STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

October 3, 2025

To Our Valued DBE Partners,

The U.S. Department of Transportation ("USDOT") has issued new guidance and an Interim Final Rule (dated September 30, 2025) regarding the Disadvantaged Business Enterprise ("DBE") program. These changes stem from the recent court ruling that determined the use of race- and sex-based presumptions of disadvantage for determining DBE eligibility do not comply with constitutional requirements.

The Interim Final Rule goes into effect immediately upon publication in the Federal Register (October 3, 2025). While there is a 30-day public comment period, USDOT determined that the unconstitutionality of the prior framework justified immediate implementation.

Key Points of the Rule

- Loss of Current Certification: Every firm currently certified as a DBE will lose its certification and must undergo reevaluation.
- New Requirements: Firms will be required to submit updated documentation and personal narratives to demonstrate eligibility for certification as a DBE.
- Agency Goals: Agencies, including DelDOT, must revise their DBE goals in alignment with the new eligibility standards.

What Is Not Affected

Importantly, it does not appear that existing contracts will be impacted. The guidance does not require agencies to recompete or reopen current awards. Instead, the focus is on recertification moving forward and the resetting of future goals. DelDOT is working with USDOT to confirm this understanding.

We understand how unsettling this news is, particularly for firms that have invested years of dedication and hard work into building their businesses. Please know, DelDOT is reviewing the guidance carefully and working with federal partners to confirm and clarify all details. We are also coordinating with other states to determine any collective next steps that can be taken.

We are committed to keeping you informed with timely updates as the process unfolds. Additionally, we will provide resources and support to help you navigate the recertification process successfully. We look forward to connecting with many of you at our DBE Networking Event scheduled for Thursday, October 9th.

If you have any questions, please reach out to our DBE Office at DOT.DelawareDBE@delaware.gov.

Sincerely,

Shanté A. Hastings, P.E.
Cabinet Secretary

SH/lc
Attachment

U.S. Department of Transportation
Office of the Secretary of Transportation

Office of Civil Rights

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

September 30, 2025

This guidance provides information about important changes that the U.S. Department of Transportation ("Department" or "DOT") is requiring recipients of financial assistance from the Department to make with respect to the Disadvantaged Business Enterprise ("DBE") and the Airport Concession Disadvantaged Business Enterprise ("ACDBE") programs.

Background

Recipients of highway, transit, and airport funding distributed by DOT are subject to the requirements of the DBE program, under which they must set goals for participation by small businesses owned and controlled by "socially and economically disadvantaged" individuals.[1] Recipients of airport funding are also subject to the requirements of the ACDBE program, which requires them to set similar goals with respect to airport concessionaries.[2]

Unfortunately, not all individuals have been treated equally under this program. Instead, Congress has mandated that DOT treat certain individuals—women and members of certain racial and ethnic groups—as "presumed" to be disadvantaged.[3] Other individuals do not benefit from that presumption. This means that two similarly situated small business owners may face different standards for entering the program, based solely on their race, ethnicity, or sex.

On September 23, 2024, the U.S. District Court for the Eastern District of Kentucky determined that the DBE program's use of race- and sex-based presumptions likely does not comply with the Constitution's promise of equal protection under the law.[4] Accordingly, the Court issued a

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[1] *See* Infrastructure Investment and Jobs Act ("IIJA") § 11101(e), Pub. L. No. 117-58 (2021) (reauthorizing DBE program with respect to highway and transit funding); 49 U.S.C. § 47113(b) (DBE program for airport funding); 49 CFR part 26 (DOT implementing regulations).

[2] *See* 49 U.S.C. § 47107(e); 49 CFR part 23.

[3] Congress has provided that: (1) "women shall be presumed to be socially and economically disadvantaged individuals"; and (2) the term "socially and economically disadvantaged individuals" should otherwise be given the meaning given by section 8(d) of the Small Business Act and its implementing regulations. *See* IIJA § 11101(e)(2)(B); 49 U.S.C. §§ 47107(e)(1), 47113(a)(2). Section 8(d) of the Small Business Act and its implementing regulations create a rebuttable presumption that "Black Americans," "Hispanic Americans," "Native Americans," "Asian Pacific Americans," and "Subcontinent Asian Americans" are disadvantaged. *See* 15 U.S.C. § 637(d)(3); 13 CFR 124.103(b)(1).

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

preliminary injunction that prohibits DOT from mandating the use of race- and sex-based presumptions with respect to contracts on which the two plaintiff entities bid.

In accordance with the directives of the President and the Attorney General, DOT and the Department of Justice ("DOJ") have evaluated the DBE and ACDBE programs. DOT and DOJ, consistent with the ruling of the District Court, have determined that the DBE program's race- and sex-based presumptions do not comply with the Fifth Amendment's Due Process Clause, which prohibits the Federal Government from depriving individuals of the equal protection of the laws.

On May 28, 2025, DOT (represented by DOJ), along with the plaintiffs in the litigation in the U.S. District Court for the Eastern District of Kentucky, asked the Court to enter a Consent Order resolving a constitutional challenge to the DBE program.[5] The motion is currently pending. In the proposed Consent Order, DOT stipulated and agreed that "the DBE program's use of race- and sex-based presumptions of social and economic disadvantage . . . violates the equal protection component of the Due Process Clause of the Fifth Amendment of the U.S. Constitution." The parties asked the Court to declare that "the use of DBE contract goals in a jurisdiction, where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption, violates the equal protection component of the Due Process Clause of the Fifth Amendment," and to hold and declare that DOT "may not approve any federal, state, or local DOT-funded projects with DBE contract goals where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption."

On June 25, 2025, the Solicitor General wrote to the Speaker of the House, consistent with 28 U.S.C. § 530D, to advise the Speaker that DOJ had concluded that the DBE program's presumptions violate the Constitution, that DOJ would no longer defend the presumptions in court, and that DOJ had taken that position in ongoing litigation.[6] DOT agrees with and adopts the Solicitor General's analysis.

Interim Final Rule and Guidance

In light of DOT's determination that the DBE program's race- and sex-based presumptions are unconstitutional, DOT issued an interim final rule removing the presumptions from the DBE program regulations ("Interim Final Rule").[7] Because the ACDBE presumptions are functionally identical and suffer the same constitutional infirmity, the rule also removes the presumptions from the ACDBE regulations.

Accordingly, DOT issues the following guidance to recipients of DOT highway, transit, and airport funding.

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[5] Joint Motion for Entry of Consent Order, *Mid-America Milling Co. v. U.S. Dep't of Transp.*, No. 3:23-cv-00072 (E.D. Ky. May 28, 2025).

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

[7] *See* Interim Final Rule, *Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications*, DBE Laws, Policy, and Guidance | US Department of Transportation (Sept. 30, 2025).

Unified Certification Programs may not use race- or sex-based presumptions in determining DBE/ACDBE eligibility.

The Interim Final Rule removes race- and sex-based presumptions from the definitions of "socially and economically disadvantaged individual," and instead provides that the owner of a DBE or ACDBE applicant must demonstrate on a case-by-case basis that the individual meets the criteria described in 49 CFR § 26.67.[8]

Section 26.67 provides, in turn, that an owner must:

(1) demonstrate that the owner is socially and economically disadvantaged based on his or her own experiences and circumstances that occurred within American society, and without regard to race or sex;
(2) submit to the certifier a personal narrative establishing the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons;
(3) state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals; and
(4) state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude; and
(5) attach to the Personal Narrative a current personal net worth statement and any other financial information the owner considers relevant.[9]

Each Unified Certification Program ("UCP") established pursuant to 49 CFR § 26.81 must immediately begin to apply these new certification standards.

UCPs must reevaluate the eligibility of existing DBEs and ACDBEs.

The Interim Final Rule requires each UCP to reevaluate all current DBEs and ACDBEs, to recertify any DBE or ACDBE that meets the new certification standards, and to decertify any DBE or ACDBE that does not meet the new certification standards. The decertification procedures of 49 CFR § 26.87 do not apply to any decertification decisions under this process.[10]

The reevaluation process mandated by the Interim Final Rule will ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions.

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[8] Interim Final Rule (§§ 23.3, 26.5).
[9] *Id.* (§ 26.67).
[10] *Id.* (§§ 23.81, 26.111).

The Interim Final Rule sets out rules governing the transition to the new requirements.

The Interim Final Rule provides that until a UCP completes the reevaluation process outlined above, each recipient covered by that UCP may not: (1) include DBE contract goals or concession-specific ACDBE goals; or (2) count any participation toward overall DBE or ACDBE goals.[11] These requirements will ensure that existing DBEs and ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.

The Interim Final Rule provides that until a UCP completes the reevaluation process, no recipient covered by that UCP shall be subject to the compliance provisions of 49 CFR § 23.57 or 49 CFR § 26.47.[12] Recipients will also not be required to update their overall goals during this process.[13]

Thank you for your cooperation as the Department seeks to ensure that its DBE and ACDBE programs treat all Americans equally and do not discriminate on the basis of race or sex.

[11] *Id.* (§§ 23.25, 23.53, 23.55, 26.51, 26.55).
[12] *Id.* (§§ 23.57, 26.47).
[13] *Id.* (§§ 23.41, 26.45).

Rules and Regulations

Federal Register
Vol. 90, No. 190
Friday, October 3, 2025

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. FAA–2025–0412]

Accepted Means of Compliance for Small Unmanned (sUA) Aircraft Category 2 and Category 3 Operations Over Human Beings; Aerial Vehicle Safety Solutions Inc. (AVSS)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notification of availability.

SUMMARY: This document announces the acceptance of a means of compliance with FAA regulations for sUA Category 2 and Category 3 operations over human beings. The Administrator finds that AVSS's "Means of Compliance with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft," revision 6, dated January 7, 2025, provides an acceptable means, but not the only means, of showing compliance with FAA regulations.

DATES: The means of compliance is accepted effective October 3, 2025.

FOR FURTHER INFORMATION CONTACT:

FAA Contact: Kimberly Luu, Cabin Safety Section, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3414; email *Kimberly.H.Luu@faa.gov.*

AVSS Contact: Josh Ogden, CEO, AVSS, 570 Queen Street, Suite 600, Fredericton, New Brunswick, E3B–6Z6, Canada, +1 (650) 741–1326; *Info@avss.co.*

SUPPLEMENTARY INFORMATION:

Background

Title 14, Code of Federal Regulations, part 107, subpart D, prescribes the eligibility and operating requirements for civil sUA to operate over human beings in the United States. To be eligible for use, the sUA must meet the requirements of § 107.120(a) for Category 2 operations or § 107.130(a) for Category 3 operations. These sections require the sUA to be designed, produced, or modified such that it will not cause injury to a human being above a specified severity limit, does not contain any exposed rotating parts that would lacerate human skin, and does not contain any safety defects. Section 107.155 requires that means of compliance with § 107.120(a) or § 107.130(a) be established and FAA-accepted. Section 107.160 requires an applicant to declare that sUA for Category 2 or Category 3 operations meet an FAA-accepted means of compliance.

Means of Compliance Accepted

This notification of availability serves as a formal acceptance by the FAA of the AVSS's "Means of Compliance with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft," revision 6, as an acceptable means of compliance, but not the only means of compliance with §§ 107.120(a) and 107.130(a). Applicants may also propose alternative means of compliance for FAA review and possible acceptance.

Revisions

Revisions to AVSS's "Means of Compliance (MOC) with §§ 107.120(a) and 107.130(a) for Small Unmanned Aircraft (sUA)," revision 6, will not be automatically accepted and will require further FAA acceptance for any revisions to be considered an accepted means of compliance.

Issued in Kansas City, Missouri, on September 30, 2025.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2025–19435 Filed 10–2–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

49 CFR Parts 23 and 26

[Docket No. DOT–OST–2025–0897]

RIN 2105–AF33

Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications

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

ACTION: Interim final rule.

SUMMARY: This interim final rule (IFR) ensures that the U.S. Department of Transportation (DOT or Department) operates its Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) Programs (collectively, Programs) in a nondiscriminatory fashion—in line with law and the U.S. Constitution. The IFR removes race- and sex-based presumptions of social and economic disadvantage that violate the U.S. Constitution.

DATES: This IFR is effective October 3, 2025. Comments must be received on or before November 3, 2025. To the extent practicable, DOT will consider late-filed comments.

ADDRESSES: You may submit comments identified by the docket number DOT–OST–2025–0897 by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name, docket name, and docket number DOT–OST–2025–0897 or Regulatory Identifier Number

(RIN) 2105–AF33 for this rulemaking. DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20950, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this IFR contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this IFR, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." Submissions containing CBI should be sent to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section below. Any commentary that OST receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Electronic Access and Filing

A copy of the IFR, all comments received, and all background material may be viewed online at *http://www.regulations.gov.* Electronic retrieval help 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 *http://www.ofr.gov* and the Government Publishing Office's website at *http://www.gpo.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of the General Counsel, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590 at (202) 658–9670 or *peter.constantine@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Spanning nearly 40 years, the Department's DBE and ACDBE programs are small business initiatives intended to level the playing field for businesses seeking to participate in federally assisted contracts and in airport concessions. Rooted in a desire to give small businesses a fair shake in the process, the Programs must balance a desire to help the small business community with an overriding government obligation to serve the public. The government must undertake all these efforts consistent with law—including constitutional nondiscrimination requirements that establish the conditions for national harmony and unity. This IFR advances the administration's goals of nondiscrimination, fairness, and excellence in serving the American public.

Although the Programs aim to assist small businesses owned and controlled by "socially and economically disadvantaged individuals," Congress has mandated by statute that DOT treat certain individuals—women and members of certain racial and ethnic groups—as "presumed" to be disadvantaged.[1] Other individuals do not benefit from that statutory presumption. This means that two similarly situated small business owners may face different standards for entering the program, based solely on their race, ethnicity, or sex.

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.[2] 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 prohibits DOT from mandating the use of presumptions with respect to contracts on which the two plaintiff entities bid. DOT has implemented the injunction by requiring funding recipients to remove DBE contract goals from any contracts on which the plaintiffs intend to bid.

On January 20, 2025, the President issued Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing,* which affirmed that "Americans deserve a government committed to serving every person with equal dignity and respect" and directed agencies to recommend actions to align their programs and activities with this policy. On January 21, 2025, the President issued Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity,* which ordered agencies to "terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements."

On March 21, 2025, the Attorney General issued a memorandum to all Federal agencies on implementing these Executive Orders.[3] The Attorney General noted that "federal policies that give preference to job applicants, employees, or contractors based on race or sex trigger heightened scrutiny under the Constitution's equal protection guarantees and can only survive in rare circumstances." The Attorney General directed all Federal agencies immediately to "[d]iscontinue any policies that establish numerical goals, targets, or quotas based on race or sex," and to "[r]emove any contracting or

[1] Congress has provided that: (1) "women shall be presumed to be socially and economically disadvantaged individuals"; and (2) the term "socially and economically disadvantaged individuals" should otherwise be given the meaning given by section 8(d) of the Small Business Act and its implementing regulations. *See* Infrastructure Investment and Jobs Act, Public Law 117–58, 11101(e)(2) (B) (2021) (DBE program for highway and transit funding); 49 U.S.C. 47107(e)(1) (ACDBE program); 49 U.S.C. 47113(a)(2) (DBE program for airport funding). Section 8(d) of the Small Business Act and its implementing regulations create a rebuttable presumption that "Black Americans," "Hispanic Americans," "Native Americans," "Asian Pacific Americans," and "Subcontinent Asian Americans" are disadvantaged. *See* 15 U.S.C. 637(d)(3); 13 CFR 124.103(b)(1).

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

[3] 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.*

funding requirement or guidance that induces, requires, or encourages private parties to adopt discriminatory practices."

On February 19, 2025, the President issued Executive Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative,* which directed agencies to identify "unconstitutional regulations and regulations that raise serious constitutional difficulties," and to target those regulations for repeal. On April 9, 2025, the President issued a memorandum directing that this effort should prioritize regulations that conflict with certain Supreme Court decisions, including *Students for Fair Admissions, Inc.* v. *Harvard (SFFA).*[4]

In accordance with the directives of the President and the Attorney General, DOT and the U.S. Department of Justice ("DOJ") have evaluated the DBE and ACDBE programs. DOT and DOJ, consistent with the ruling of the District Court, have determined that the race- and sex-based presumptions of DOT's DBE programs are unconstitutional. In *SFFA,* the Supreme Court held that race-based admissions programs at universities violated the Equal Protection Clause of the Fourteenth Amendment—and, by corollary, Title VI of the Civil Rights Act. In light of *SFFA,* multiple Federal courts have held unlawful the use of presumptions similar to those used in the DBE and ACDBE programs. In *Ultima Serv. Corp.* v. *U.S. Dep't of Ag.,* the Eastern District of Tennessee held that a Small Business Act program violated the equal protection component of the Fifth Amendment's Due Process Clause to the extent that it used the exact same type of race-based presumptions used by the DBE and ACDBE programs.[5] And in *Nuziard* v. *Minority Business Development Agency,* the Northern District of Texas held that a race-based statutory presumption of disadvantage was unconstitutional and that the U.S. Department of Commerce's application of this statutory preference violated the equal protection principle of the Fifth Amendment.[6] As with the presumptions at issue in *Ultima* and *Nuziard,* there is not a strong basis in evidence that the race- and sex-based presumptions used by the DBE and ACDBE programs are necessary to support a compelling governmental interest, and the presumptions are not narrowly tailored. The government has no compelling justification for engaging in overt race or sex discrimination in the awarding of contracts in the absence of clear and individualized evidence that the award is needed to redress the economic effects of actual previous discrimination suffered by the awardee. For these reasons, the presumptions must be disregarded, and the Department's DBE and ACDBE programs must be administered in all other respects in accordance with the law and consistent with the U.S. Constitution.

On May 28, 2025, DOT (represented by DOJ), along with the plaintiffs in the litigation in the U.S. District Court for the Eastern District of Kentucky, asked the Court to enter a Consent Order resolving a constitutional challenge to the DBE program.[7] The motion is currently pending. In the proposed Consent Order, DOT stipulated and agreed that "the DBE program's use of race- and sex-based presumptions of social and economic disadvantage . . . violates the equal protection component of the Due Process Clause of the Fifth Amendment of the U.S. Constitution." The parties asked the Court to declare that "the use of DBE contract goals in a jurisdiction, where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption, violates the equal protection component of the Due Process Clause of the Fifth Amendment," and to "hold and declare that [DOT] may not approve any Federal, State, or local DOT-funded projects with DBE contract goals where any DBE in that jurisdiction was determined to be eligible based on a race- or sex-based presumption."

On June 25, 2025, the Solicitor General wrote to the Speaker of the House, consistent with 28 U.S.C. 530D, to advise the Speaker that DOJ had concluded that the DBE program's presumptions violate the U.S. Constitution, that DOJ would no longer defend the presumptions in court, and that DOJ had taken that position in ongoing litigation.[8] The Solicitor General noted that DOJ "had previously defended the DBE program's race-and sex-based presumptions by pointing to societal discrimination against minority-owned businesses generally." He stated, however, that "[c]onsistent with *SFFA*'s rejection of a similar justification in the university-admissions context, [DOJ] has determined that an interest in remedying the effects of societal discrimination does not justify the use of race-and sex-based presumptions in the DBE program." The Solicitor General also reported that DOJ has determined that "like the admissions programs at issue in *SFFA,* the DBE program relies on arbitrary, overbroad, and underinclusive racial categories and lacks any logical end point." DOT agrees with and adopts the Solicitor General's analysis.

In light of DOT and DOJ's determination that the DBE program's race- and sex-based presumptions are unconstitutional, DOT is issuing this IFR to remove the presumptions from the DBE program regulations set forth in 49 CFR part 26. Because the ACDBE presumptions are functionally identical and suffer the same constitutional infirmity, this IFR also removes the presumptions from the ACDBE regulations set forth in 49 CFR part 23. To ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance in whole or in part on claims of disadvantage based on race or sex, this IFR requires each Unified Certification Program (UCP) to reevaluate any currently certified DBE or ACDBE, to recertify any DBE or ACDBE that meets the new certification standards, and to decertify any DBE or ACDBE that does not meet the new certification standards. The IFR includes certain requirements that apply during the pendency of this reevaluation process.

II. Revisions

Part 26

Subpart A—General

1. Objectives (§ 26.1)

The Department amends § 26.1 to clarify the proper objectives of the DBE program. The Department's amendments replace references to the DBE program being "narrowly tailored" with an objective intended to ensure that the DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service. These amendments center the DBE program's purpose of leveling the playing field for businesses owned and controlled by socially and economically disadvantaged individuals while providing excellent service to the American people.

2. Definitions (§ 26.5)

The Department changes the definition of "socially and economically disadvantaged individual" in § 26.5 to

[4] 600 U.S. 181 (2023).

[5] *Ultima Servs. Corp.* v. *U.S. Dep't of Agric.,* 683 F. Supp. 3d 745 (E.D. Tenn. 2023).

[6] *Nuziard* v. *Minority Bus. Dev. Agency,* 721 F. Supp. 3d 431 (N.D. Tex. 2024).

[7] Joint Motion for Entry of Consent Order, *Mid-America Milling Co.* v. *U.S. Dep't of Transp.,* No. 3:23–cv–00072 (E.D. Ky. May 28, 2025).

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

remove the race- and sex-based presumptions that DOT and DOJ and have found to violate the Fifth Amendment. Under the revised rule, any individual seeking to demonstrate that he or she is a "socially and economically disadvantaged individual" will be required to make the same individualized showing of disadvantage, regardless of the individual's race or sex.

In furtherance of these legal conclusions, the IFR also replaces the terms "race-neutral" and "race-conscious" in § 26.5 with "DBE-neutral" and "DBE-conscious" and modifies the definitions slightly for the same reasons.

3. Recordkeeping and Reporting (§ 26.11)

Similarly, the IFR eliminates the requirement in § 26.11(c)(2)(iv) for recipients to obtain bidders list information about the majority owner's race and sex for all DBEs and non-DBEs who bid as prime contractors and subcontractors on each of a recipient's federally assisted contracts, and then renumbers the requirements in current §§ 26.11(c)(v) through (c)(vii) as §§ 26.11(c)(iv) through (c)(vi).

The IFR also eliminates the requirement in § 26.11(e)(1) that recipients report and categorize the percentage of in-State and out-of-State DBE certifications by sex and ethnicity. The IFR also eliminates the requirements in §§ 26.11(e)(5) and (6) that recipients report the number of in-State and out-of-State applications for an "individualized" determination of social or economic disadvantage status, and the number of in-State and out-of-State applicants who made an individualized showing of social and economic disadvantaged status. This IFR requires all applicants to demonstrate social and economic disadvantage affirmatively to participate in the DBE program, which renders these reporting requirements unnecessary. The IFR further renumbers the reporting requirements in current §§ 26.11(e)(2) through (e)(4) as §§ 26.11(e)(1) through (e)(3).

Subpart B—Administrative Requirements for DBE Programs for Federally Assisted Contracting

4. Recipient Monitoring Responsibilities (§ 26.37)

For consistency, the IFR replaces the word "race-neutral" with "DBE-neutral" in § 26.37(b).

5. Fostering Small Business Participation (§ 26.39)

For consistency, the IFR replaces the word "race-neutral" with "DBE-neutral" in §§ 26.39(b)(1) and (5).

Subpart C—Goals, Good Faith Efforts, and Counting

6. Setting Goals (§ 26.45)

For consistency, the IFR replaces the phrase "race-neutral DBE program" with "DBE-neutral program" in § 26.45(a)(2).

For consistency, the IFR amends the second sentence of § 26.45(b) to replace the word "discrimination" with "social and economic disadvantage" so it will read as follows: "The goal must reflect your determination of the level of DBE participation you would expect absent the effects of social and economic disadvantage."

For consistency and to ensure recipients establish overall goals that include only DBEs who are ready, willing, and able to compete for and participate in DOT-assisted contracts, the Department amends § 26.45(c)(3) to clarify that any disparity studies utilized by recipients in setting their goals must provide a detailed capacity analysis, including the methodology used. The Department makes the same clarification regarding the use of disparity studies in § 26.45(d)(ii).

For consistency, the IFR amends § 26.45(f)(3) to remove references to race-neutral and race-conscious measures.

The IFR amends § 26.45(g)(1) to remove consultation requirements for minority and women's contractor groups, as well as the language related to posting proposed overall goals in minority-focused media.

The IFR amends § 26.45(h) by removing the existing language, as there will be no opportunity to create group-specific goals now that race and sex have been removed from the regulation. In its place, the IFR adds new language in § 26.45(h) to indicate that a recipient is not required to update its overall goal until its UCP completes the reevaluation process described in § 26.111.

7. Failing To Meet Overall Goals (§ 26.47)

For consistency, the IFR replaces the words "race-conscious" and "race-neutral" with "DBE-conscious" and "DBE-neutral" in in § 26.47(c)(4) and § 26.47(d).

The IFR adds § 26.47(e) to provide that until a Unified Certification Program (UCP) completes the reevaluation process described in § 26.111, the compliance provisions of § 26.47 will not apply to any recipient covered by that UCP. This requirement ensures fairness to recipients during the transition period.

8. Means Used To Meet Overall Goals (§ 26.51)

For consistency, the IFR replaces the words "race-conscious" and "race-neutral" with "DBE-conscious" and "DBE-neutral" throughout § 26.51 and the corresponding examples.

The IFR adds § 26.51(h) to provide that until a UCP completes the reevaluation process described in § 26.111, a recipient covered by that UCP may not set any contract goals. This provision ensures that existing DBEs do not continue to receive any benefits as a result of their certification under the old standards.

9. Counting DBE Participation Toward Goals (§ 26.55)

The IFR adds § 26.55(i) to provide that until a UCP completes the reevaluation process described in § 26.111, a recipient covered by that UCP may not count any DBE participation toward DBE goals. This provision ensures that existing DBEs do not continue to receive any benefits as a result of their certification under the old standards.

Subpart D—Certification Standards

10. Burden of Proof (§ 26.61)

The IFR eliminates § 26.61(b)(2), which imposed a burden of proof on certifiers with respect to individuals subject to the race- and sex-based presumptions that the IFR eliminates.

11. Social and Economic Disadvantage (§ 26.67)

The IFR revises § 26.67 to implement the removal of unconstitutional race- and sex-based presumptions. The IFR requires all small business concerns to demonstrate social and economic disadvantage based on their own experiences and circumstances without reliance in whole or in part on race or sex.

Subpart F—Compliance and Enforcement

12. Reevaluation Process (§ 26.111)

This IFR adds § 26.111 to require each UCP to reevaluate any currently certified DBE, to recertify any DBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards or fails to provide additional information required for submission under the new certification standards. The IFR provides that decertification procedures of 49 CFR 26.87 do not apply to any

decertification decisions under this process. The IFR requires each UCP to complete the reevaluation process as quickly as practicable following issuance of this IFR. The Department will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process. This reevaluation process will ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance on claims of disadvantage based in whole or in part on race or sex. This process does not replace or restrict the Department's ability to conduct a review or take action under Title VI or other applicable law regarding compliance with equal protection principles. A companion provision has been added to part 23 with respect to reevaluation of ACDBEs.

Part 23

Subpart A—General

13. Aligning Part 23 With Part 26 Objectives (§ 23.1)

The IFR amends the program objectives for the ACDBE program in § 23.1 that are similar to the amendments to the DBE program objectives in § 26.1.

14. Definitions (§ 23.3)

The IFR amends the definition of the phrase "socially and economically disadvantaged individual" in § 23.3 to conform to the definition of the phrase in § 26.5. In addition, the IFR replaces the terms "race-conscious" and "race-neutral" with "ACDBE-conscious" and "ACDBE-neutral" in § 23.3.

Subpart B—ACDBE Programs

15. Measures To Ensure Nondiscrimination Participation of ACDBEs (§ 23.25)

For consistency, the IFR replaces the words "race-neutral" and "race-conscious" with "DBE-neutral" and "DBE-conscious" in §§ 23.25(d) and (e).

The IFR adds § 23.25(h) to provide that until a UCP completes the reevaluation process described in § 23.81, a recipient covered by that UCP may not set concession-specific goals or use any of the other methods described in § 23.25(e). This provision ensures that existing ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.

16. Fostering Small Business Participation (§ 23.26)

For consistency, the IFR replaces the words "race-neutral" with "DBE-neutral" in § 23.26(b)(1).

For consistency, the IFR replaces the words "minority and women owned" with "socially and economically disadvantaged" in § 23.26(d)(5).

For consistency, the IFR replaces the word "gender" with "sex" in § 23.26(e).

17. Reporting and Recordkeeping (§ 23.27)

The IFR eliminates the requirement in § 23.27(c)(2)(iv) for recipients to obtain information about the majority owner's race and sex for all ACDBEs and non-ACDBEs who seek to work on each of a recipient's concession opportunities, and then renumbers the requirements in current §§ 23.27(c)(v) through (c)(vii) as §§ 23.27(c)(iv) through (c)(vi). The IFR also eliminates the requirement in § 23.27(d)(1) that recipients report and categorize the percentage of in-State and out-of-State ACDBE certifications by sex and ethnicity. The IFR also eliminates the requirements in §§ 23.27(d)(5) and (6) that recipients report the number of in-State and out-of-State applications for "individualized" determinations of social or economic disadvantage status, and the number of in-State and out-of-State applicants who made an individualized showing of social and economic disadvantaged status. This IFR requires all applicants to demonstrate social and economic disadvantage affirmatively to participate in the ACDBE program, which renders these reporting requirements unnecessary. The IFR further renumbers the reporting requirements in current §§ 23.27(d)(2) through (d)(4) as §§ 23.27(d)(1) through (d)(3).

Subpart D—Goals, Good Faith Efforts, and Counting

18. Goal and Consultation Requirements (§§ 23.41, 23.43)

The IFR amends § 23.41(d) by removing the existing language, as there will be no opportunity to create group-specific goals now that race and sex have been removed from the regulation. In its place, the IFR adds new language to indicate that a recipient is not required to update its overall goal until its UCP completes the reevaluation process described in § 23.81.

The IFR amends § 23.43(b) to remove consultation requirements for minority and women's contractor groups, as well as the language related to posting proposed overall goals in minority-focused media.

19. Setting Goals (§ 23.51)

For consistency, the Department amends § 23.51(a) to replace the words "discrimination and its effects" with "social and economic disadvantage." For consistency, the IFR replaces the words "race-neutral" and "race-conscious" with "ACDBE-neutral" and "ACDBE-conscious" in §§ 23.51(f), (g), and (h), and in § 23.51(d)(5).

For consistency and to ensure recipients establish overall goals that include only DBEs who are ready, willing, and able to compete for and participate in DOT-assisted contracts, the Department amends § 23.51(c)(3) to clarify that any disparity studies utilized by recipients in setting their goals must provide a detailed capacity analysis, including the methodology used.

20. Counting ACDBE Participation During Transition Period (§§ 23.53, 23.55)

The IFR adds § 23.53(g) and § 23.55(m) to provide that until a UCP completes the reevaluation process described in § 23.81, recipients covered by that UCP, and car rental companies operating at airports covered by that UCP, may not count any ACDBE participation toward ACDBE goals. These provisions ensure that existing ACDBEs do not continue to receive any benefits as a result of their certification under the old standards.

21. Failing To Meet Overall Goals (§ 23.57)

For consistency, the IFR replaces the words "race-conscious" and "race-neutral" with "DBE-conscious" and "DBE-neutral" in in § 23.57(b)(4) and § 23.57(c).

The IFR adds § 23.57(d) to provide that until a UCP completes the reevaluation process described in § 23.81, the compliance provisions of § 23.57 will not apply to any recipient covered by that UCP. This requirement ensures fairness to recipients during the transition period.

22. Reevaluation Process (§ 23.81)

This IFR adds § 23.81 to require each UCP to reevaluate any currently certified ACDBE, to recertify any ACDBE that meets the new certification standards, and to decertify any DBE that does not meet the new certification standards or fails to provide additional information required for submission under the new certification standards. The IFR provides that decertification procedures of 49 CFR 26.87 do not apply to any decertification decisions under this process. The IFR requires each UCP to complete the reevaluation process as quickly as practicable following issuance of this IFR. The Department will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process. This reevaluation

process will ensure a level playing field between existing participants and new applicants, while also eliminating the effects of the unconstitutional presumptions and reliance on claims of disadvantage based in whole or in part on race or sex. This process does not replace or restrict the Department's ability to conduct a review or take action under Title VI or other applicable law regarding compliance with equal protection principles. A companion provision has been added to part 26 with respect to reevaluation of DBEs.

III. Public Proceedings

The Administrative Procedure Act generally requires agencies to provide the public with notice of proposed rulemaking and an opportunity to comment prior to publication of a substantive rule. However, 5 U.S.C. 553(b)(B) authorizes agencies 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 finds that providing advance notice and an opportunity to comment on these regulatory changes pertaining to the DBE and ACDBE programs would be impracticable, unnecessary, and contrary to the public interest. Consistent with the letter authored by the Solicitor General and discussed elsewhere in the preamble,[9] DOT has determined that race- and sex-based presumptions of the DBE and ACDBE programs violate the U.S. Constitution. In the absence of this IFR, however, DOT's own regulations would continue to require funding recipients to apply those very same presumptions. Allowing this confusing and contradictory situation to continue during a notice-and-comment process would be impracticable and contrary to the public interest. Further, notice-and-comment is unnecessary where a regulatory action is required as a matter of law to ensure consistency with rulings of the United States Supreme Court. It is well-established that an agency is not required to continue to enforce a statutory provision that it has found to be unconstitutional.[10] By the same token, an agency is not required to subject the public to unconstitutional requirements. This IFR provides notice of the amendments to the regulations' provisions and invites the public to comment. DOT has determined, however, that it should not delay the effectiveness of the amendments and that it should act immediately to remedy the unconstitutional programs. For the foregoing reasons, the good cause exception in 5 U.S.C. 553(d)(3) also applies to DOT's decision to make this IFR effective upon publication.

IV. Regulatory Analyses and Notices

A. Executive Order: 12866 ("Regulatory Planning and Review"), Executive Order 13563 ("Improving Regulation and Regulatory Review"), and DOT Regulatory Policies and Procedures

The IFR 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.

The IFR amends reporting and eligibility requirements for the Department's Airport Concession Disadvantaged Business Enterprises (ACDBE) program and Disadvantaged Business Enterprise (DBE) program. These programs are implemented and overseen by recipients of certain Department funds. The changes to the requirements would affect businesses participating in the programs, recipients of Department funds who oversee the programs, and the Department.

The IFR replaces the race- and sex-based presumptions previously embedded in these programs with a requirement for individualized demonstrations of social and economic disadvantage. The IFR also modifies terminology and data reporting requirements to align with constitutional principles while maintaining the programs' statutory objectives.

Need for Regulatory Revisions

The IFR is being issued pursuant to legal determinations by DOT and DOJ that the race- and sex-based presumptions previously embedded in these programs are unconstitutional. In addition to legal compliance, this action corrects a regulatory failure—namely, reliance on presumptions that no longer withstand judicial scrutiny—by shifting to individualized determinations. The IFR aligns the programs with constitutional mandates.

Costs and Benefits

Costs

While DOT is unable to quantify all the economic costs and benefits of the IFR, the Department has identified both qualitative and quantitative impacts. Several provisions may lead to increased or decreased burdens for applicants, certifying agencies, and recipients related to transitional documentation requirements, the degree of technical rigor in disparity studies, and changes in program reporting. The magnitude of these costs and benefits would depend on the scope of the change; the likelihood of behavior adjustment; and potential legal, administrative, or programmatic effects.

Unquantified Costs

Key provisions of the IFR and their related cost impacts include:

- *Removal of race- and sex-based presumptions.* This provision eliminates presumptive eligibility based on race or sex and requires applicants to submit individualized evidence of social disadvantage, alongside the remaining required showing of economic disadvantage. Although the underlying economic disadvantage documentation (*e.g.,* Personal Net Worth, income verification) was already a component of many applications, the shift to a required narrative or case-specific justification for all applications, as opposed to just those that did not meet the presumption of eligibility, may introduce additional procedural burdens and time costs on some applicants. This may increase the complexity of preparing applications and even potentially deter participation among some eligible small businesses, especially those with limited administrative capacity or legal support. This may also implicate reliance interests for businesses that were previously certified based on presumptive eligibility. However, many eligible small businesses will continue efforts at applying for certification and assume the additional burden to apply because of the benefits to being certified and the potential opportunity it brings outweighs the added burden of the application process. All eligible businesses may apply for and potentially obtain certification under the new certification process, which mitigates any impact on reliance interests. In addition, businesses'

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

[10] *See In re Aiken County,* 725 F.3d 255, 259 (D.C. Cir. 2013) (Kavanaugh, J.) ("If the President has a constitutional objection to a statutory mandate or prohibition, the President may decline to follow the law unless and until a final Court order dictates otherwise. . . . [This] basic constitutional principle[ ] appl[ies] to the President and subordinate executive agencies."); Office of Legal Counsel Opinion, *Presidential Authority to Decline to Execute Unconstitutional Statutes,* 18 U.S. Op. Off. Legal Counsel 199 (1994).

reliance interests do not justify continuing to implement presumptions that DOT and DOJ have determined are unconstitutional.

• *Certification burden.* As the burden of production and persuasion shifts away from certifying officials to individual applicants, certifying agencies may experience increased numbers of intake inquiries and clarification requests as applicants navigate the new social disadvantage requirements, or face inconsistent application quality, especially during the transition period. This would require certifying agencies to spend time following up with applicants and guiding them through the application as they go through the re-certification process, which implicates certifying agencies' reliance interests. In the short-term, the increase in workload and support services on certifying agencies may temporarily elevate the demands on the recipients' staff demands or delay determinations, which could at least partially offset any cost savings from shifting this burden to applicants. However, in the long run, it is expected that after the initial review of each applicant, subsequent reviews of applicants will require minimal agency time and will not implicate agencies' reliance interests.

• *Reevaluation of all affected DBEs/ACDBEs.* DBE/ACDBE participants who have previously qualified based in whole or in part on their race or sex will incur additional costs to develop and provide the individualized narrative required by the IFR. In addition, all firms will temporarily lose certifications until the reevaluation process is complete, and some firms may lose the certifications that currently lead to opportunities for them to participate, potentially leading to a loss of business opportunities and implicating firms' reliance interests (though this would be offset by other firms who face increased access to the same opportunities). Additional administrative burdens will also fall on certifiers (UCPs) performing the reevaluations. This could also lead to delays in goal setting and program participation, resulting from the temporary pause in counting DBE participation while the reevaluation process is underway.

• *Clarified disparity study expectations.* The rule requires that disparity studies include detailed capacity analyses, which may necessitate additional economic modeling, data collection, and expert analysis beyond what is standard practice in many jurisdictions. These requirements could increase costs, particularly for large or multi-jurisdictional studies. While such studies are episodic rather than annual, the enhanced methodology could impose non-trivial compliance costs when undertaken.

• *Elimination of race/sex reporting in bidder lists.* The removal of demographic fields from bidder list reporting will reduce the administrative burden of data entry for participants and recipients, though the cost impact would likely be negligible.

• *Terminology changes and redefinitions.* These changes update program language to reflect constitutional terminology but do not alter administrative procedures or eligibility. The impact is purely semantic and is not expected to have any material cost impacts.

Quantified Costs: Information Collection Burden (Paperwork Reduction Act)

In addition to the above qualitative costs, the Department has quantified a portion of the expected compliance burdens as part of its Paperwork Reduction Act (PRA) package of the rule. These burdens represent the time and resources required to prepare, submit, and review program-related information.

Requirement	Estimated cost burden	Timing
Certification narratives (firms)	$91.9 million	One-time.
UCP reevaluations	$3.4 million	One-time.
Interstate certification	$0.46 million	One-time.
Bidders' list reporting	$1.24 million	Annual.
ACDBE annual report	$0.58 million	Annual.
Goal setting (disparity studies)	$0.46 million (annual cost)	Every three years.

These figures reflect fully loaded labor costs consistent with the Bureau of Labor Statistics data and DOT's standard methodology. One-time burdens primarily reflect transaction costs related to individualized certification requirements, while recurring burdens are associated with ongoing reporting and program administration. Overall, the IFR's primary quantified costs are transitional and one-time, totaling approximately $95 million, with recurring annualized burdens of about $1.8 million.

Benefits

With respect to benefits, the IFR will enhance constitutional compliance and reduce risks associated with constitutional litigation. It may also improve public trust by reinforcing fairness in eligibility determinations, which, although not easily quantifiable, represent important benefits from improved program integrity.

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

This interim final rule is considered an E.O. 14219 deregulatory action because the unquantified cost-savings associated with constitutional compliance outweigh the quantified costs.

C. Executive Order 13132 ("Federalism")

This IFR 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. While the rule may include provisions that impose substantial direct compliance costs on State and local governments, the Department has determined that consultation with State and local governments prior to promulgation of the rule is not practicable given the urgent need to cure constitutional infirmities with the existing DBE and ACDBE regulations. These changes are required not by statute, but to ensure that the DBE and ACDBE programs do not violate the U.S. Constitution. We seek comment from State and local governments on these burdens during the comment period for this IFR.

D. 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.

E. 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.

F. 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 the Federal Transit Administration's 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.

G. 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.

H. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 49 U.S.C. 3501, 3507) requires Federal agencies to obtain approval from the Office of Management and Budget (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 IFR modifies existing collection instruments in both parts 23 and 26. The following is a description of the sections that contain new and modified information collection requirements, along with the estimated hours and cost to fulfill them.

For purposes of estimating the cost burden on recipients, the State government wage rate was taken from the Bureau of Labor and Statistics (BLS) estimate of median wages for employees in the category of "Eligibility Interviewer in Government Programs" (OEWS Designation 43–4061). For the purpose of calculating loaded wage rates, these burden estimates assume wages represent 61.9 percent of total compensation, which is consistent with similar loaded wage rate estimates identified by BLS and used by DOT for related purposes. Because wages represent 61.9 percent of total compensation, the appropriate cost multiplier is 1.62 (1/0.619). Accordingly, the wage rate ($25.95) is multiplied by 1.62 to get a fully loaded hourly wage rate of $42.04 to account for the cost of employer-provided benefits.

For purposes of estimating the cost burden on applicant and certified DBE/ACDBE firms, the wage rate was taken from the BLS estimate of median wages for individuals in the category of "Cross-industry, Private Ownership Only" (OEWS Designation 00–0001). Using the same loaded wage rate identified above, the wage rate for DBE/ACDBE applicant firms ($69.20) is multiplied by 1.62 to get a fully loaded hourly wage rate of $112.10 to account for the cost of employer-provided benefits. The Department emphasizes that many of these hour and cost burdens are one-time burdens as a result of the change in the DBE certification eligibility requirements. After the initial transition to the new requirements, increases in annual burdens will be modest. For DOT recipients, reporting burdens are expected to decrease as a result of reduced DBE/ACDBE reporting requirements.

i. Reapplication Review for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage

To satisfy the social and economic disadvantage (SED) requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier 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, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated persons who did not face barriers in obtaining terms.

The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

The owner must attach to the PN a current personal net worth (PNW) statement and any other financial information the owner considers relevant. The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 240–2,000 hours. The total annual cost burden was calculated based on one stakeholder response of $80,000.

In preparing this estimate, DOT estimated a 10 percent decrease in the number of currently certified firms who will submit documentation to maintain their DBE/ACDBE decertification status. DOT also assumed a 50 percent reduction in the total burden hours compared to the pre-existing estimated burden for completing the full Uniform Certification Application (UCA), as firms will be able to use many of their other existing certification documents for resubmission.

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: $91,922,000 (one-time burden).

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

UCPs will need to reevaluate DBE/ACDBE applicant firms based on updated submission of application materials, including the PN and PNW statement. This estimate assumes an average burden of two hours to complete a review and make a disposition for each DBE/ACDBE certification application, including notifications to other jurisdictions.
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: $3,447,280 (one-time cost).

iii. Maintaining and Updating Bidders' Lists

We estimate that recipients will experience a reduced burden to implement 49 CFR 26.11 as a result of eliminating the race- and sex-based reporting requirements for bidders' lists, in addition to eliminating the requirement to report data related to applications for and determinations of individualized social and economic disadvantage.
Respondents: FAA, FHWA, and FTA funding recipients.
Estimated Number of Respondents: 1,639.
Frequency: 3 times per year.
Total Annual Burden Hours: 29,502.
Total Annual Cost Burden: $1,240,264.

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

We estimate that FAA airport recipients will experience a reduced burden to implement 49 CFR 26.11 as a result of eliminating the race- and sex-based reporting requirements for bidders' lists, in addition to eliminating the requirement to report data related to applications for and determinations of individualized social and economic disadvantage.
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: $579,311.

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

The Department estimates a modest increase in burden for setting overall DBE goals as a result of the transition to the new DBE certification requirements and enhanced expectations related to disparity studies used in setting overall goals. These changes may result in increases in the amount of time for recipients to set goals based on the relative availability of certified DBEs.
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: $459,371.

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

The Department estimates a one-time increase in the burden for firms to provide evidence of certification to an additional State when a firm certified in its home State applies to another State for 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: $459,610 (one-time cost).

As noted in the Costs and Benefits section of this analysis, these burden hour and cost estimates have been incorporated into the Department's overall assessment of regulatory costs.

Notwithstanding any other provision of law, no person is required to respond to a collection of information unless that collection displays a valid OMB control number.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DOT 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 does not constitute a major rule as defined in 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, Minority businesses, Reporting and recordkeeping requirements.

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 § 23.1 by revising paragraph (c) to read as follows:

§ 23.1 What are the objectives of this part?

* * * * *

(c) To ensure that the Department's ACDBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;

* * * * *

■ 3. Amend § 23.3 as follows:
■ a. Add definitions for ACDBE-conscious and ACDBE-neutral in alphabetical order;
■ b. Remove the definitions of Race-conscious and Race-neutral; and
■ c. Revise the definition of Socially and economically disadvantaged individual.

The additions and revisions read as follows:

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

ACDBE-conscious measure or program is one that is focused specifically on assisting only ACDBEs.

ACDBE-neutral measure or program is one that is, or can be, used to assist all small business concerns.

* * * * *

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 race or sex. For that reason, applicants may qualify as socially and economically disadvantaged only if they can meet the relevant criteria described in § 26.67.

* * * * *

■ 4. Amend § 23.25 as follows:
■ a. Revise the introductory text of paragraphs (d) and (e); and
■ b. Add paragraph (h).

The revisions read as follows:

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

* * * * *

(d) Your ACDBE program must include ACDBE-neutral measures that you will take. You must maximize the use of ACDBE-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of ACDBE-neutral measures you can implement:

* * * * *

(e) Your ACDBE program must also provide for the use of ACDBE-conscious measures when ACDBE-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of ACDBE-conscious measures you can implement:

* * * * *

(h) Effective October 3, 2025, you may not use any of the measures described in paragraph (e) of this section until the UCP that covers you has completed the reevaluation process described in § 23.81.

■ 5. Amend § 23.26 by revising paragraphs (b) introductory text, (b)(1), (d)(5), and (e) to read as follows:

§ 23.26 Fostering small business participation.

* * * * *

(b) This element must be submitted to the FAA for approval as a part of your ACDBE program. As part of this program element, you may include, but are not limited to including, the following strategies:

(1) Establish an ACDBE-neutral small business set-aside for certain concession opportunities. Such a strategy would include the rationale for selecting small business set-aside concession opportunities that may include consideration of size and availability of small businesses to operate the concession.

* * * * *

(d) * * *

(5) You will take aggressive steps to encourage those socially and economically disadvantaged firms eligible for ACDBE certification to become certified; and

* * * * *

(e) A State, local, or other program, in which eligibility requires satisfaction of race, sex, or other criteria in addition to business size, may not be used to comply with the requirements of this part.

* * * * *

§ 23.27 [Amended]

■ 6. Amend § 23.27 as follows:
■ a. Remove paragraph (c)(2)(iv);
■ b. Redesignate paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii) as paragraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi), respectively;
■ c. Remove paragraph (d)(1);
■ d. Redesignate subparagraphs (d)(2), (d)(3), and (d)(4) as paragraphs (d)(1), (d)(2), and (d)(3), respectively; and
■ e. Remove paragraphs (d)(5) and (d)(6).

■ 7. Amend § 23.41 by revising paragraph (d) to read as follows:

§ 23.41 What is the basic overall goal requirement for recipients?

* * * * *

(d) Effective October 3, 2025, you are not required to update your overall goals until the UCP that covers you has completed the reevaluation process described in § 23.81.

* * * * *

■ 8. Amend § 23.43 by revising paragraph (b) to read as follows:

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

* * * * *

(b) Stakeholders with whom you must consult include, but are not limited to, business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged businesses and the recipient's efforts to increase participation of ACDBEs.

* * * * *

■ 9. Amend § 23.45 by revising paragraphs (f), (g), and (h) to read as follows:

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

* * * * *

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of ACDBE-neutral and ACDBE-conscious means, respectively, and the basis for making this projection (see § 23.51(d)(5)).

(g) FAA may approve or disapprove the way you calculated your goal, including your ACDBE-neutral/ACDBE-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (*i.e.,* the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or ACDBE-neutral/ACDBE-conscious "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding.

* * * * *

■ 10. Amend § 23.51 as follows:
■ a. Revise the introductory text of paragraph (a);
■ b. Revise paragraph (a)(2);
■ c. Revise paragraph (c)(3); and
■ d. Revise paragraph (d)(5).

The revisions read as follows:

§ 23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§ 23.47 through 23.49 that would be performed by ACDBEs in the absence of social and economic disadvantage and its effects.

* * * * *

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have been impacted by social and economic disadvantage in connection with concession opportunities or related business opportunities.

* * * * *

(c) * * *

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study. Any disparity study utilized must

provide a detailed capacity analysis, including the methodology used.

* * * * *

(d) * * *

(5) Among the information you submit with your overall goal (see § 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through ACDBE-neutral and ACDBE-conscious measures, respectively (see §§ 26.51(c) of this chapter).

* * * * *

■ 11. Amend § 23.53 by adding paragraph (g) to read as follows:

§ 23.53 How do car rental companies count ACDBE participation toward their goals?

* * * * *

(g) Effective October 3, 2025, you as a car rental company may not count any ACDBE participation toward the goal that an airport has set for you until the UCP covering that airport has completed the reevaluation process described in part 26, § 23.81

■ 12. Amend § 23.55 by adding paragraph (m) to read as follows:

§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

* * * * *

(m) Effective October 3, 2025, you may not count any ACDBE participation toward ACDBE goals until the UCP covering you has completed the reevaluation process described in § 23.81.

■ 13. Amend § 23.57 as follows:

■ a. Revise paragraphs (b)(4) and (c); and

■ b. Add paragraph (d).

The revision and addition read as follows:

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

* * * * *

(b) * * *

(4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your ACDBE-neutral/ACDBE-conscious split, or the introduction of additional ACDBE-neutral or ACDBE-conscious measures.

* * * * *

(c) If information coming to the attention of FAA demonstrates that current trends make it unlikely that you, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FAA may require you to make further good faith efforts, such as modifying your ACDBE-conscious/ACDBE-neutral split or introducing additional ACDBE-neutral or ACDBE-conscious measures for the remainder of the fiscal year.

(d) Effective October 3, 2025, you are not subject to this section until the UCP that covers you has completed the reevaluation process described in § 23.81.

■ 14. Add § 23.81 to subpart E to read as follows:

§ 23.81 ACDBE reevaluation process.

(a) Effective October 3, 2025, each UCP must:

(1) Identify each currently certified ACDBE;

(2) Provide each firm identified pursuant to paragraph (a)(1) of this section with the opportunity to submit documentation demonstrating its ACDBE eligibility under the standards set forth in this part;

(3) Determine whether each firm identified pursuant to paragraph (a)(1) of this section meets the ACDBE eligibility standards set forth in this part; and

(4) Issue a written decision to each firm reevaluated pursuant to subparagraph (a)(3), indicating that it has either been recertified or is decertified.

(b) The provisions of § 26.87 of this chapter shall not apply to any action taken pursuant to paragraph (a) of this section.

(c) Each UCP must reevaluate each firm identified pursuant to paragraph (a)(1) of this section as quickly as practicable and must promptly notify the Department when it has done so. The Department reserves the right to review a UCP's reevaluation process.

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

■ 15. 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).

■ 16. Amend § 26.1 by revising paragraph (c) to read as follows:

§ 26.1 What are the objectives of this part?

* * * * *

(c) To ensure that the Department's DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;

* * * * *

■ 17. Amend § 26.5 as follows:

■ a. Add definitions for DBE-conscious and DBE-neutral in alphabetical order;

■ b. Remove the definitions of Race-conscious and Race-neutral; and

■ c. Revise the definition of Socially and economically disadvantaged individual.

The addition and revision read as follows:

§ 26.5 Definitions.

* * * * *

DBE-conscious measure or program is one that is focused specifically on assisting only DBEs.

DBE-neutral measure or program is one that is, or can be, used to assist all small businesses.

* * * * *

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 race or sex. For that reason, all applicants shall qualify as socially and economically disadvantaged if they can meet the relevant criteria described in § 26.67. Being born in a particular country does not, standing alone, mean that a person is necessarily socially and economically disadvantaged.

* * * * *

§ 26.11 [Amended]

■ 18. Amend § 26.11 as follows:

■ a. Remove paragraph (c)(2)(iv);

■ b. Redesignate paragraphs (c)(2)(v), (c)(2)(vi), and (c)(2)(vii) as subparagraphs (c)(2)(iv), (c)(2)(v), and (c)(2)(vi), respectively;

■ c. Remove paragraph (e)(1);

■ d. Redesignateparagraphs (e)(2), (e)(3), and (e)(4) as paragraphs (e)(1), (e)(2), and (e)(3), respectively; and

■ e. Remove paragraphs (e)(5) and (e)(6).

■ 19. Amend § 26.37 by revising paragraph (b) to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring?

* * * * *

(b) A recipient's DBE program must also include a monitoring and enforcement mechanism to ensure that work committed, or in the case of DBE-neutral participation, the work subcontracted, to all DBEs at contract award or subsequently is performed by the DBEs to which the work was committed or subcontracted to, and such work is counted according to the requirements of § 26.55. This mechanism must include a written verification that you have reviewed contracting records and monitored the work site to ensure the counting of each DBE's participation is consistent with its function on the contract. The monitoring to which this paragraph (b) refers may be conducted in conjunction with monitoring of contract performance for other purposes such as a commercially useful function review.

* * * * *

■ 20. Amend § 26.39 by revising paragraphs (b)(1) and (b)(5) to read as follows:

§ 26.39 Fostering small business participation.

* * * * *

(b) * * *

(1) Establishing a DBE-neutral small business set-aside for prime contracts under a stated amount (*e.g.*, $1 million).

* * * * *

(5) To meet the portion of your overall goal you project to meet through DBE-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

* * * * *

■ 21. Amend § 26.45 as follows:
■ a. Revise paragraph (a)(2);
■ b. Revise paragraph (b);
■ c. Revise paragraph (c)(3);
■ d. Revise paragraph (d)(1)(ii);
■ e. Revise paragraph (d)(3);
■ f. Revise paragraph (f)(3);
■ g. Revise paragraph (g)(1); and
■ h. Revise paragraph (h);

The revisions read as follows:

§ 26.45 How do recipients set overall goals?

(a) * * *

(2) If you are an FTA Tier II recipient who intends to operate a DBE-neutral program, or if you are an FAA recipient who reasonably anticipates awarding $250,000 or less in FAA prime contract funds in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA, respectively, for that Federal fiscal year.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of social and economic disadvantage. You cannot simply rely on either the 10 percent national goal, your previous overall goal, or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) * * *

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study. Any disparity study utilized must provide a detailed capacity analysis, including the methodology used.

* * * * *

(d) * * *

(1) * * *

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure. To the extent that the disparity study provides a detailed capacity analysis, include the methodology used;

* * * * *

(3) If you attempt to make an adjustment to your base figure to account for the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

* * * * *

(f) * * *

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through DBE-neutral and DBE-conscious measures, respectively (*see* § 26.51(c)).

* * * * *

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (*e.g.*, a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official internet website and may be posted in any other sources (*e.g.*, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official internet website.

* * * * *

(h) Effective October 3, 2025you are not required to update your overall goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 22. Amend § 26.47 as follows:
■ a. Revise paragraph (c)(4);
■ b. Revise paragraph (d); and
■ c. Add paragraph (e).

§ 26.47 Can recipients be penalized for failing to meet overall goals?

* * * * *

(c) * * *

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your DBE-conscious/DBE-neutral split, or the introduction of additional DBE-neutral or DBE-conscious measures.

* * * * *

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current

trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your DBE-conscious/DBE-neutral or introducing additional DBE-neutral or DBE-conscious measures for the remainder of the fiscal year.

(e) Effective October 3, 2025, you are not subject to this section until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 23. Amend § 26.51 as follows:
■ a. Revise paragraph (a);
■ b. Revise the introductory text to paragraph (b);
■ c. Revise paragraph (c);
■ d. Revise paragraph (d);
■ e. Revise paragraph (e)(2);
■ f. Revise paragraph (f);
■ g. Revise paragraph (g); and
■ h. Add paragraph (h).

The revisions read as follows:

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using DBE-neutral means of facilitating DBE-neutral participation. DBE-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

(b) DBE-neutral means include, but are not limited to, the following:

* * * * *

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through DBE-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using DBE-neutral means.

* * * * *

(e) * * *

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of DBE-neutral means.

* * * * *

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of social and economic disadvantage, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through DBE-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

Example 1 to paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through DBE-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I. However, if part way through Year I, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year I, you could begin setting DBE-conscious contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of DBE-neutral or DBE-conscious measures to allow you to meet the overall goal.

Example 2 to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of DBE-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of DBE-neutral or DBE-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by DBE-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only DBE-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example 3 to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through DBE-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using DBE-neutral means. You simply use DBE-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) of this section projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years using contract goals (*i.e.*, not through DBE-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example 4 to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) of this section projection estimates that you will obtain 4 percent DBE participation through DBE-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through DBE-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

(h) Effective October 3, 2025, you may not set any contract goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 24. Amend § 26.55 by adding paragraph (i) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(i) Effective October 3, 2025, you may not count any DBE participation toward DBE goals until the UCP that covers you has completed the reevaluation process described in § 26.111.

■ 25. Amend § 26.61 by revising paragraph (b) to read as follows:

§ 26.61 Burden of proof.

* * * * *

(b) The firm has the burden of demonstrating, by a preponderance of the evidence, *i.e.*, more likely than not, that it satisfies all of the requirements in this subpart. In determining whether the firm has met its burden, the certifier must consider all the information in the record, viewed as a whole. In a decertification proceeding the certifier bears the burden of proving, by a preponderance of the evidence, that the firm is no longer eligible for certification under the rules of this part.

■ 26. Revise § 26.67 to read as follows:

§ 26.67 Social and economic disadvantage.

(a) Non-presumptive Disadvantage. All applicants must demonstrate social and economic disadvantage (SED) affirmatively based on their own experiences and circumstances within American society, and without regard to race or sex.

(1) To satisfy the SED requirement and ensure all determinations of disadvantage are not based in whole or in part on race or sex, an owner must provide the certifier 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, systemic barriers, and denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons.

(2) The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of type and magnitude, and must establish the owner is economically disadvantaged in fact relative to similarly situated non-disadvantaged individuals.

(3) The owner must attach to the PN a current PNW statement and any other financial information he considers relevant.

■ 27. Add § 26.111 to subpart F to read as follows:

§ 26.111 DBE Reevaluation Process.

(a) Effective October 3, 2025, each UCP must:

(1) Identify each currently certified DBE;

(2) Provide each firm identified pursuant to subparagraph (a)(1) with the opportunity to submit documentation demonstrating its DBE eligibility under the standards set forth in this part;

(3) Determine whether each firm identified pursuant to subparagraph (a)(1) meets the DBE eligibility standards set forth in this part; and

(4) Issue a written decision to each firm reevaluated pursuant to subparagraph (a)(3), indicating that it has either been recertified or is decertified.

(b) The provisions of § 26.87 of this part shall not apply to any action taken pursuant to paragraph (a).

(c) Each UCP must reevaluate each firm identified pursuant to subparagraph (a)(1) as quickly as practicable and must promptly notify the Department when it has done so. The Department reserves the right to review a UCP's reevaluation process.

[FR Doc. 2025–19460 Filed 10–2–25; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 250915–0853]

RIN 0648–BM94

Fisheries of the Caribbean, Gulf of America, and South Atlantic; Fishery Management Plans of Puerto Rico, St. Croix, and St. Thomas and St. John; Amendment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Amendment 2 to the Fishery Management Plans (FMPs) for Puerto Rico, St. Croix, St. Thomas and St. John FMP (Amendment 2), as prepared by the Caribbean Fishery Management Council (Council). This final rule prohibits and restricts the use of certain net gear in U.S. Caribbean Federal waters and requires a descending device to be available and ready for use on vessels when fishing for federally managed reef fish species in U.S. Caribbean Federal waters. The purpose of this final rule and Amendment 2 is to protect habitats and species from the potential negative impacts associated with the use of certain net gear and to enhance the survival of released reef fish in U.S. Caribbean Federal waters.

DATES: This final rule is effective November 3, 2025, except for the revisions for §§ 622.437(a)(4), 622.477(a)(4), and 622.512(a)(4), which are effective April 1, 2026.

ADDRESSES: Electronic copies of Amendment 2, which includes a fishery impact statement, an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis, may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/amendment-2-puerto-rico-st-croix-and-st-thomas-and-st-john-fishery-management-plans-trawl.*

FOR FURTHER INFORMATION CONTACT: Maria Lopez-Mercer, NMFS Southeast Regional Office, 727–824–5305, *maria.lopez@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS, with the advice of the Council, manages the Puerto Rico, St. Croix, and St. Thomas and St. John fisheries in U.S. Caribbean Federal waters under the Puerto Rico, St. Croix, and St. Thomas and St. John FMPs. The Council prepared the FMPs, which the Secretary of Commerce approved, and NMFS implements the FMPs through regulations at 50 CFR parts 600 and 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 27, 2024, NMFS published a notice of availability for Amendment 2 and requested public comment (89 FR 68572). On September 30, 2024, NMFS published a proposed rule for Amendment 2 and requested public comment (89 FR 79492). NMFS