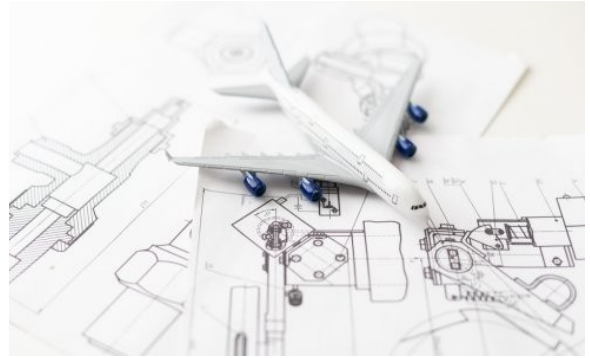


USDOT's Interim Final Rule: A New Era for DBE and ACDBE Certifications

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Update (December 2025)

New developments have occurred regarding USDOT's Interim Final Rule. On December 2, the Pennsylvania Unified Certification Program (PA UCP) issued notice to DBE firms advising that recertification submissions are required under the new USDOT Interim Final Rule. To be considered for recertification, firms must submit updated Personal Net Worth statements, 2024 tax information, and a Personal Narrative demonstrating individualized social and economic disadvantage. **All required materials must be submitted by February 5.** Firms that do not timely submit complete documentation risk decertification.

In 1983, Congress enacted the U.S. Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program to ensure equitable access to federal contracts involving highway, transit and aviation projects for small businesses owned and operated by socially and economically disadvantaged individuals, including women and members of specific racial and ethnic minority groups.

Last month, USDOT issued an Interim Final Rule (IFR) on October 3, 2025 that fundamentally changes how firms qualify as DBE and Airport Concession Disadvantaged Business Enterprises (ACDBE).

The rule, which came into effect on the date of its publication, eliminates race- and sex-based presumptions of disadvantage — requiring every applicant and currently certified firms to prove social and economic disadvantage on an individual basis.

These changes affect all firms certified or seeking certification under the DBE and ACDBE programs, including thousands of women- and minority-owned small businesses that have historically relied on the presumption of disadvantage.

Why the Rule Was Issued

The IFR, effective October 3, 2025, follows a series of court rulings and executive orders directing agencies to remove race- and sex-based classifications from federally funded programs. In *Mid-America Milling Co. v. U.S. Department of Transportation*, the U.S. District Court for the Eastern District of Kentucky held that USDOT's use of such presumptions likely violate the equal-protection component of the Fifth Amendment.

USDOT and the Department of Justice agreed with the court's conclusion and determined that the DBE and ACDBE programs must now operate in a race- and sex-neutral manner to be consistent with constitutional requirements.

Key Changes Under the Interim Final Rule

The IFR amends 49 CFR Parts 24 and 26 to remove race- and sex-based presumptions from the definitions of "socially and economically disadvantaged individual." Instead, each owner applying for or maintaining a firm's DBE or ACDBE certification must now:

- Demonstrate disadvantage on a case-by-case, individual basis — based on personal experiences and circumstances within American society, without regard to race or sex
- Submit a personal narrative establishing disadvantage by a preponderance of the evidence — describing specific experiences of economic hardship, systemic barriers, or denied opportunities in education, employment, or business
- Explain the resulting economic harm, including type and magnitude — illustrating disadvantage relative to similarly situated, non-disadvantaged persons
- Attach a personal net worth statement—and any other relevant financial information

Immediate Program Wide Impacts

USDOT has estimated that roughly 41,000 firms nationwide will need to be reviewed, and each state must assess and revise

its DBE goal methodology for approval. Many state DOTs have already paused goal setting and tracking while UCPs develop a process for reevaluation.

Until each UCP completes its reevaluation process, recipients of federal transportation funding may not set DBE contract goals, and participation by existing DBEs cannot be counted toward overall goals. Following the reevaluation of all DBEs in the state, recipients must assess, update, and obtain approval of their DBE goal methodology.

Importantly, contracts that have already been awarded are not impacted, and the DBE goals stated within those contracts remain applicable. Additionally, the termination provisions outlined in 49 CFR § 26.53 continue to apply, prohibiting contractors from terminating a DBE firm without good cause. However, all contracts that have not yet been awarded must be amended to zero out the DBE goal.

Why This Matters

The DBE and ACDBE programs have long been essential to ensuring fair access to public transportation project contracts. But the shift from group-based presumptions to individualized proof introduces significant uncertainty and administrative burden for small businesses.

Firms that do not respond promptly, or that submit insufficient documentation, risk losing certification and access to set-aside opportunities until they can requalify under the new standards.

What DBE and ACDBE Businesses Should Know

While the rule applies to all DBE and ACDBE firms, female- and minority-owned businesses will feel the most immediate impact. Under prior regulations, women and certain minorities were presumed to be socially and economically disadvantaged. That presumption no longer exists.

As such, to maintain certification, owners must now prepare a detailed personal narrative and financial disclosure demonstrating disadvantages based on lived experience not related to race or gender.

For many owners, this will mean documenting:

- Specific professional or economic barriers encountered
- Instances of unequal access to capital or contracting opportunities
- Measurable economic impact of barrier encountered

Mid-Atlantic State Responses

The IFR requires that each state's UCP to reevaluate all certified firms "as quickly as practicable." All DBE firms must complete the reevaluation process in the jurisdiction of their original certification (i.e. the firm's home state). Below is a brief update from key Mid-Atlantic states.

Delaware

DeIDOT has provided notice stating that all currently certified DBE firms have lost their certification and must undergo reevaluation to remain in the program. In its communication, DeIDOT clarified that the IFR does not affect existing contracts, and agencies are not required to recompile or reopen current awards.

Maryland

With over 10,000 certified firms — nearly 25% of the national total — MDOT, serving as the state's UCP, has expressed its desire to move swiftly in recertifying and reassessing its DBE program. In fact, MDOT has already initiated the process of securing expedited procurement to hire external reviewers to support the reevaluation process.

New Jersey

The state's UCP has issued a notice outlining requirements and prohibitions under the IFR; however, no specific deadlines or guidance regarding the reevaluation process is provided. Moreover, all interstate firms will be delisted from the NJUCP directory and must complete the reevaluation process in the jurisdiction of the firm's original certification.

New York

While there is no conspicuous notice of the IFR on the state's UCP websites, MTA — one of New York's Certifying Partners — has revised the DBE Participation Provisions within its General Provisions for Design-Build Contracts. These revisions indicate that firms will be recertified through an application process, followed by a reassessment and resetting of the overall DBE goal. Only after this process will the need for new contract-specific goals be determined.

Pennsylvania

A notice has been sent to DBE firms regarding the IFR requirements; however, no deadlines have been provided for the reevaluation process. The Pennsylvania UCP has also announced that it is not currently accepting any new applications.

Southeastern State Responses

Georgia

The Georgia UCP (GUCP) has issued a notice to DBE firms regarding the IFR's requirement to demonstrate individual social and economic disadvantage. In its communication, GUCP stated that it is seeking further clarification and will continue to update DBE firms regarding certification status and recertification procedures once additional guidance is received.

North Carolina

The state's UCP has acknowledged the IFR through formal notice but has not provided further communication regarding its specific requirements or prohibitions. No deadlines or guidance related to the reevaluation process have been issued at this time.

South Carolina

SCDOT has announced that all currently certified DBE firms have temporarily lost their certification and must undergo reevaluation to remain in the program, noting that the previous decertification procedures found in 49 C.F.R. § 26.87 do not apply. SCDOT also indicated that it is working expeditiously to complete the reevaluation process and will issue further guidance, including the required documentation, to DBE program participants.

How DBE and ACDBE Businesses Can Prepare

Affected businesses should begin preparing now to ensure they remain eligible and avoid decertification during the reevaluation process:

- **Collection Documentation** – Gather records reflecting challenges obtaining financing, discrimination in lending or contracting, or other business obstacles.
- **Draft a Comprehensive Personal Narrative** – Explain, in detail, how personal and economic barriers have impacted business growth.
- **Review Financial Information** – Confirm your Personal Net Worth statement is current and accurate.
- **Consult Counsel** – Experienced legal counsel can help interpret new requirements, structure the narrative, and ensure compliance with 49 CFR § 26.67 and related provisions.

How DBE and ACDBE Businesses Can Be Proactive

While the IFR impacts federally funded projects, small and minority business certifications remain active and relevant for state-funded projects. Unlike DBE certification, which is governed by federal regulations, small and minority business certifications

are administered under state specific guidelines.

Firms undergoing DBE reevaluation may already hold certification as a small or minority business within their certifying state. For instance, Maryland's UCP evaluates all DBE applicants during the certification process to determine their eligibility for the small business program. Generally, a firm will qualify as a small business if it does not exceed the established size and revenue thresholds.

In addition, some states are transitioning their DBE firms to the Small Business Administration's 8(a) program which certifies socially and economically disadvantaged small business owners seeking to expand in the federal marketplace. Certification under the 8(a) program allows firms to compete for sole-source and competitive set-aside contracts. The program authorizes up to \$7 million for acquisitions assigned NAICS codes and \$4.5 million for all other acquisitions. Similar to the DBE program, to be eligible for the 8(a) program 51% of the firm's ownership interest and control of the firm must be in a socially and economically disadvantaged individual whose personal net worth is no more than \$850,000.

As the landscape continues to shift, DBE and ACDBE firms are encouraged to review their certifications and evaluate alternative certification programs that offer greater stability and alignment with their long-term business goals.