*C. Public Comment and Final Action*

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

**III. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 19, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011–13239 Filed 5–26–11; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 23

**[Docket No. OST–2011–0101]**

**RIN 2105–AE10**

## Disadvantaged Business Enterprise: Program Improvements for Airport Concessions

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice of proposed rulemaking (NPRM) proposes conforming amendments to the Department of Transportation's Airport Concessions Disadvantaged Business Enterprise (ACDBE) regulation, consistent with recently issued amendments in the Department's regulation for the disadvantaged business enterprise (DBE) program in highway, transit, and airport financial assistance programs.

**DATES:** Comments on this proposed rule must be received by July 26, 2011.

**ADDRESSES:** You may submit comments (identified by the agency name and DOT Docket ID Number OST–2011–0101) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

*Instructions:* You must include the agency name (Office of the Secretary, DOT) and Docket number (OST–2011–0101) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov.*

*Docket:* For Internet access to the docket to read background documents and comments received, go to *http://www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave, S.E., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Room W94–302, 202–366–9310, *bob.ashby@dot.gov* or Wilbur Barham, Director National Airport Civil Rights Policy and Compliance, U.S. Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Room 1030, 202–385–6210, *wilbur.barham@faa.gov.*

**SUPPLEMENTARY INFORMATION:** On January 28, 2011, the Department published a final rule establishing several program improvements to the Department's DBE program rule (49 CFR part 26) for financial assistance programs (76 FR 5083). This NPRM proposes conforming amendments to the Department's companion rule for the ACDBE program (49 CFR part 23) for several of the Part 26 amendments. The rationales for the proposed conforming changes to Part 23 are very similar to

those for the parallel Part 26 changes, and we refer readers to the preamble of the Part 26 final rule for information on the basis and purpose of the proposed changes.

We note that it is not necessary to propose conforming changes to Part 23 parallel to all of the Part 26 changes. For example, it is not necessary to include a Part 23 provision parallel to the change to § 26.11, concerning the frequency of reports, since existing § 23.27(b) already states the appropriate reporting frequency for Part 23 reports.

In addition, many of the Part 26 amendments apply automatically to Part 23, because of sections in Part 23 that incorporate provisions of Part 26. For example, existing § 23.23 incorporates the provisions of § 26.31, regarding directories, so the changes to § 26.31 apply in the Part 23 context without further amendment to Part 23. Existing § 23.31(a) states that, except where otherwise provided in Part 23, the certification provisions of §§ 26.61–26.91 apply to Part 23. Consequently, the amendments to §§ 26.71, 26.73, 26.81, 26.83, 26.84, and 26.85 automatically apply under Part 23 as well as Part 26. Finally, the existing § 23.25(e)(1)(iv) states that the administrative procedures applicable to contract goals in §§ 26.51–26.53 apply with respect to concession specific goals, so the amendment to § 26.51 and the amendment to § 26.53 automatically apply under Part 23 as well as Part 26.

In the list that follows, we highlight the recent amendments to Part 26 that apply automatically under Part 23. When these Part 26 sections apply under Part 23, the terms ''contractor'' or ''subcontractor'' are understood to mean ''concessionaire'' or ''subconcessionaire.''

- Section 26.31: This amendment, requiring that the DBE directory include the list of each type of work for which a firm is eligible to be certified, applies to the ACDBE program as well.
- Section 26.51: Applied in the ACDBE context, this amendment directs recipients who originally set all race-neutral goals to start setting race-conscious concession-specific goals if it appeared that the race-neutral approach was not working.
- Section 26.53: As applied to ACDBEs, this amended section sets forth the circumstances in which a prime concessionaire has good cause to terminate an ACDBE firm.
- Section 26.71: Under this amended section, the types of work an ACDBE firm can perform must be described in terms of the most specific available NAICS code for that type of work.
- Section 26.73: This amended section provides that certification of a firm may not be denied solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success.
- Section 26.81: The requirements for Unified Certification Programs (UCPs) were amended to require the UCP to revise the print version of the Directory at least once a year.
- Section 26.83: The amended procedures for making certification decisions apply in the ACDBE context. The amendments include a new subsection that addresses the procedure for a certification decision involving an application that was withdrawn and then resubmitted.
- Section 26.84: This section was removed in the recently issued Part 26 final rule.
- Section 26.85: This section has been removed and replaced with a section describing the process of interstate certification for a DBE firm. This includes the information the applicant must provide to the other state (''State B''), what actions State B must take when it receives an application, and appropriate reasons for making a determination that there is good cause to believe that the home state's, State A, certification of the firm is erroneous or should not apply in State B.

Even though the Part 26 amendments listed above apply automatically to Part 23, it is important that these new Part 26 changes make sense in the ACDBE context. Therefore, the Department seeks comments on whether there are terms or concepts in these recently issued Part 26 amendments that need to be modified to conform to the Part 23 context.

Amended § 26.39, concerning fostering small business participation, is focused on Federally-assisted contracting and associated issues such as ''unbundling.'' For this reason, the Department is not proposing at this time to include parallel provisions in Part 23, though we seek comments on whether additional small-business-related provisions are needed in the concessions context. The changes to § 26.45, concerning project goals, likewise apply only to DOT-assisted contracting, not concessions.

In § 23.35, the Department would substitute $1.32 million for the current $750,000 as the personal net worth (PNW) standard. This parallels the revision of § 26.67, and is being proposed for the same reasons. The Part 23 PNW provision has been separate from the Part 26 PNW provision, so a specific Part 23 amendment is needed to maintain consistency between the two regulations.

The Part 26 PNW definition differs from the Part 23 PNW definition in that Part 23 includes an exemption for ''other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business), to a maximum of $3 million.'' Some background regarding the $3 million (maximum) exemption for ''other assets * * *'' can be found in the preamble to 49 CFR Part 23, issued March 22, 2005.

In determining whether to include the $3 million exclusion, the Department noted that one PNW standard for Part 23 and Part 26 would ''* * * avoid concerns about overinclusiveness in the program by ensuring that persons who would fairly be perceived as too wealthy for a program aimed at assisting 'disadvantaged' individuals do not participate''. The Department countered ''[a]t the same time, the Department is sensitive to the concern of commenters that a PNW standard at this level [$750,000] could inhibit opportunities for business owners to enter the concessions field and expand existing businesses,'' and it also said that ''[i]n the different business context of concessions, the Department will add a third exclusion.''

The Department recognized in the preamble that ''[w]ithout unduly expanding the well-accepted $750,000 standard, this approach will take into account individual circumstances and avoid the 'glass ceiling' effect of an across-the-board PNW standard about which commenters were concerned'' and ''prevent the eligibility standards from becoming too open-ended, resulting in the participation of individuals so wealthy that it would be difficult to justify their inclusion in a program aimed at disadvantaged individuals, we are adding a $3 million cap on this third exclusion * * *''

The Department is aware that the $3 million exemption from PNW for assets used as collateral for a loan has been difficult to implement. For example, issues arise in applying the exemption when part of the loan has been paid down. Also, there has been inconsistent interpretation as to the necessary documentation to support this exemption. The Department seeks comment on whether this exemption should be retained in the definition of PNW, deleted altogether, modified, or

replaced with a different but more workable provision aimed to achieve the same objective. We would also like comments on how to improve the definition of this exemption so if retained, the exemption can be implemented more effectively.

In § 23.29, we propose to adopt the key change we made to § 26.37 concerning enhanced monitoring of the actual performance of work by DBEs or ACDBEs. Airports would be responsible for reviewing documents and actual on-site performance to ensure that ACDBEs were actually performing the work committed to them during the concession award process.

This NPRM would revise § 23.57 to make its accountability provisions parallel to those of the recently amended § 26.47(c). Again, the rationale for doing so is the same as for Part 26. The Department seeks comment on whether any further modifications of the language of this provision would be useful for purposes of the ACDBE program.

**Regulatory Analyses and Notices**

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This is a non-significant regulation for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The proposals involve administrative modifications to several provisions of a long-existing and well-established program, designed to improve the program's implementation. The proposals, if made final, would not alter the direction of the program, make major policy changes, or impose significant new costs or burdens.

*Regulatory Flexibility Act*

A number of provisions of the NPRM would reduce small business burdens or increase opportunities for small business. The personal net worth change would allow some small businesses to remain in the ACDBE program for a longer period of time. Small recipients would not be required to prepare or transmit reports concerning the reasons for overall goal shortfalls and corrective action steps to be taken. Only the 30–50 airports receiving the greatest amount of FAA financial assistance or enplaning the greatest number of passengers would have to file these reports. The NPRM would not make major policy changes that would cause recipients to expend significant resources on program modifications. For these reasons, the Department certifies that the NPRM, if made final, would not have a significant economic impact on a substantial number of small entities.

*Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under the Order and have determined that it does not have implications for federalism, since it merely makes administrative modifications to an existing program. It does not change the relationship between the Department and State or local governments, pre-empt State law, or impose substantial direct compliance costs on those governments.

*Paperwork Reduction Act*

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collections of information in this rule should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. The Department will not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The Department intends to obtain current OMB control numbers for the new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

It is estimated that the total incremental annual burden for the information collection requirements in this rule is 13,855 hours.

The following are the information collection requirements in this rule:

*Certification of Monitoring (49 CFR 23.29)*

Each recipient would certify that it had conducted post-award monitoring of contracts that would be counted for ACDBE credit to ensure that ACDBEs had done the work for which credit was claimed. The certification is for the purpose of ensuring accountability for monitoring which the regulation already requires.

*Respondents:* 184 (*i.e.,* airports with covered concessions).

*Frequency:* 1,071 non-car rental concessions; 449 car rental concessions, for a total of 1520, or an average of 8.2 concessions per airport.

*Estimated Burden per Response:* ½ hour.

*Estimated Total Annual Burden:* 6,230 hours.

*Accountability Mechanism (49 CFR 23.57)*

If a recipient failed to meet its overall goal in a given year, it would have to determine the reasons for its failure and establish corrective steps. Of the 184 airports covered by this rule, 35 large recipients would transmit this analysis to DOT; smaller recipients would perform the analysis but would not be required to submit it to DOT. We estimate that about half of recipients (92) would be subject to this requirement in a given year.

*Respondents:* 92.

*Estimated Average Burden per Response:* 80 hours + 5 additional hours for recipients sending report to DOT.

*Estimated Total Annual Burden Hours:* 7535 (i.e., 7,360 [92 × 80] + 175 [35 × 5]).

**List of Subjects in 49 CFR Part 23**

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Minority businesses, Reporting and record keeping requirements.

Issued this 4th day of May 2011, at Washington DC.

**Ray LaHood,**

*Secretary of Transportation.*

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 49 CFR part 23 as follows:

## PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

1. The authority citation for Part 23 continues to read as follows:

**Authority:** 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

2. Revise § 23.29 to read as follows:

### § 23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. This mechanism must include a written certification that you have reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site in your State for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (*e.g.,* closeout reviews for a contract).

3. In § 23.35, remove the number ''$750,000'' and add in its place ''$1.32 million.''

4. Revise § 23.45(i) to read as follows:

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

* * * * *

(i) If a new concession opportunity, the estimated average annual gross revenues of which are anticipated to be $200,000 or greater, arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval at least six months before executing the concession agreement for the new concession opportunity.

5. Revise § 23.57(b) and (c) to read as follows:

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

* * * * *

(b) If the awards and commitments shown on your Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your ACDBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to the FAA, on request, for their review.

(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 race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;

(ii) FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FAA has imposed following review of your analysis and corrective actions.

(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 race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[FR Doc. 2011–13187 Filed 5–26–11; 8:45 am]

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