

Title 7--DEPARTMENT OF TRANSPORTATION
Division 10--Missouri Highways and Transportation Commission
Chapter 8--Disadvantaged Business Enterprise Program

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SECRETARY OF STATE
ADMINISTRATIVE RULES

PROPOSED RULE

7 CSR 10-8.121 MoDOT DBE Program Goals, Contract Goals

COPY

PURPOSE: This rule is being rescinded and readopted to harmonize state rules and federal regulations on setting DBE program goals and contract goals on federal-aid highway projects by incorporating the federal regulations on the DBE Program and provides guidance on the federal regulation and further clarifies state rules.

(1) Overall Program Goal.

(A) Amount of Goal. MoDOT may use an interim goal-setting mechanism while it updates its availability calculations to set its DBE goals based upon the most legally defensible methodology. MoDOT may consult with economic and statistical experts to assist in adopting a goal-setting methodology that best meets the constitutional requirements of narrow tailoring in setting MoDOT's overall DBE goal.

(B) Goal-Setting Process.

1. MoDOT will submit its overall DBE Program goal to the USDOT on August 1 at three (3) year intervals, based on a schedule established by the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), or Federal Aviation Administration (FAA), as applicable. Before establishing the overall goal, MoDOT will consult with minority, female, and general contractor groups, community organizations, and other officials or organizations. These groups include any organization or individuals necessary to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MoDOT's efforts to establish a level playing field for the participation of DBE firms in USDOT assisted contracts pertaining to highway, transit and airport financial assistance programs. MoDOT will publish the proposed overall goal in general circulation, minority and female focused publications, trade association publications, and the MoDOT website. MoDOT will publish a notice of its goal-setting process by June 1 of any year an overall goal is being set, at three (3) year intervals, in order to allow thirty (30) days for inspection and public comment.

2. Following this consultation, MoDOT will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the headquarters office for thirty (30) days following the date of the notice. MoDOT and the USDOT will accept comments on the goals for forty-five (45) days from the date of the notice. MoDOT will plan to issue the notice by June 1 of any year an overall goal is being set, at three (3) year intervals. The notice will include addresses to which comments may be sent and addresses, including office and website addresses where the proposal may be reviewed. MoDOT will begin using the overall goal on October 1 of any year an overall goal is being set, at (3) year intervals, unless other instructions have been received from USDOT.

3. MoDOT will include a summary of information and comments received during this public participation process and MoDOT's responses in the overall goal submission to the USDOT.

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(C) Race- and Gender-Neutral Means.

1. MoDOT will strive to meet the maximum feasible portion of the overall DBE Program goal by race and gender-neutral means of facilitating DBE participation in DOT assisted contracts pertaining to highway, transit and airport financial assistance programs. Race and gender-neutral participation involves affirmative action to assist all small business contractors and subcontractors.

2. MoDOT will adjust the estimated breakout of race and gender-neutral and race and gender-conscious participation to reflect actual DBE participation and will track and report race and gender-neutral and race-conscious participation separately. For reporting purposes, race and gender-neutral DBE participation includes, but is not necessarily limited to, the following:

A. DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;

B. DBE participation through a subcontract that does not carry a DBE goal;

C. DBE participation on a prime contract exceeding the contract DBE goal.

(D) In order to comply with Title 49 CFR section 26.39, the Department amends its current DBE program to create the following Small Business Enterprise (SBE) program for USDOT assisted projects:

1. The SBE program will not require SBE goal setting on MoDOT's USDOT assisted projects; however, certified SBEs will be encouraged to participate and certified SBE participation will be tracked, monitored, and reported.

2. The Small Business Program "Declaration of Certification" form will be utilized by MoDOT as a member of the Missouri Unified Certification Program, also known as the Missouri Regional Certification Committee (MRCC). The "Declaration of Certification" is the document to be utilized by MoDOT to verify interested small businesses' eligibility under Small Business Administration (SBA) regulations, contained in 13 CFR sections 121.101-201 as found in 15 USC 634(b) and incorporated herein by reference, to participate in the SBE Program. This rule does not incorporate any subsequent amendments or additions.

(2) Project Goals on USDOT-Assisted Contract Work.

(A) MoDOT will use contract DBE goals to meet any portion of the overall DBE goal. MoDOT does not have an expectation of being able to meet the goal using only race and gender-neutral means. MoDOT will establish contract DBE goals only on those USDOT-assisted contracts with subcontracting possibilities.

(B) The External Civil Rights Division is responsible for setting all DBE goals on MoDOT-let federal aid projects. The Division is also responsible for review and concurrence on all off-state highway system, aviation, transit, enhancement, consultant, and any other sub-recipient federal aid projects.

(C) The DBE project goal is set by reviewing the type of project, elements of work to be performed, time frame, geographical location, history of DBE and non-DBE usage, and available DBE firms. The goal will be expressed as a percentage of the total amount of funds on a USDOT-assisted contract.

(D) MoDOT will work to ensure that its DBE Program continues to be narrowly tailored to overcome the effects of discrimination, and MoDOT will adjust its use of contract DBE goals accordingly, as directed in 49 CFR section 26.51. MoDOT welcomes all public comments regarding any contract DBE goal or its contract DBE goal-setting processes. These comments should be made in writing, and sent to MoDOT's External Civil Rights Division at any time.

AUTHORITY: Sections 226.900-.910 and Section 226.150, RSMo 2000; Section 226.020, RSMo 1939; Title 49 Code of Federal Regulations part 26; Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 105-178, 112 Stat. 107, 113; Moving Ahead for Progress in the 21st Century Act, Public Law 112-141; and MoDOT's approved DBE Program submittals to the U.S. Department of Transportation. Emergency rule filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Original rule filed May 10, 2000, effective Nov. 30, 2000. Rescinded and Readopted: Filed January 12, 2018.*

**Original authority: 226.150, RSMo 1939, amended 1977.*

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Highways and Transportation Commission, Pamela J. Harlan, Secretary to the Commission, 105 W. Capitol Avenue, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*