

# 49 CFR PART 23 FINAL RULE

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**Federal Aviation  
Administration**



# 49 CFR Part 23 Rule CHRONOLOGY

- **Notice of Proposed Rulemaking (NPRM) issued May 27, 2011**
- **NPRM closed July 26, 2011**
- **9 public comments received**
- **Final rule issued June 2012**



# Purpose of Part 23 NPRM

- **Purpose: to conform Jan. 28, 2011 changes in part 26 to part 23**
- **Review of part 23:**
  - Part 23 has stand-alone requirement.
  - Part 23 provision incorporates part 26 provisions by reference. Therefore, any change in part 26 provision automatically applies in part 23 without further amendment.
  - A conforming amendment is needed. For example, Part 23 has a PNW definition that differs from Part 26. A conforming amendment needed to increase the PNW cap in the Part 23 PNW definition.

# Overview of Changes to Part 23 (that are in Part 26)

- ✓ **Increased program oversight - certification of monitoring for every ACDBE contract.**
- ✓ **Accountability mechanism.**
- ✓ **Termination of ACDBE firm for convenience.**
- ✓ **Personal Net Worth to \$1.32 million.**



# Overview of Changes to Part 23 (that are in Part 26)

- ✓ **Interstate certification procedures.**
- ✓ **Other certification-related changes.**
- ✓ **Race conscious goal-setting required when race-neutral goals not being achieved.**



# Changes in Part 26 that do not apply to Part 23

- **Small business program element requirement recently implemented in the part 26 program under section 26.39.**
- **Rules governing project goals under section 26.45 that were inadvertently omitted in the final rule establishing the three year DBE goal review cycle.**



# Issue Raised in Part 23 NPRM

- **Third exemption or exclusion in the PNW definition in part 23: should this exemption be retained, deleted, or modified, in light of the proposed increase in the PNW? How can the definition be improved?**
  - **The third exemption is for “other assets that the individual can document are necessary to obtain financing or a franchise agreement for 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.” (section 23.3)**

# DOT's Response in Final Rule

- **Third exemption in ACDBE PNW is suspended until further notice.**
- **Suspension is prospective, not retroactive.**



# Issue raised in Part 23 NPRM

- **Counting retirement assets in PNW. Comments received favored eliminating retirement assets from PNW.**
- **In the Jan. 28, 2011, final rule on part 26, DOT stated it was not ready to decide the issue of retirement assets. Will study the comments received.**



# Issue raised in Part 23 NPRM

- **Section 23.45 (i): FAA deadline for submitting adjustment to overall ACDBE goal for new opportunities not in three-year plan.**
- **Section 23.45(i) requires sponsors to submit their adjusted goal to the FAA Office of Civil Rights point of contact at least 6 months before date of contract execution.**

# DOT's Response in Final Rule

- **Section 23.45(i) is amended to require sponsors to submit an adjusted overall goal to FAA for approval no later than 90 days before issuing the solicitation for new concession opportunity.**



# Updated in Final Rule: Inflationary Adjustment of ACDBE Size Standards

- **Non-car rental concessions:**  
**from \$52.47 to \$56.42 million**
- **Car rental concessions:**  
**from \$69.97 to \$75.23 million**

**( No change in size standards for banks & financial institutions: \$1 billion in assets; pay telephones: 1,500 employees; and, auto dealers: 350 employees)**

# Questions

