

What does the USDOT's Interim Final Rule on the DBE Program Mean for Minnesota's Highway Contractors?

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What is the Interim Final Rule?

- October 3, 2025
- 49 CFR Parts 23 and 26
- Docket No. DOT-OST-2025-0897
- **KEY POINTS**
 - Eliminates the presumption of disadvantage based on race and gender on grounds that such presumptions are unconstitutional.
 - Requires UCPs to overhaul DBE program by reevaluating all DBEs and recertifying them.
 - DBEs to seek certification and/or recertification using a new format, which requires DBEs to provide a Personal Narrative proving disadvantage based on individualized proof on a case-by-case basis.
 - DBE contract or participation goals cannot be used in new procurements until the overhaul and recertification process is complete.

Why did this Happen?

- *Mid-America Milling Co. v. U.S. Dep’t of Transp.*, No. 3:23-cv-0072 (E.D. Ky.)
 - Sept. 23, 2024, MAAMCO orders preliminary injunction that US DOT DBE program violates equal protection.
 - Oct. 16, 2024, injunction extended to all states on which MAAMCO operates or bids.
 - May 28, 2025, DOT and MAAMCO Joint Motion for Entry of Consent Order stipulating that DBE program violates equal protection due to race and gender based presumptions (Pending)
 - June 16, 2025, Amicus of States supporting Consent Order.
 - June 24, 2025, Amicus of States opposing Consent Order (MN included).
- *Nuzziard v. Minority Business Redevelopment Agency*, No. 4:23-cv-00278, (N.D. Tex)
 - Mar. 5, 2024, orders injunction against the Federal Minority Business Development Assistant Program which denied benefits to plaintiffs based on their race, which was not included in the list of races for which the program was designed.

Why did this Happen?

- Executive Orders on DEI and unconstitutional regulations
 - E.O. 14151, Jan. 20, 2025
 - E.O. 14219, Feb. 19, 2025
- AG memorandum that race and gender descriptions DBE program does not pass equal protection in light of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).
 - Mar. 21, 2025
- [Federal Register :: Disadvantaged Business Enterprise Program and Disadvantaged Business Enterprise in Airport Concessions Program Implementation Modifications](#)

Is the DBE Program Dead in MN?

- MnUCP Website:

"On October 3, 2025, The USDOT published an Interim Final Rule (IFR) in the Federal Register (Vol.90, No. 190) effective immediately, which significantly changed the Federal regulations governing the Disadvantaged Business Enterprise (DBE) program. The IFR removes the presumption of social and economic disadvantage and requires that the MnUCP reevaluate all ACDBE and DBE firms certified under those presumptions.

The MnUCP is prioritizing the reevaluation process. We will remain in touch as we navigate this change."

Is the DBE Program Dead in MN?

- MnDOT

“It is important to note that the DBE program has not been eliminated and that certain obligations remain, such as prompt payment requirements and DBE substitution requirements. This change does not affect on-the-job training requirements, tribal requirements, or workforce goals. This change also does not affect Targeted Group Business goals on projects without federal funding.

The MnUCP is committed to completing its review process as quickly as reasonably feasible. MnDOT will continue to review this direction from the federal government and assess options we have to successfully deliver a multimodal transportation system that maximizes the health of people, the environment, and our economy. Thank you for your continued support of small and disadvantaged businesses.”

[DBE program update](#)

What is the DBE Reevaluation Process?

- Each UCP must
 - Identify each currently certified DBE
 - Provide each firm a chance to meet the DBE eligibility standards
 - Determine whether each firm meets the DBE eligibility standards
 - Issue a written decision on each firm indicating whether it has been recertified or decertified.

49 CFR § 26.111

- So, before new goals set, UCP has to reevaluate all DBEs.
- When? “As quickly as practicable and must promptly notify the Department when it has done so.”
 - No deadline

What is the New Goal Setting Process?

- Program administrator must provide for consultation and publication about the goal, including:
 - “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 business and your efforts to establish a level playing field for participation of DBEs.”
 - Includes face-to-face meetings, video conference, teleconference
 - Notice of proposed goal has to be posted on website by 8/1 annually
 - Goals not to be updated until UCP has completed reevaluation process.

What is the New DBE Certification Process?

- There does not appear to be a new application form yet.
- As of Oct. 3, 2025: “DOT expects to provide an updated Uniform Application Form on its website.”

[Official Frequently Asked Questions on the DBE Program](#)

Personal Narrative Requirement

- 49 CFR 26.67: Applicants must provide a “Personal Narrative” to demonstrate “social and economic disadvantage” (SED).
 - Must be based on “their own experiences and circumstances **within American society**, and without regard to race or sex.”
 - Personal Narrative needed to satisfy SED and to “ensure all determinations of disadvantage are not based in whole or in part on race or sex”
 - Personal Narrative must establish “the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of

Personal Narrative Requirement

- Personal Narrative must establish “the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of
 - Economic hardship
 - Systemic barriers
 - Denied opportunities that impeded the owner’s progress or success in
 - Education
 - Employment
 - Business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons

Personal Narrative Requirement

- Must state and show 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 Personal Narrative a personal net worth statement and “any other financial information he considers relevant.”

Personal Narrative Requirement

- Requires “evidence”
 - Hearsay is not evidence
 - Supporting documentation should be authenticated with sworn declarations/affidavits
- No definition of “disadvantage” is provided – must be social and economic
- No definition of “economic hardship” is provided
- No definition of “systemic barriers” is provided
- Personal Narratives should be carefully prepared, thoroughly documented with “evidence” and designed to meet the “preponderance of the evidence” standard
- Applicants should seek legal counsel to navigate the application and to assist in the preparation of the Personal Narratives to increase the odds of success.

My Recertification Application Was Denied what Now?

- Appeal of denial of recertification is possible under 49 CFR § 26.89.
- Must be filed within 45 days of denial, and provide full explanation of the error, the outcome determinative facts not considered, and/or the part 26 provisions that were misapplied.

Will MnDOT Adhere to the IFR?

- Per MnDOT Office of Civil Rights posting as of 10/13/25:

“DBE and valued partners –

Last week, the Trump Administration announced significant changes to the Disadvantaged Business Enterprise (DBE) program – a program that is critical to ensure we have a broad and diverse base of contractors working on federally funded MnDOT projects across the state.

The US DOT issued an Interim Final Rule (IFR) published Friday, Oct. 3, that mandates states remove race and gender presumptions that help businesses qualify as DBEs and requires all currently certified DBE firms to individually demonstrate social and economic disadvantage, without regard to race or sex, if they want to re-qualify as a DBE.

MnDOT is actively reviewing this direction and assessing the options we have to both stay true to our values and successfully deliver a multimodal transportation system that maximizes the health of people, the environment and our economy. While we don't have all the answers today, we will remain in touch as we navigate this large change.

Thank you.

Sean Skibbie
Director, Office of Civil Rights”

[DBE program changes](#)

Will MnDOT Adhere to the IFR?

- MnDOT notice for reevaluation of the DBE program just went out.
 - [Disadvantaged Business Enterprise/Airport Concessions Disadvantaged Business Enterprise Program Reevaluation - Intellistack](#)
- MnDOT form instructions
 - Available at [DBEACDBE Reevaluation Form Instructions-38977371-v4.PDF](#)
 - MnDOT's approach
 - Requires an applicant to submit one instance, and appears to allow hearsay.

What About MnDOT's Targeted Business Group Program for Engineering

Per MnDOT: [Professional Technical Consultant Services](#)
TGB Program

MnDOT strongly supports our TGB program – it brings tremendous value to the work we do, and we remain committed to this program. We've been assessing impacts of legal challenges around the country to programs like this and the potential impacts to us, to our important TGB community and the future of the TGB program here in MN. At this time, we are not making changes to the program, and we plan to engage with our stakeholders moving forward ahead of making any changes. We are committed to keeping you informed as we move forward.

Questions can be directed to Danielle Plocher at Danielle.plocher@state.mn.us.

- MnDOT appears to be still using an “up to 12%” preference based on race and gender classifications per Minn. R. 1230.1810, 1230.1830.

QUESTIONS