

Issued this 25th day of March 2009, at Washington, DC.

**Ray LaHood,**

*Secretary of Transportation.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 26

[Docket No. OST-2009-0081]

RIN 2105-AD76

#### Disadvantaged Business Enterprise; Overall Goal Schedule and Substitution

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice of proposed rulemaking (NPRM) would propose to improve administration of the Disadvantaged Business Enterprise (DBE) program by calling upon recipients of DOT financial assistance to transmit overall goals to the Department for approval every three years, rather than annually.

**DATES:** Comments on this proposed rule must be received by July 7, 2009.

**ADDRESSES:** You may submit comments (identified by the agency name and DOT Docket ID Number OST-2009- ) by any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](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-2009- ) 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 [www.regulations.gov](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 [www.regulations.gov](http://www.regulations.gov). Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave., SE., 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](mailto:bob.ashby@dot.gov).

#### SUPPLEMENTARY INFORMATION:

The current DBE rule (49 CFR part 26) requires recipients to submit overall goals for review by the applicable DOT operating administration on August 1 of each year. The process of setting annual overall goals can be time-consuming, particularly given the requirements for public participation by the recipient. The Department's experience has been that many goals are submitted after the August 1 date, and the Department's workload involved in reviewing annual goals from 52 state departments of transportation and hundreds of transit authorities and airports has often resulted in delays in the Department's response to recipients' submissions.

In the Department's 2005 airport concessions disadvantaged business enterprise (ACDBE) regulation (49 CFR part 23), the Department established a staggered three-year schedule for the submission by airports of ACDBE goals. The purpose of this provision was to better manage the workloads of both airports and the Federal Aviation Administration (FAA). This approach appears to have been successful in achieving that objective, and we are now proposing to establish a similar system for Part 26 DBE goals. We seek comment on whether such a system should, like its Part 23 counterpart, permit operating administrations to grant program waivers for different schedules that recipients suggest.

Under the proposal, each Part 26 recipient would submit an overall goal every three years, based on a schedule established by the operating administrations. Some recipients would submit a goal in August 2009, as per the existing requirement. Others would not

submit an overall goal until August 2010, and others not until August 2011. With respect to airports, FAA would arrange the schedule so that an airport would not have to submit both a Part 23 and Part 26 goal in the same year. The Department seeks comment on the concept of submitting DBE goals every three years as well as the proposed schedules for submission. We also seek comment on whether the rule should provide for annual reviews of goals or adjustments for new opportunities, similar to what is provided in section 23.45 of the airport concessions DBE rule.

#### Regulatory Analyses and Notices

The Department has determined that this action is not considered a significant regulatory action for purposes of Executive Order 12866 or the Department's regulatory policies and procedures. The NPRM would ease administrative burdens on recipients by reducing the frequency of overall goal submissions and would improve protections for DBE subcontractors by requiring recipient approval of certain contracting actions.

The NPRM would affect some small entities, easing administrative burdens related to goal submission on any recipients that are considered small entities and enhancing contracting process protections for DBEs, which are small entities. However, the economic effects of these changes on small entities are negligible. For that reason, the Department certifies that the NPRM, if made final, would not have a significant economic impact on a substantial number of small entities.

The Department has analyzed this proposed action in accordance with the principles and criteria contained in Executive Order 13132, and has determined that the proposed amendments are consistent with the Executive Order and that no consultation is necessary. This NPRM does not propose information collection requirements covered by the Paperwork Reduction Act.

#### List of Subjects in 49 CFR Part 26

Administrative practice and procedures, Airports, Civil rights, Government contracts, Grant programs—transportation, Highways and roads, Mass transportation, Minority business, Reporting and recordkeeping requirements.

Issued at Washington DC this 25th day of March 2009.

**Ray LaHood,**

*Secretary of Transportation.*

For reasons discussed in the preamble, the Department of Transportation proposes to amend Title 49 of the Code of Federal Regulations, Part 26, as follows:

1. The authority citation for 49 CFR part 26 is amended to read as follows:

**Authority:** 23 U.S.C. 324; 42 U.S.C. 2000d et seq.; 49 U.S.C. 1615, 47107, 47113, 47123; Public Law 105–59, sec. 1101(b).

2. Revise § 26.45(f)(1) to read as follows:

**§ 26.45 How do recipients set overall goals?**

\* \* \* \* \*

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FAA, FTA, or FHWA, as applicable, and posted on that agency's Web site.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**RIN 0648–AX39**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 29**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Availability of Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico; request for comments.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) has submitted Amendment 29 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 29 proposes actions to establish an individual fishing quota (IFQ) program for grouper and tilefish species, establish design elements of the program, allow permit stacking, and

establish dual classifications to the shallow water and deepwater management units for speckled hind and warsaw grouper. The measures contained in the subject amendment are intended to reduce effort in the Gulf of Mexico grouper and tilefish fisheries.

**DATES:** Comments must be received no later than 5 p.m., eastern time, on June 8, 2009.

**ADDRESSES:** You may submit comments on the amendment, identified by “0648–AX39”, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Mail: Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter “NOAA–NMFS–2008–0223” in the keyword search, then check the box labeled “Select to find documents accepting comments or submissions”, then select “Send a Comment or Submission.” NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 29 may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org); or may be downloaded from the Council's website at <http://www.gulfcouncil.org/>.

Amendment 29 includes an Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Susan Gerhart, telephone: 727–824–5305; fax: 727–824–5308; e-mail: [Susan.Gerhart@noaa.gov](mailto:Susan.Gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf of Mexico (Gulf

is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**Background**

Current regulatory measures used to manage the commercial fisheries for the grouper/tilefish complex in the Gulf exclusive economic zone (EEZ) include a license limitation system, quotas, trip limits, minimum size limits, area/gear restrictions, and seasonal closures. Nonetheless, the commercial grouper and tilefish fisheries have become overcapitalized, which has caused increasingly restrictive commercial regulations. Under the current management structure, the commercial grouper and tilefish fisheries are expected to continue to have higher than necessary levels of capital investment, increased operating costs, increased likelihood of shortened seasons, reduced safety at-sea, wide fluctuations in grouper supply, and depressed ex-vessel prices.

The Council chose a multi-species IFQ program for grouper and tilefish species in the Gulf EEZ as the preferred alternative for effort management. The Magnuson-Stevens Act stipulates the Council may not submit, and the Secretary of Commerce (Secretary) may not approve, an IFQ program that has not first been approved by a majority of eligible voters in a referendum. NMFS conducted a referendum in December 2008, with more than 80 percent of the respondents voting in favor of the IFQ program.

Amendment 29 contains many design elements of the IFQ program, as well as major requirements for limited access privilege programs listed in the Magnuson-Stevens Act. Initial IFQ share distribution, and transfer of shares and allocation during the first 5 years, would be restricted to commercial reef fish permit holders. Initially, shares would be distributed proportionately among eligible participants based on landings during 1999–2004, with an allowance for dropping 1 year. The Regional Administrator would establish a formal appeals process and reserve 3 percent of the total available IFQ shares during the first year of the program for use in resolving disputes. If NMFS implemented commercial quota adjustments or reallocations, IFQ allocation would be redistributed proportionately among shareholders.

Five species-specific share types would be established for red grouper, gag, other shallow water groupers,