



Rules of
Missouri Department of Transportation
Division 10—Missouri Highways and Transportation
Commission
Chapter 8—Disadvantaged Business Enterprise Program

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

7 CSR 10-8.005 Scope of Rules

PURPOSE: This rule sets forth the scope of this chapter and Missouri Department of Transportation's (MoDOT) implementation of the Disadvantaged Business Enterprise Program (DBE) requirements of Title 49 Code of Federal Regulations part 26 in United States Department of Transportation-assisted programs and contracts.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Incorporates Federal Regulations. The Missouri Highways and Transportation Commission (commission) incorporates by reference into this rule and Title 7, *Code of State Regulations* (CSR) 10-8.011 through 7 CSR 10-8.151 the regulations for the Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs as set forth in Title 49, *Code of Federal Regulations* (CFR), sections 26.1 through 26.109, including all Appendices referenced therein. This rule incorporates these sections of the CFR as published by the United States Government Printing Office, 732 North Capitol Street NW, Washington, DC 20401 on November 3, 2014. This rule does not incorporate any subsequent amendments or additions to the CFR. These rules shall be in effect for all commission-let projects for which the commission receives funding through.

(A) Highways. Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law (P.L.) 102-240, 105 Stat. 1914, or Titles I, III, and Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); The Moving Ahead for Progress in the 21st Century Act (MAP 21),

P.L. 112-141; and Fixing America's Surface Transportation (FAST) Act, P.L. 114-94.

(B) Transit. Federal transit funds authorized by Titles I, III, V and VI of ISTEA, P.L. 102-240 or by federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the SAFETEA-LU; and The Moving Ahead for Progress in the 21st Century Act (MAP 21), P.L. 112-141.

(C) Airports. Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(D) To the extent that any individual, entity, or firm is governed by the Disadvantaged Business Enterprise (DBE) Program regulations in this chapter, that individual, entity, or firm is also governed and bound by the corresponding United States Department of Transportation (USDOT) DBE program regulations at 49 CFR part 26. Clarifications of 49 CFR part 26 are incorporated by reference in the USDOT Questions and Answers on the DBE program as published on February 11, 2016 at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/official-questions-and-answers-qas-disadvantaged>. This rule does not incorporate any subsequent amendments or additions.

(E) This rule incorporates by reference the Missouri Department of Transportation (MoDOT) Mentor/Protégé Program (MPP) as revised by MoDOT on June 17, 2014. The MPP shall be made a part of this rule as published by MoDOT, 105 West Capitol Avenue, PO Box 270, Jefferson City, MO 65102 and as it appears on MoDOT's website located at www.modot.mo.gov/External/CivilRights/Mentor/Protégé program. This rule does not incorporate any subsequent amendments or additions.

(2) Breach for Noncompliance. MoDOT will advise each contractor, through contract specifications on USDOT-funded contracts, that failure to carry out these requirements shall constitute a breach of contract and may result in termination of the contract, or any such remedy that MoDOT deems appropriate. MoDOT will require all contractor employees and contractor agents on USDOT-funded contracts to adhere to the provisions of 49 CFR part 26.

(3) Administration. The commission has adopted the federal DBE program regulations for MoDOT, which executive branch department of state government is subordinate to and controlled by the commission through commission's appointee, the MoDOT director, who is MoDOT's chief executive officer. The commission delegates the day-to-day administration of the DBE program to the External Civil Rights Director, who has been designated as MoDOT's DBE liaison officer in com-

pliance with 49 CFR section 26.25.

AUTHORITY: sections 226.020, 226.150, and 226.900-226.910, RSMo 2016; 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; Map-21, The 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. Original rule filed Jan. 12, 2018, effective Aug. 30, 2018.*

**Original authority: 226.020, RSMo 1939; 226.150, RSMo 1939, amended 1977; and 226.900-226.910, RSMo 1993.*

7 CSR 10-8.010 General Information
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.011 Definitions

PURPOSE: This rule harmonizes state rules and federal regulations by incorporating the federal regulations on the DBE Program and provides guidance on the federal regulation and further clarifies state rules.

(1) The Missouri Highways and Transportation Commission (commission) adopts the definitions contained in 49 *Code of Federal Regulations* Section 26.5 except as such words and phrases are given meaning and definition below. The following words and phrases have the meaning and definition stated below, exclusively for the purpose of administering and regulating the Disadvantaged Business Enterprise (DBE) Program established by the commission in this chapter:

(A) "Commission" means the Missouri Highways and Transportation Commission, a state commission within the executive branch of state government created by statute and vested with authority or the administration of the state highway system by Article IV, Section 29, *Missouri Constitution* and section 226.020 of the Revised Statutes of the State



of Missouri (RSMo);

(B) "Contractor" means a person or company which receives a contract directly from the commission or another United States Department of Transportation (USDOT) recipient in a USDOT-assisted highway, transit or airport program;

(C) "CSR" means the Code of State Regulations for the state of Missouri, published by the secretary of state of Missouri;

(D) "CUF" means commercially useful function;

(E) "DBE" means a disadvantaged business enterprise;

(F) "Department" means the Missouri Department of Transportation or "MoDOT," a constitutional state department answerable and subordinate to the commission within the executive branch of Missouri government, unless the context and usage of the term clearly indicates that it is referring to the USDOT;

(G) "FTA" means the Federal Transit Administration;

(H) "FHWA" means the Federal Highway Administration;

(I) "Firm" means DBE. Furthermore, the firm and any fictitious name used by the firm must, to the extent required by Missouri law, be properly registered to do business in Missouri with the Missouri Secretary of State and the Missouri Department of Revenue before that firm may perform work or sell materials or supplies in Missouri as a contractor, subcontractor, or as a DBE firm recognized by MoDOT;

(J) "USDOT" refers to the U.S. Department of Transportation, including the Secretary of transportation, the Office of the Secretary, the Federal Highway Administration, the Federal Transit Administration and the Federal Aviation Administration, or any one of these administrative units of the United States Department of Transportation.

AUTHORITY: sections 226.020, 226.150, and 226.900-226.910, RSMo 2016; 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 Jan. 12, 2018, effective Aug. 30, 2018.*

*Original authority: 226.020, RSMo 1939; 226.150, RSMo 1939, amended 1977; and 226.900-226.910, RSMo 1993.

7 CSR 10-8.020 Definitions
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1994, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency amendment filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Amended: Filed Feb. 15, 1996, effective Aug. 30, 1996. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.021 General Information
(Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.030 Procedures for Certifying Disadvantaged Business Enterprises
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.031 Who Is Governed and Bound by the USDOT and MoDOT DBE Program Regulations
(Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.040 Procedures for Certification Renewal of Disadvantaged Business Enterprises
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.041 Effective Date of the DBE Program Under 49 CFR Part 26
(Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.050 Challenge Procedures for Disadvantaged Business Enterprises
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded; Filed May 10, 2000, effective Nov. 30, 2000.



7 CSR 10-8.051 Procedures and Policies for Initially Certifying and Recertifying Disadvantaged Business Enterprise Firms
(Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.060 Requirements to Participate in a Mentor-Protege Agreement
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.061 Missouri Unified Certification Program

PURPOSE: This rule describes Missouri's Unified Certification Program (UCP) for the United States Department of Transportation Disadvantaged Business Enterprise certifications.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Unified Certification Program (UCP). United States Department of Transportation (USDOT) included in Title 49 of the *Code of Federal Regulations* (CFR) part 26 a provision for a "one-stop" certification process for

all Disadvantaged Business Enterprises (DBEs) that is required to be implemented by agencies that are recipients of federal funds from the USDOT.

(2) Missouri Regional Certification Committee (MRCC). The Missouri Regional Certification Committee is the UCP for the state of Missouri. The five (5) agencies that directly receive USDOT funds and currently operate a USDOT approved DBE program are: 1) Missouri Department of Transportation (MoDOT); 2) City of St. Louis, Missouri; 3) Bi-State Development/Metro; 4) Kansas City Area Transportation Authority (KCATA); and 5) the City of Kansas City, Missouri. These entities shall be referred to as the "Direct Partners," and are the members of the MRCC.

(3) Unified Certification Agreement. All Direct Partners agreed to the procedures, processes, and requirements set out in the Unified Certification Agreement, Policies, and Procedures. This process allows for DBE certification by one Direct Partner to be honored by all other Direct Partners. It also allows for the review of a determination of DBE ineligibility by the MRCC Direct Partners who were not involved in the decision to remove DBE eligibility. The Missouri Highways and Transportation Commission (commission) incorporates by reference and makes a part of this rule the MRCC's Unified Certification Agreement, Policies and Procedures as published by the MRCC whose address is Missouri Department of Transportation, External Civil Rights Division, 105 West Capitol Avenue, Jefferson City, MO 65102, and effective June 15, 2011. This rule does not incorporate any subsequent amendments or additions to this publication. All final decisions to remove a DBE's eligibility will be made by the MRCC.

(4) Certifications, Eligibility, and Hearings. MoDOT may request a removal of a DBE's eligibility, and such a removal shall be determined by the MRCC. All initial certification denials by MoDOT are administratively appealable to the USDOT. Any hearing conducted on a DBE's eligibility or a complaint filed against a DBE shall be conducted by the MRCC and the MRCC shall issue the decision. Such decision by the MRCC is administratively appealable to the USDOT pursuant to 49 CFR section 26.89.

(5) NAICS Codes. The types of work a DBE firm can perform (whether on initial certification or when a new type of work is added) should be described in terms of six- (6-) digit North American Industry Classification System (NAICS) codes. The MRCC will

make the final determination after an informal, independent, administrative review hearing after a MRCC member requests that a DBE be denied a NAICS code expansion or has a NAICS code removed.

(6) NAICS Code Descriptions. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to the USDOT recipients. The initial determination of NAICS codes will be determined by the member agency of the MRCC in receipt of the DBE firm application and occurs simultaneously with the initial determination of DBE eligibility. The Bureau of Census website (www.census.gov/naics) provides additional information about the details of NAICS codes. The DBE firm has the primary responsibility to provide the detailed company information the member agency of the MRCC needs to make an appropriate NAICS code determination.

(7) NAICS Code Descriptions Not Adequate. DBE firms shall rely on, and not depart from, the plain meaning of the NAICS code descriptions in determining the scope of a firm's certification. However, in situations in which a DBE firm believes that the NAICS codes on record for the firm do not adequately describe the scope of the work the firm can perform, DBE firms should use the following guidance:

(A) If a DBE firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE for a commission project, the firm may request that MoDOT, in the firm's certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm seeks certification. A vague, general, or confusing description is not sufficient for this purpose, and MoDOT will not rely on such a description in determining whether a firm's desires to obtain DBE certification will be given that specific NAICS code, and, as a result, whether it's participation may be counted toward the DBE goals established for the project.

(B) The MRCC is not precluded from changing a NAICS code determination or description if there is a factual basis in the record resulting from the informal, independent, administrative hearing authorized in this rule for doing so.

(8) NAICS Code Expansion Denial or Removal. If MoDOT initially denies or removes a NAICS code expansion request,



the DBE firm has fifteen (15) days from the date of receipt of the denial of a NAICS code expansion or removal of a NAICS code to request an informal, independent, administrative review hearing before the MRCC in the same manner as a hearing under 49 CFR section 26.87. The DBE firm must exhaust all administrative remedies with the MRCC prior to appealing a decision denying or removing of a NAICS code expansion to the USDOT. In the case of a removal of NAICS code, the DBE maintains its NAICS code unless and until a final decision of the MRCC removes such code. If the DBE firm chooses to appeal to the MRCC, it will retain its rights to any future appeals to the USDOT. In the event the DBE firm chooses to not appeal this decision to the MRCC, the DBE firm then waives its rights to appeal to the USDOT and any judicial review. If the DBE firm fails to make a timely request for an informal, independent, administrative review by MRCC within fifteen (15) days from the date of receipt of the denial of the NAICS code expansion by MoDOT, MoDOT's decision regarding the DBE's NAICS code expansion will be final.

AUTHORITY: sections 226.020, 226.150, and 226.900-226.910, RSMo 2016; 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; Map-21, The 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 Jan. 12, 2018, effective Aug. 30, 2018.*

**Original authority: 226.020, RSMo 1939; 226.150, RSMo 1939, amended 1977; and 226.900-226.910, RSMo 1993.*

7 CSR 10-8.070 Decertification Procedures for Disadvantaged Business Enterprises (Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Original rule filed Aug. 15, 1988, effective Jan. 13, 1989. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov.

30, 2000.

7 CSR 10-8.071 DBE Program Reporting and Disclosure Requirements for Currently Certified DBE Firms (Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.080 Determination and Review Procedures Governing the Failure to Perform a Commercially Useful Function (Rescinded November 30, 2000)

AUTHORITY: section 226.020 and 226.150, RSMo 1994, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, and Title 49 Code of Federal Regulations part 23. Emergency rule filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Original rule filed Feb. 15, 1996, effective Aug. 30, 1996, Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.081 Ineligibility Complaints (Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.090 Finality of Department Determinations in the Disadvantaged Business Enterprise Program (Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1994, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 and Title 49 Code of Federal Regulations part 23. Emergency rule filed Feb. 15, 1996, effective Feb. 25, 1996, expired Aug. 22, 1996. Original rule filed Feb. 15, 1996, effective Aug. 30, 1996. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.091 MoDOT Procedures and Hearings to Remove a Firm's DBE Eligibility (Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.101 The Effect of a USDOT Certification Appeal (Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.111 Prompt Payment, Record Keeping and Audit Requirements (Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

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

PURPOSE: This rule harmonizes 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.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Overall Program Goal.

(A) Amount of Goal. Missouri Department of Transportation (MoDOT) may use an interim goal-setting mechanism while it updates its availability calculations to set its Disadvantaged Business Enterprise (DBE) goals. MoDOT may consult with economic and statistical experts to assist in adopting a goal-setting methodology that best meets the 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 United States Department of Transportation (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 that:

- A. Reveals the availability of disadvantaged and non-disadvantaged businesses;
- B. Ensures non-discrimination on opportunities for DBEs; and
- C. Assists 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.

(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 sub-contract 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; and

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, 409 3rd Street, SW., Washington, DC 20416, June 2, 2017. 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 226.020, 226.150, and 226.900-226.910, RSMo 2016*; 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 Jan. 12, 2018, effective Aug. 30, 2018.

*Original authority: 226.020, RSMo 1939; 226.150, RSMo 1939, amended 1977; and 226.900-226.910, RSMo 1993.

7 CSR 10-8.131 DBE Participation Credit Toward Project or Contract Goals
(Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.141 USDOT-Assisted DBE Contract Awards and Good Faith Efforts
(Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.151 Performance of a Commercially Useful Function by a DBE Firm
(Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation

Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.161 Confidentiality of DBE Program Financial and Other Information
(Rescinded August 30, 2018)

AUTHORITY: section 226.150, RSMo 1994; Title 49 Code of Federal Regulations part 26; section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 113; 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: Filed Jan. 12, 2018, effective Aug. 30, 2018.

7 CSR 10-8.200 Disadvantaged Business Enterprise Set-Aside Program General Information
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.210 Definitions
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.220 Eligibility for Participation in the Commission's DBE Set-Aside Program
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.230 Publication of Qualified DBEs and Joint Ventures in the DBE Directory
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.240 Retaining Qualification to Participate in the Commission's DBE Set-Aside Program
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule filed April 13, 1994, effective Oct. 30, 1994. Emergency rescission filed May 10, 2000, effective May 20, 2000, expired Nov. 6, 2000. Rescinded: Filed May 10, 2000, effective Nov. 30, 2000.

7 CSR 10-8.250 Bidding Limitations on Qualified Firms and Joint Ventures Having Active Commission DBE Set-Aside Contracts
(Rescinded November 30, 2000)

AUTHORITY: sections 226.020 and 226.150, RSMo 1986, section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240 and Title 49 Code of Federal Regulations part 23. Original rule



*filed April 13, 1994, effective Oct. 30, 1994.
Emergency rescission filed May 10, 2000,
effective May 20, 2000, expired Nov. 6, 2000.
Rescinded: Filed May 10, 2000, effective Nov.
30, 2000.*

**7 CSR 10-8.260 DBE Subcontracting Goals
for the Commission's DBE Set-Aside Pro-
gram Contracts**
(Rescinded November 30, 2000)

*AUTHORITY: sections 226.020 and 226.150,
RSMo 1986, section 1003(b) of the Inter-
modal Surface Transportation Efficiency Act
of 1991, P.L. 102-240 and Title 49 Code of
Federal Regulations part 23. Original rule
filed April 13, 1994, effective Oct. 30, 1994.
Emergency rescission filed May 10, 2000,
effective May 20, 2000, expired Nov. 6, 2000.
Rescinded: Filed May 10, 2000, effective Nov.
30, 2000.*

**7 CSR 10-8.270 Disqualification of a Firm
or Joint Venture from the DBE Set-Aside
Program**
(Rescinded November 30, 2000)

*AUTHORITY: sections 226.020 and 226.150,
RSMo 1986, section 1003(b) of the Inter-
modal Surface Transportation Efficiency Act
of 1991, P.L. 102-240 and Title 49 Code of
Federal Regulations part 23. Original rule
filed April 13, 1994, effective Oct. 30, 1994.
Emergency rescission filed May 10, 2000,
effective May 20, 2000, expired Nov. 6, 2000.
Rescinded: Filed May 10, 2000, effective Nov.
30, 2000.*