.

The Department's cost estimates utilize NAICS codes for Business and Financial Operations Occupations (NAICS 13–0000) for firm owner burden calculations and Compliance Officer categories for recipient burden calculations. These occupational categories were selected because they most closely approximate the personnel who would undertake the compliance activities required by this rule—specifically, preparing personal narratives (firm owners) and reviewing certification applications (agency compliance staff). The BLS wage data and the 1.62 multiplier for fully loaded compensation rates are consistent with standard DOT practice for regulatory cost estimation based off of the Bureau of Labor Statistics' Employer Costs for Employee Compensation News Release.[13]

A recipient's employee's wage rate is based on BLS' estimate of a Transit Agency Compliance Officer at $31.31/hour.[14] The wage rate is multiplied by 1.62 to get a fully loaded wage rate (*i.e.,* compensation rate) of $50.72 to account for the cost of employer-provided benefits. The 1.62 loaded wage multiplier reflects the ratio of total compensation to wages and salaries for private industry workers, as reported in the Bureau of Labor Statistics' Employer Costs for Employee Compensation

[13] Bureau of Labor Statistics' Employer Costs for Employee Compensation News Release (March 20, 2026), available at *https://www.bls.gov/news.release/ecec.htm.*

[14] See Urban Transit Systems—May 2024 OEWS Industry-Specific Occupational Employment and Wage Estimates available at *https://www.bls.gov/oes/home.htm.*

(ECEC) survey. According to the most recent ECEC data, wages and salaries account for approximately 61.6 percent of total compensation, implying that total compensation is roughly 1.62 times the base wage. This multiplier accounts for employer-paid benefits including paid leave, supplemental pay, insurance, retirement and savings contributions, and legally required benefits such as Social Security, Medicare, and unemployment insurance.

The airport employee wage rate taken from BLS' estimate of a Compliance Officer in Air Transportation at $41.95/hour.[15] The wage rate is multiplied by 1.62 to get a fully loaded wage rate (compensation rate) of $67.95 to account for the cost of employer-provided benefits.

For socially and economically disadvantaged business owners (SEDO), this analysis uses a wage rate without additional benefits, as a SEDO would pay the benefits to themself.

OCCUPATIONAL EMPLOYMENT AND WAGES, MAY 2024, 13–0000 BUSINESS AND FINANCIAL OPERATIONS OCCUPATIONS (MAJOR GROUP), HOURLY WAGE, 50 PERCENT MEDIAN, $38.90 [16]

Requirement	Estimated cost burden ($ million)	Timing
Certification narratives (firms)	31.9	One-time.
UCP reevaluations	4.15	One-time.
Interstate certification	0.16	One-time.
Bidders' list reporting	1.62	Annual.
ACDBE annual report	0.70	Annual.
MAP–21 data report	0.70	Annual.
Setting overall goals	0.60	Every three years.

i. Reapplication for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage (Certification Narratives)

Respondents: Firms seeking to maintain their DBE/ACDBE certification.

Estimated Number of Respondents: 41,000.

Frequency: One time per respondent.

Total Annual Burden Hours: 820,000 (one-time burden).

Total Annual Cost Burden: $31.898,000 (one-time burden).

ii. UCP Reevaluation of Applications for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage

Respondents: UCPs.

Estimated Number of Respondents: 53.

Frequency: One-time reevaluation of 41,000 applicant firms.

Total Annual Burden Hours: 82,000 (one-time burden).

Total Annual Cost Burden: $4,149,040 (one-time cost).

iii. Maintaining and Updating Bidders' Lists

Respondents: Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) funding recipients.

Estimated Number of Respondents: 1,639.

Frequency: 3 times per year.

Total Annual Burden Hours: 29,502.

Total Annual Cost Burden: $1,619,156.

iv. ACDBE Annual Report of Percentages of ACDBEs in Various Categories

Respondents: State Departments of Transportation, District of Columbia, U.S. Virgin Islands, and Puerto Rico.

Estimated Number of Respondents: 53.

Frequency: Once per year.

Total Annual Burden Hours: 13,780.

Total Annual Cost Burden: $698,921.

v. Reporting Percentages of DBEs in Various Categories (MAP–21 Data Report)

Estimated Number of Respondents: 53.

Frequency: Once per year.

Total Annual Burden Hours: 13,780.

Total Annual Cost Burden: $698,921.

vi. Setting Overall Goals for DBE Participation in DOT-Assisted Contracts

Respondents: DOT funding recipients.

Estimated Number of Respondents: 1,639.

Frequency: Once every three years.

Total Annual Burden Hours: 10,927.

Total Annual Cost Burden: $599,987.

vii. Providing Evidence of Certification to an Additional State When a Firm Certified in Its Home State Applies to Another State for Certification (Interstate Certification)

Respondents: DBE/ACDBE firms applying for interstate certification.

Estimated Number of Respondents: 4,100.

Frequency: Once.

Total Annual Burden Hours: 4,100.

Total Annual Cost Burden: $159,490 (one-time cost).

Given that the modifications to the existing collection instruments as identified in the IFR cover modifications to existing information collections covered by OMB Control No. 2105–0585 and No. 2105–0586, the Department's information collection request submitted in conjunction with this final rule will cover the collection instruments from both information collections.

I. Congressional Review Act

The Department will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 49 CFR Parts 23 and 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Transportation.

[15] See Support Activities for Air Transportation—May 2024 OEWS Industry-Specific Occupational Employment and Wage Estimates available at *https://www.bls.gov/oes/home.htm.*

[16] See Occupational Employment and Wages, May 2024, 13–0000 Business and Financial Operations Occupations (Major Group), Hourly Wage, 50 percent Median, $38.90, available at *https://www.bls.gov/news.release/pdf/ocwage.pdf.*

Issued at Washington, DC.

Sean P. Duffy,

Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR parts 23 and 26 as follows:

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

■ 1. The authority for part 23 continues to read as follows:

Authority: 49 U.S.C. 47107 and 47113; 42 U.S.C. 2000d; 49 U.S.C. 322; E.O. 12138, 44 FR 29637, 3 CFR, 1979 Comp., p. 393.

■ 2. Amend § 23.3 by revising the definition of ''Socially and economically disadvantaged individual'' to read as follows:

§ 23.3 What do the terms used in this part mean?

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on a presumption based on race or sex. For that reason, all owners may qualify as socially and economically disadvantaged only if they meet the relevant criteria described in § 26.67 of this subtitle.

* * * * *

■ 3. Amend § 23.35 by revising the section heading to read as follows:

§ 23.35 Personal net worth.

■ 4. Amend § 23.81 by:

■ a. Adding a heading to paragraph (a);

■ b. Revising paragraph (a)(4);

■ c. Adding a heading to paragraph (b);

■ d. Revising paragraph (c); and

■ e. Adding paragraph (d).

The additions and revisions read as follows:

§ 23.81 ACDBE reevaluation process.

(a) *Reevaluation.* * * *

(4) Issue a written decision to each firm reevaluated pursuant to paragraph (a)(3) of this section, stating either that it has been retained as an ACDBE or has been disqualified from the ACDBE program. For disqualified firms, the decision must follow the requirements of § 26.86(a) of this subtitle.

(b) *Relationship to 49 CFR 26.87.* * * *

(c) *Deadline for completion.* Each UCP must complete the reevaluation process required under this section no later than December 24, 2026.

(1) *Extension.* A UCP may request a one-time extension of up to 90 days to complete the reevaluation process. The Office of Small and Disadvantaged Business Utilization (OSDBU) may grant this extension if it determines that good cause exists. UCPs must request extensions in advance of the reevaluation deadline.

(2) *Notice of completion.* Following the completion of the reevaluation process, each UCP must promptly email the Department's OSDBU at *DBEreevaluations@dot.gov.* Within three business days of emailing OSDBU, the UCP must send a copy of the email to all recipients of DOT funding (certifying and non-certifying agencies) within its jurisdiction. The email must provide the following data:

(i) *Total ACDBEs that remain certified.* The number of ACDBEs that remained certified following the reevaluation, including a certification that the UCP is the Jurisdiction of Original Certification (JOC) that certified the ACDBEs;

(ii) *Total ACDBEs disqualified.* The number of ACDBEs disqualified because an owner failed to meet the requirements of § 26.67 of this subtitle; and

(iii) *ACDBEs not processed due to nonresponse.* The number of ACDBEs that the UCP did not reevaluate because the owner failed to respond to the notice requiring the submission of Personal Narratives (PNs) and PNW statements.

(3) *Right of review.* The Department reserves the right to review the UCP's reevaluation process and the underlying documentation for any firm reported under paragraph (c)(2) of this section.

(d) *Nonresponsive firms.* Any ACDBE that fails to submit its owner's PN and PNW statement by the date the UCP completes its reevaluation process, as reported to the Department under paragraph (c)(2) of this section, must be issued a written notice of nonresponse by the UCP. The ACDBE has until March 24, 2027 to submit the PN and PNW statement to the UCP. If the UCP is granted an extension under paragraph (c)(1) of this section, the ACDBE must submit the owner's PN and PNW statement within 90 days of the UCP's extended deadline. Any firm that fails to submit the required documentation by the applicable deadline provided in this paragraph (d) will be automatically disqualified by the UCP without further administrative proceedings. The UCP need only issue a NOD, under § 26.68(a) of this subtitle, informing the firm that it has been disqualified for failure to meet the requirements of § 26.67 of this subtitle.

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

■ 5. The authority for part 26 continues to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.;* 49 U.S.C. 47113, 47123; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312, 1324 (23 U.S.C. 101 note); Sec. 150, Pub. L. 115–254, 132 Stat. 3215 (23 U.S.C. 101 note); Pub. L. 117–58, 135 Stat. 429 (23 U.S.C. 101 note).

■ 6. Amend § 26.5 by revising the definition of ''Socially and economically disadvantaged individual'' to read as follows:

§ 26.5 Definitions.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on a presumption based on race or sex. For that reason, all owners may qualify as socially and economically disadvantaged only if they meet the relevant criteria described in § 26.67.

* * * * *

■ 7. Amend § 26.63 by revising paragraph (c)(1) to read as follows:

§ 26.63 General certification rules.

* * * * *

(c) * * *

(1) *Indian Tribes and NHOs.* A firm that is owned by an Indian Tribe or Native Hawaiian organization (NHO), rather than by Indians or Native Hawaiians as individuals, is eligible if the firm and its representatives meet all other certification requirements in this part (*e.g.,* Size, Control, PNW). The officials that control these firms are not required to submit a § 26.67 personal narrative or participate in the § 26.111 mandatory reevaluation process.

* * * * *

■ 8. Revise § 26.67 to read as follows:

§ 26.67 Social and economic disadvantage.

(a) *Non-presumptive disadvantage.* Except as stated in § 26.63(c), all applicable owner(s) must demonstrate social and economic disadvantage (SED) affirmatively based on their own experiences and circumstances within American society, and without any presumptions based on race or sex.

(1) To satisfy the SED requirement and ensure all determinations of disadvantage are not based in whole or in part on a presumption of disadvantage based on race or sex, an owner must provide the certifier with a Personal Narrative (PN) that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, social barriers, or denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to non-disadvantaged individuals with comparable qualifications.

(2) The PN must identify at least one objective basis for the owner's disadvantaged status. The basis may be any identifiable status or condition. The PN must describe this objective distinguishing feature (ODF) in sufficient detail to justify the owner's conclusion that it prompted economic hardship, social barriers, or denied opportunities that the owner experienced.

(3) The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of the type and magnitude.

(4) The owner must attach to the PN a current PNW statement and any other financial information he considers relevant. If a certifier has a reasonable basis to believe that an owner who submits a PNW statement that is below the current PNW cap is not economically disadvantaged, the certifier may determine that the individual is not economically disadvantaged in fact under paragraph (b) of this section.

(b) *Economically disadvantaged in fact.* The certifier may conclude that a reasonable person would not consider the owner economically disadvantaged in fact (EDIF) compared to non-disadvantaged individuals with comparable qualifications.

(1) *Evidence to consider.* There are no limitations or exclusions. The certifier may consider individual's assets, income, access to credit and capital. (*e.g.,* disproportionately expensive homes; premium luxury personal property; high-value stocks or retirement funds; unearned assets; substantial trust holdings). This includes avoiding the free use of, or ready access to, the benefits of such wealth. The certifier need only demonstrate ''ballpark'' values based on available evidence.

Example 1 to paragraph (b)(1): An owner of an engineering firm has, or enjoys the benefits of, excessively high income of $X; an exorbitant home worth approximately $Y; substantial interests in outside businesses Q, R, and S; four rental properties of aggregate value $Z; holds a high-value retirement account worth approximately $V.

(2) [Reserved]

■ 9. Amend § 26.111 by:

■ a. Adding a heading to paragraph (a);

■ b. Revising paragraph (a)(4);

■ c. Adding a heading to paragraph (b);

■ d. Revising paragraph (c); and

■ e. Adding paragraph (d).

The additions and revisions read as follows:

§ 26.111 The DBE reevaluation process

(a) *Reevaluation.* * * *

(4) Issue a written decision to each firm reevaluated pursuant to paragraph (a)(3) of this section, stating either that it has been retained as a DBE or has been disqualified from the DBE program. For disqualified firms, the decision must follow the requirements of § 26.86(a).

(b) *Relationship to § 26.87.* * * *

(c) *Deadline for completion.* Each UCP must complete the reevaluation process required under this section no later than December 24, 2026.

(1) *Extension.* A UCP may request a one-time extension of up to 90 days to complete the reevaluation process. The Office of Small and Disadvantaged Business Utilization (OSDBU) may grant this extension if it determines that good cause exists. UCPs must request extensions in advance of the reevaluation deadline.

(2) *Notice of completion.* Following the completion of the reevaluation process, each UCP must promptly email the Department's OSDBU at *DBEreevaluations@dot.gov.* The email must clearly state that the reevaluation process is complete for all UCP members, not just a subset of certifiers. Within three business days of emailing OSDBU, the UCP must send a copy of the email to all recipients of DOT funding (certifying and non-certifying agencies) within its jurisdiction. The email must provide the following data:

(i) *Total DBEs that remain certified.* The number of DBEs that remained certified following the reevaluation, including a certification that the UCP is the Jurisdiction of Original Certification (JOC) that certified the DBEs;

(ii) *Total DBEs disqualified.* The number of DBEs disqualified because an owner failed to meet the requirements of § 26.67; and

(iii) *DBEs not processed due to nonresponse.* The number of DBEs that the UCP did not reevaluate because the owner failed to respond to the notice requiring the submission of Personal Narratives (PNs) and Personal Net Worth (PNW) statements.

(3) *Right of review.* The Department reserves the right to review the UCP's reevaluation process and the underlying documentation for any firm reported under paragraph (c)(2) of this section.

(d*) Non-responsive firms.* Any DBE that fails to submit its owner's PN and PNW statement by the date the UCP completes its reevaluation process, as reported to the Department under paragraph (c)(2) of this section, must be issued a written notice of nonresponse by the UCP. The DBE has until March 24, 2027 to submit the PN and PNW statement to the UCP. If the UCP is granted an extension under paragraph (c)(1) of this section, the DBE must submit the PN and PNW statement within 90 days of the UCP's extended deadline. Any firm that fails to submit the required documentation by the applicable deadline provided in this paragraph (d) will be automatically disqualified by the UCP without further administrative proceedings. The UCP need only issue a NOD, under § 26.86(a), informing the firm that it has been disqualified for failure to meet the requirements of § 26.67.

[FR Doc. 2026–19688 Filed 9–24–26; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 71

[Docket No. FWS–HQ–NWRS–2026–1223; FXRS12610900000–267–FF09R20000]

RIN 1018–BI71

National Wildlife Refuge System; 2026–2027 Station-Specific Hunting and Sport Fishing Regulations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correcting amendments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS or Service), are correcting a final rule that appeared in the **Federal Register** on September 1, 2026. The rule opened or expanded hunting opportunities on 111 field stations, including 107 units of the National Wildlife Refuges System (Refuge System or NWRS) and 4 units of the National Fish Hatchery System (Hatchery System or NFHS).