



DBE Program Status

October 7, 2025

Rich Juliano
General Counsel



ARTBA-UCON Partnership

Since 1998...



American Road
& Transportation
Builders Association



OJT and DEI

President Trump's Initial Executive Order on DEI

Jan. 2025

- Revokes 1965 EO on federal contracting
- Refocuses DOL's Office of Federal Contract Compliance Programs
- Dismantles federal agency DEI initiatives
- How does this affect OJT requirements?
- Distinct issue from DBE program
 - But see DOJ memo to "evaluate litigation positions"

Litigation

- Recent cases directly or indirectly relating to the DBE program...
 - *Harvard* college admissions (SCOTUS)
 - *Ultima* SBA 8(a) program (E.D. of Tennessee)
 - *Mid-America Milling Company v. U.S. DOT* (E.D. Kentucky)
 - Other challenges possible

Litigation

Mid-America Milling (MAMCO) v. U.S. DOT

Oct. 2023

- Two non-DBE plaintiffs challenging constitutionality of the program
- Federal judge a granted preliminary injunction in Sept. and clarified in Oct. 2024
- 0% DBE goals on any of plaintiffs' projects of interest in any state
- FHWA issued guidance to all states

Litigation

Mid-America Milling (MAMCO) v. U.S. DOT

- U.S. DOT, FHWA and federal officials are defendants in the suit
- New officials stepped in as defendants with change of administrations in Jan. 2025
- Opportunity to settle case with the plaintiffs

Litigation

MAMCO proposed consent order filed 5/28/25

- “Defendants, upon review of the DBE program and their position in this litigation, have determined that the program’s use of race- and sex-based presumptions is unconstitutional.”

Case: 3:23-cv-00072-GFVT-EBA Doc #: 82-1 Filed: 05/28/25 Page: 1 of 7 - Page ID#: 1119

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT

MID-AMERICA MILLING COMPANY,
LLC, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
TRANSPORTATION, *et al.*,

Defendants.

Case No. 3:23-cv-00072-GFVT-EBA

CONSENT ORDER

This action was brought by Plaintiffs, Mid-America Milling Company, LLC and Bagshaw Trucking Inc., against Defendants the United States Department of Transportation (“USDOT”), Secretary of Transportation Sean Duffy, Administrator of the Federal Highway Administration, and Division Administrator of the Kentucky Division of the Federal Highway Administration Shundreka Givan¹ (“Defendants”), under the Fifth Amendment to the United States Constitution and the Administrative Procedure Act (“APA”). Plaintiffs and Defendants (collectively, “the Parties”) agree to this Order as final and binding between themselves as to the issues raised in Plaintiffs’ Complaint in this action.

NOW, THEREFORE, it is hereby AGREED BY THE PARTIES, through their undersigned counsel, and ORDERED BY THE COURT, that:

¹ Defendants hereby notify the Court of the substitution of Shundreka Givan pursuant to Federal Rule of Civil Procedure 25(d).

Litigation

MAMCO proposed consent order filed 5/28

- “Defendants 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.”

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Litigation

***MAMCO* Filing by U.S. DOT – 7/16/25**

- The IIJA "grants the Secretary of Transportation sole discretion to set the DBE goal for small business concerns owned and controlled by socially and economically disadvantaged individuals..."
- "[The] Secretary could set the DOT DBE goal at zero percent nationwide."

Litigation

***MAMCO* Filing by U.S. DOT – 7/16/25**

- "This Proposed Consent Order, in contrast, will permit the DOT DBE program, and associated DBE goals on all contracts[,] to continue, provided that no DBE has qualified to the program through race- and sex-based presumptions."
- The Proposed Consent Order "attempts to implement the program, and maintain the goals, in a manner that comports with the Constitution."

Litigation

***MAMCO* Filing by U.S. DOT – 7/16/25**

- "The Proposed Consent Order... provides a path forward for states to implement a DBE program without the use of the [race- and sex-based] presumptions in a constitutional manner."
- Recipients will be "free to requalify DBEs without the use of race- or sex-based presumptions and then resume setting DBE goals on DOT projects..."
- DBEs "will be presented an opportunity to reenter the DOT DBE program through race-neutral means."

Prelude to the New DBE Rule

Secy. Duffy Letter to MD Gov. Wes Moore, re: Key Bridge Replacement – 9/18/25

- "[An] area of specific concern relates to whether Maryland intends to award contracts for the FSK Bridge project in a manner that relies on the race or sex of contractors. Any reliance on race- or sex-conscious factors in contracting decisions could introduce significant legal vulnerabilities and inefficiencies in the management of the project."

Interim Final DBE Rule

- Released 9/30/25
- Announced 10/1/25
- Formally published 10/3/25
- Effective 10/3/25
- Comments taken through 11/3/25
- “Interim Final Rule” because of urgency to change the program
- Further context

47969

Rules and Regulations

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

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents.

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 Lau, 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.Lau@faa.gov. AVSS Contact: Josh Ogden, CEO, AVSS, 570 Quest Street, Suite 600, Fredericton, New Brunswick, E3B-6Z6, Canada, +1 (603) 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 and § 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 demonstrate 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 (MO) 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

Interim Final DBE Rule

Changes to DBE Eligibility and Certification

- Rescinds longstanding presumption that women, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Subcontinent Asian Americans are “socially and economically disadvantaged” for purposes of DBE program participation.
- That term can now apply on a case-by-case basis to any U.S. citizen (or lawfully admitted permanent resident), as determined by a Unified Certification Program (UCP).

Interim Final DBE Rule

Changes to DBE Eligibility and Certification

- All existing DBE firms will need to be reevaluated.
- “As quickly as practicable,” UCPs will need to identify and contact these firms (which U.S. DOT estimates as 41,000 nationwide) so they can submit documentation for recertification based on the new standards.
- Additional firms, not previously eligible for the DBE program, may also apply for certification.

Interim Final DBE Rule

Changes to DBE Eligibility and Certification

- All applicants must submit a “Personal Narrative” documenting “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.”

Interim Final DBE Rule

Changes to DBE Eligibility and Certification

- The UCPs will provide results to the relevant transportation agencies. U.S. DOT “will work with each UCP to minimize the practical impact of this rule change during the pendency of the reevaluation process.”
- A state DOT “may not count any DBE participation toward DBE goals” until the reevaluation process is complete for their jurisdiction. This effectively suspends compliance with a state’s overall goal until its pool of DBE firms is reconstituted.

Interim Final DBE Rule

Not Changing

- Other limitations for ownership of a DBE firm (such as control and personal net worth) and the firm itself (small business size standards) will remain.

Interim Final DBE Rule

Not Changing

- There will still be DBE goals in each state, although...
 - Program goals will now seek to remediate the effects of “social and economic disadvantage” instead of “discrimination.”
 - Agencies no longer need to consult with minority and women’s contractor groups in goal setting.
 - They may still utilize disparity studies, but under revised guidelines.

Interim Final DBE Rule

Not Changing

- Other long-discussed aspects of the program remain for now...
 - Definition of good faith effort
 - Determining commercially-useful function
 - Limitations on interactions between primes and DBE subs
 - Etc.

Interim Final DBE Rule

Open Questions

- How does the IFR apply to...
 - existing projects?
 - projects in particular stages of procurement?
 - alternative procurement?
 - changing out a DBE firm during construction?
 - etc.

DBE Program

Current Tasks for ARTBA

- Reaching out to federal officials
- Information gathering with chapters
- Talking with other national groups
- Compiling state-by-state status of DBE programs
- Preparing questions and comments

DBE Program

Looking Forward

- Need for U.S. DOT guidance
- Legal challenges to Interim Final Rule?
- Consent Order process/timing
- Opposition/Appeals (pro-DBE intervenors)
- Applicability of state/local laws
- IIJA Reauthorization (due by 10/1/26)

Questions or Comments?

Rich Juliano

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