

all laws under which such actions were taken, including but not limited to:

1. NEPA;
2. Council on Environmental Quality regulations (1978);<sup>2</sup>
3. Fixing America's Surface Transportation Act (FAST Act);
4. Department of Transportation Act of 1966, Section 4(f);
5. Land and Water Conservation Fund (LWCF) Act of 1965, Section 6(f);
6. Clean Air Act Amendments of 1990;
7. Clean Water Act of 1977 and 1987;
8. Endangered Species Act of 1973;
9. Migratory Bird Treaty Act;
10. National Historic Preservation Act of 1966, as amended;
11. Executive Order 11990, Protection of Wetlands;
12. Executive Order 11988, Floodplain Management;
13. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;
14. Executive Order 13112, Invasive Species.

Issued in Washington, DC.

**Jamie P. Rennert,**

*Director, Office of Infrastructure Investment.*

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**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. DOT-OST-2021-0104]

#### Agency Request for Approval of a New Information Collection(s): Disadvantaged Business Enterprise (DBE) Program Requirements

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Transportation (DOT or Department) invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for an information collection for the Department's Disadvantaged Business Enterprise (DBE) program. The information collected is necessary to

<sup>2</sup> The Council on Environmental Quality (CEQ) issued new regulations on July 14, 2020, effective September 14, 2020, updating the NEPA implementing procedures at 40 CFR parts 1500 through 1508. However, this project initiated NEPA before the effective date and relies on the CEQ regulations as they existed prior to September 14, 2020. All subsequent citations to the CEQ regulations in the ROD and Final EIS refer to the 1978 regulations, consistent with 40 CFR 1506.13 (2020) and the preamble at 85 FR 43340.

maintain successful implementation of the DBE program, as it helps ensure that state and local recipients of DOT funds carry out the program's mission of providing a level playing field for small businesses owned and controlled by socially and economically disadvantaged individuals. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Written comments should be submitted by October 15, 2021.

**ADDRESSES:** You may submit comments [identified by Docket No. DOT-OST-2021-0104] through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Marc D. Pentino, (202)366-6968, [marc.pentino@dot.gov](mailto:marc.pentino@dot.gov) or Aarathi Haig, [aarathi.haig@dot.gov](mailto:aarathi.haig@dot.gov)/Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** To assist in estimating the potential paperwork burden of these collections, the Department reached out to a small number of stakeholders to gain a general understanding of how much time they spend each year responding to these collections. However, the stakeholder responses varied so significantly that we are concerned the responses blur lines between what aspects of the program are specifically information collections versus more general requirements of the program. To help commenters provide information that will better allow the Department to include the appropriate paperwork burden within this collection, we offer the following clarifications. A "collection of information" is defined as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons." 5 CFR 1320.3(c)(1). The activities that constitute the "burden" associated with a collection are defined in 5 CFR

1320.3(b)(1) as "the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency." Importantly, this burden is not necessarily the same as the entire regulatory burden for a program or an aspect of a program. For example, if a regulation requires an inspection and the completion of a form documenting the inspection, the full regulatory burden would likely include both actions, while the paperwork burden would only include the time and other resources needed to complete the form.

In addition, the Department believes certain recordkeeping requirements have not been adequately accounted for in the current collection. As stated in 5 CFR 1320(m), "Recordkeeping requirement means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to: (1) Retain such records; (2) Notify third parties, the Federal government, or the public of the existence of such records; (3) Disclose such records to third parties, the Federal government, or the public; or (4) Report to third parties, the Federal government, or the public regarding such records." Thus, recordkeeping requirements can attach to records that are not necessarily covered by the PRA itself if, as in the DBE program, a requirement exists to maintain a complete case file. In that case, as the case file itself is not standardized, it would not be considered an information collection and the burden associated with developing the file would not be a paperwork burden. However, the requirement to keep that case file and, upon request, submit it to the Department, would be part of the paperwork burden.

For purposes of this 30-day notice, we have included the burden estimates we received from the small number of stakeholders we contacted as well as from the seven comments we received from the 60-day notice published in the **Federal Register** on June 15, 2021. As noted above, the Department is concerned that at least several of these estimates contain burdens associated with aspects of the program that are not paperwork burdens. To the extent feasible, the Department requests that commenters who provide burden estimates for aspects of the program identified below be as specific as possible, including what amount of time each task takes and what, if any, additional costs beyond labor costs (e.g., copying, mailing, storage, or other technology costs) are associated with each aspect of the collection.

*OMB Control Number:* N/A.  
*Title:* Disadvantaged Business Enterprise (DBE) Program Requirements.  
*Form Numbers:* N/A.  
*Type of Review:* Initial Approval of Existing Information Collection.

### 1. Maintain Bidders Lists

Section 26.11 and Appendix B of the DBE regulation require recipients to maintain a bidders list. The purpose of the list is to provide recipients the most accurate data possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on federally-assisted contracts. Recipients use the bidders lists to more accurately determine the availability of DBE and non-DBE firms and to measure the relative availability of ready, willing, and able DBEs when setting their overall goals under § 26.45. The data on a bidders list includes each firm's name, address, DBE status, age, and approximate annual gross receipts.

The annual burden hours we received from six stakeholder responses ranged from 3–915 hours. The total estimated annual cost burden we received from four stakeholder responses ranged from \$360–\$35,000. Although the Department acknowledges the wide range of recipients that must comply with this requirement, it seems unlikely that a fulltime employee dedicates half of his or her time each year to this task, as these lists are only updated three times per year for each recipient. Thus, the Department believes that the total annual burden per recipient is likely towards the lower end of the estimates we received.

*Respondents:* State and local recipients of DOT funds.

*Number of Respondents:* 1,198 (592 Federal Aviation Administration (FAA) recipients, 53 Federal Highway Administration (FHWA) recipients, 553 Federal Transit Administration (FTA) recipients).

*Frequency:* 3 times per year, although recipients have significant flexibility under § 26.11 to determine how often they update their bidders lists.

*Number of Responses:* 3,594.

*Total Annual Burden:* 636 hours and \$30,000.

### 2. Maintaining DBE Directories

Section 26.81(g) requires recipients to maintain an electronic DBE directory. Section 26.31 mandates that each directory listing include the firm's address, phone number, and the types of work the firm has been certified to perform as a DBE, using the most specific North American Industry Classification System (NAICS) code available to describe each type of work.

The primary purpose of the directory is to show the results of the certification process, *i.e.*, all firms that the recipient has certified. Prime contractors use the information to find potential DBE subcontractors.

The total annual burden hours we received from the five stakeholder responses ranged from 10–1,300 hours. The total annual cost burden we received from four stakeholder responses ranged from \$240–\$79,800. As with the above, the Department is concerned that the high estimate includes burden beyond the paperwork requirement of updating and maintaining the directory, though the Department believes the lower value of 10 hours may be insufficient for our larger stakeholders.

The General Contractors Association of New York (GCANY) commented that a requirement for recipients to include a detailed business description of each DBE in the directories would help prime contractors to conduct more targeted and meaningful outreach to DBEs. GCANY did not give examples of what additional details should be included beyond those that recipients already provide. The trade association American Road & Transportation Builders (ARTBA) commented that DBE directories in their current form should be improved, but did not provide specific suggestions.

*Respondents:* State and local recipients of DOT funds that perform DBE certification.

*Number of Respondents:* 132.

*Frequency:* Monthly, *i.e.*, 12 times each year.

*Number of Responses:* 1,584.

*Total Annual Burden:* 4,500 hours and \$426,000.

### 3. Monitoring the Performance of DBE Program Participants

Section 26.37 requires recipients to implement monitoring mechanisms to ensure that all DBE program participants comply with the regulation's requirements. There are two required mechanisms: (1) Written certification that recipients have reviewed contracting records and monitored work sites in their state for this purpose, and (2) a running tally of actual DBE attainments. If a DOT Operating Administration (OA) conducts a compliance review or investigation, it checks to see if the recipient has the written certifications and tallies; recipients do not otherwise submit the information. Recipients collect the information so they can confirm at project sites that the DBE to whom the work was committed is in fact performing the work.

The total estimated annual burden hours we received from the six stakeholder responses ranged from 45–2000 hours. The total annual cost burden was calculated based on the average of four stakeholder responses ranging from \$10,000–\$80,000. The Department believes that it is likely that the stakeholders who provided the higher numbers were basing their response on the substantive monitoring requirement rather than the paperwork specific requirements.

In response to the Department's 60-day **Federal Register** notice, the Associated General Contractors of Texas (AGCT) commented that there is much fluctuation in the amount of time it takes to report DBE payments, with a range of 36–2,500 annual hours to gather and report the necessary data. AGCT attributes the difficulties involved to flaws in the Texas DOT's DBE management software.

*Respondents:* State and local recipients of DOT funds.

*Number of Responses:* 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

*Frequency:* 36 times each year (3 times per month).

*Number of Responses:* 43,128.

*Total Annual Burden:* 28,224 hours and \$42,250.

### 4. Addressing Overconcentration of DBEs in Certain Types of Work

Section 26.33 contemplates a situation in which DBEs in a certain work type are so prevalent that they unduly burden the ability of non-DBE firms to participate in those work types. If a recipient determines that overconcentration of DBEs exists in certain types of work, the recipient must submit to the appropriate OA the reasons for the determination and the measures devised to address it. The recipient must review and analyze actual data concerning an overconcentration allegation to determine if it supports a finding of overconcentration. The OA have never received submittals of overconcentration determinations from recipients. ARTBA commented that overconcentration of DBEs in the trucking industry is well known and that better data is needed to inform the Department, recipients, and others to develop new DBE firms within industries where they are needed. ARTBA did not specify what type(s) of data might be helpful; thus, the Department cannot estimate what the burden impact would be of collecting additional data.

*Respondents:* State and local recipients of DOT funds.

*Number of Respondents:* 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

*Frequency:* Zero.

*Number of Responses:* Zero.

*Total Annual Burden:* Zero.

##### **5. Setting Overall Goals for DBE Participation in DOT-Assisted Contracts**

Congress carefully considered and concluded that race-neutral means alone insufficient to remedy the effects of discrimination in DOT-assisted contracting. Thus, § 26.45 mandates that, in three-year intervals, recipients set and submit to DOT an overall goal for DBE participation in DOT-assisted contracts based on the availability of DBE firms compared to all firms in each recipient's DOT-assisted contracting market. Recipients must include with their overall goal submission a description of the methodology they used to establish the goal and a projection of the portions of the overall goal that they expect to meet through race-neutral and race-conscious means.

The total annual burden hours below were calculated based on the average of six stakeholder responses ranging from 16–500 hours. The total annual cost burden was calculated based on the average of four stakeholder responses ranging from \$2,300–\$50,000. The Department notes that the paperwork-specific burden does not apply to all the work that goes into the goal setting process, but rather only to those aspects of that work that is related to the submission of goals.

*Respondents:* State and local recipients of DOT funds.

*Number of Respondents:* 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

*Frequency:* Triennially.

*Number of Responses:* 1,198.

*Total Annual Burden:* 47 hours and \$5,400.

##### **6. Analyzing Discrepancies Between Uniform Report Data and Recipients' Overall Goals**

Section 26.47(c) mandates that if the awards and commitments shown on a recipient's Uniform Report at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the recipient must, in order to be regarded by the Department as implementing the DBE program in good faith, (1) analyze in detail the reasons for the difference between the overall goal and awards and commitments in that fiscal year, and (2) establish specific steps and milestones to correct the problems the recipient identified in the analysis and to enable the recipient to meet fully the

goal for the new fiscal year. If the recipient is a state highway agency, one of the 50 largest transit authorities as determined by the FTA, or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, the recipient must submit, within 90 days of the end of the fiscal year, an analysis and corrective action plan to the appropriate OA for approval. A transit authority or airport not meeting the criteria of § 26.47(c)(3)(i) must retain analysis and corrective actions in its records for three years and make it available to the FTA or FAA on request.

The total annual burden hours we received from seven stakeholder responses ranged from 3–2,000 hours. The total annual cost burden was calculated based on the average of five stakeholder responses ranging from \$450–\$80,000. The Department is concerned that the higher numbers account for aspects of the program beyond the narrow collection in this requirement.

*Respondents:* State and local recipients of DOT funds.

*Number of Respondents:* 450.

*Frequency:* Annually or triennially depending on which OA provided the funds.

*Number of Responses:* 450.

*Total Annual Burden:* 650 hours and \$36,650 per respondent.

##### **7. Requiring Transit Vehicle Manufacturers (TVMs) To Comply With the DBE Regulation's Goal Setting Requirements**

Under § 26.49, FTA funding recipients must require that each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the regulation's goal setting requirements. TVMs must establish and submit for the FTA's approval an annual overall percentage goal that is narrowly tailored and specific to its market area. The FTA reviews the goal setting methodologies to ensure that they are developed pursuant to regulatory requirements and the Department's official guidance. In addition to submitting an annual percentage goal, FTA recipients must submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement. Once collected, the FTA analyzes the information for oversight purposes. For example, when the FTA conducts triennial and DBE-specific reviews, FTA contractors check the TVM Award Report data to make sure that the information on file with

the recipients is accurately reflected on the report.

The total annual burden hours for FTA recipients were calculated based on the average of three stakeholder responses ranging from 1–40 hours. The total annual cost burden for FTA recipients was calculated based on the average of two stakeholder responses ranging from \$60–\$4,000. The total annual burden hours and cost for TVMs is the response from one stakeholder. The Department believes that these responses are, generally, consistent with its understanding of the paperwork burden associated with this requirement.

*Respondents:* FTA recipients and TVMs.

*Number of Respondents:* 391 (328 FTA recipients; 63 TVMs).

*Frequency:* FTA recipients each submit contract award information once each time they award a contract to a TVM, *i.e.*, cumulatively 1,255 times each year. The 63 TVMs each annually submit one overall percentage goal to the FTA, *i.e.*, cumulative total of 63 annual submissions.

*Number of Responses:* 1,255 (1,192 FTA recipient responses and 63 TVM responses).

*Total Annual Burden:* 12,020 hours and \$18,880 (11,920 hours and \$17,880 for FTA recipients to submit contract award information; 100 hours and \$1,000 for each TVM to submit one overall percentage goal submission).

##### **8. Projecting Which Portions of Overall Goals of DBE Participation Will Be Met Through Race-Neutral Means and Which Portions Will Be Met Through Race-Conscious Means**

Section 26.51(c) states that each time a recipient submits an overall goal for review by the concerned OA, the recipient must also submit a projection of the portion of the goal that the recipient expects to meet through race neutral means and the basis for that projection. The projection is subject to approval by the concerned OA in conjunction with its review of the recipient's overall goal. Recipients use the information to determine what combination of race conscious and race neutral efforts they should undertake to meet their overall goal.

The total annual burden hours we received from six stakeholder responses ranged from 3–1,387 hours. The total annual cost burden from four stakeholder responses ranged from \$360–\$100,000. The Department believes that the higher totals include programmatic burdens beyond this specific collection.

*Respondents:* State and local recipients of DOT funds.

*Number of Respondents:* 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

*Frequency:* Triennially.

*Number of Responses:* 1,198.

*Total Annual Burden:* 171,713 hours and \$9,000.

### **9. Documenting and Submitting Evidence of Having Made “Good Faith Efforts” To Secure DBE Participation in DOT-Assisted Contracts**

Section 26.53(b)(2) and Appendix A state that in solicitations for DOT-assisted contracts for which a contract goal has been established, a recipient must require all bidders or offerors to submit the names and addresses of the DBE firms that will participate in the contract, a description of the work that each DBE will perform, the dollar amount of the participation of each DBE firm participating, written documentation of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet a contract goal, and written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor’s commitment. If the contract goal is not met, the recipient must require all bidders or offerors to submit evidence of their “good faith efforts” to achieve DBE participation on the contract. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE.

The total annual burden hours below were calculated based on the average of five recipient responses ranging from 2–192 hours. The total annual cost burden was calculated based on the average of four stakeholder responses ranging from \$250–\$7,300.

The Department acknowledges that the requirement of submitting “good faith efforts” documentation imposes a paperwork burden on prime contractors as well. It has not been feasible for the Department to survey prime contractors to calculate their burden. We request that prime contractors comment on this collection and provide hour and cost burden estimates that are as specific as possible, especially what amount of time it takes to prepare and submit “good faith efforts” documentation and any additional costs beyond labor costs (e.g., copying, mailing, storage, or other technology costs). In response to the Department’s 60-day notice, GCANY commented that some of its members have reported spending approximately

\$10,000–\$15,000 per year on newspaper advertisements that did not result in DBE interest or participation. GCANY also responded that on average it takes four days for one full-time employee to call 300 DBEs, explaining that one person can call 15–20 DBEs in one hour, it takes 15 hours to contact 300 DBEs for the first round of calls, and then an additional 10 hours for the second round of calls. Prime contractor Milestone Contractors LP commented that its annual average burdens for documenting and submitting evidence of having made good faith efforts is 168 hours and \$17,000. Contractor Jonathan Nolting shared that good faith efforts documentation takes approximately 1–2 days of multiple employees compiling, editing, reviewing, and submitting the required information. ARTBA commented that its average annual burden related to good faith efforts is 168 hours and \$17,000, based bidding on 24 contracts per year.

*Respondents:* State and local recipients of DOT funds and prime contractors.

*Number of Respondents:* 1,198 (592 FAA recipients, 53 FHWA recipients, 553 FTA recipients).

*Frequency:* 72 times each year (6 times per month) for state and local recipients of DOT funds.

*Number of Responses:* 86,256 (state and local recipients of DOT funds).

*Total Annual Burden:* 4,680 hours and \$359,400 for state and local recipients of DOT funds; approximately 96.5 hours and \$15,000 for prime contractors (based on the comments described above).

### **10. Drafting Unified Certification Program (UCP) Agreements**

The DBE program regulation requires all recipients and sponsors implementing DBE and Airport Concession DBE (ACDBE) programs to establish a UCP in their respective jurisdictions. In January 2020, DOCR evaluated the UCP agreements of the 50 states, the District of Columbia, the Northern Mariana Islands, and Puerto Rico. DOCR found that over 20 UCP agreements have errors, have not been updated to reflect changes to the DBE regulation made in 2011 and 2014, and contain significant changes that might not have been approved by the Department.

One of the Department’s concerns is that the UCP agreements and procedures are posted online and included in employee training materials, but contain information that misleads certified and applicant firms, as well as the recipients that created the agreements. For instance, some agreements contain

outdated standards (e.g., listing \$750,000 instead of the current \$1.32 million personal net worth limit), and/or inaccurate procedures (e.g., reference to nonexistent regulatory requirements, such as DBE certification expiration, and impermissibly requiring interstate certification applicants to participate in telephone interviews).

The total annual burden hours for UCPs to update their program agreements were calculated based on two stakeholder responses ranging from 2–192 hours. The total annual cost burden was calculated based on the response of one stakeholder.

*Respondents:* Unified Certification Programs.

*Number of Respondents:* 53.

*Frequency:* The Department proposes that this occur every four years. The Department or OAs may, as part of compliance activities, recommend or request the recipient and sponsor to make changes more frequently if necessary.

*Number of Responses:* 53.

*Total Annual Burden:* 50 hours and \$3,700 per respondent.

### **11. Evaluating the DBE Certification Eligibility of Applicant Firms**

Recipients must take various steps in determining an applicant’s eligibility, such as performing an on-site visit to the firm’s principal place of business. Recipients often write a report documenting the visit and maintain a copy of it. They send a copy to the Department if a firm found ineligible files an appeal.

The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 240–2000 hours. The total annual cost burden was calculated based on one stakeholder response of \$80,000.

*Respondents:* Recipients that perform DBE certification.

*Number of Respondents:* 132.

*Frequency:* 40 per respondent.

*Number of Responses:* 5,280.

*Total Annual Burden:* 44,000 hours and \$3.2 million.

### **12. Maintaining Copies of Written Denial Letters Sent to Applicant Firms and Sending Copies to DOT Upon Request**

Under § 26.86(a), when a recipient denies a certification application of a firm that is not currently certified by the UCP of which the recipient is a member, the recipient must provide the firm a written denial letter explaining the reasons for the decision, specifically referencing the evidence in the record that supports each reason for the denial. The recipient must maintain a copy of

the denial letter. If the denied firm appeals to DOT, the recipient must send a copy of the letter to DOT. If the firm requests the documents and other information on which the denial was based, the recipient must provide them.

The total annual burden hours below were calculated based on the average of three recipient responses within a narrow range. The total annual cost burden was calculated based on one stakeholder response of \$7,000. This is an instance in which the Department believes that recipients included hours and costs beyond those attributable to the paperwork burden. As denial letters are not standardized, they are not considered an information collection and the burden associated with writing them is not a paperwork burden. The only paperwork burdens are for recipients to send electronic copies of the letters to firms and to the Department, and maintain a copy of the letters. Given the relative simplicity of those tasks, it seems unlikely that they require 3,360 hours and \$210,000.

*Respondents:* Recipients that perform DBE certification.

*Number of Respondents:* 132.

*Frequency:* 2.5 each month.

*Number of Responses:* 3,960 per year.

*Total Annual Burden:* 3,360 hours and \$210,000.

### 13. Removing the Eligibility of a DBE Firm

Section 26.87 describes the process for a recipient to remove a firm's certification. If a recipient determines there is reasonable cause to believe that a certified firm is no longer eligible for DBE certification, the recipient must give the firm a written notice of its intent to decertify the firm. The notice must clearly describe the reasons for the proposed determination and the reasons for it, with specific references to the evidence in the record on which each reason is based. The recipient must offer the firm, in writing, an opportunity for an informal hearing at which the firm may respond to the reasons for the proposal to remove its eligibility. The recipient must maintain a verbatim record/transcript of the hearing. If a recipient reaches a final decision to decertify the firm, the recipient must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of the final decision and explain the process for filing an appeal with the Department. If the firm appeals to the Department, the recipient must provide the Department with a copy of

the transcript, and on request, to the firm.

The information collected during the decertification process is used in multiple ways. The decisionmaker appointed by the recipient uses the information in the notice of intent to decertify and any evidence presented during or after the hearing to make a final decision on whether the firm should be decertified. The firm uses the information in the notice of intent to decertify to determine what evidence or arguments it might want to submit at the informal hearing. The firm uses the information in the final decision, in part, to decide whether it wishes to file an appeal with the Department. If the firm files an appeal, the Department uses the information to determine whether substantial evidence supports the recipient's decision to remove the firm's certification eligibility.

The total annual burden hours are based on the average of three stakeholder responses ranging from 60–180 hours. The total annual cost is based on one stakeholder response of \$4,100.

*Respondents:* Unified Certification Programs.

*Number of Respondents:* 38.

*Frequency:* 53 each year.

*Number of Responses:* 2,014.

*Total Annual Burden:* 6,095 hours and \$217,300.

### 14. Mailing and Maintaining Copies of Summary Suspension Notices

Under § 26.88 when a recipient summarily suspends a firm's DBE certification, the recipient must immediately notify the firm of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the firm. If the owner(s) responds to the notice with information demonstrating that the firm remains eligible, the recipient must respond in writing (within 30 days of receiving the information) and explain how it intends to proceed.

The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 12–180 hours. The total annual cost burden was calculated based on one response from one stakeholder of \$7,600. This is another instance in which the Department believes that recipients included hours and costs beyond those attributable to the paperwork burden. Given that, the hours and cost estimates the Department received are likely too high. Summary suspension notices are not standardized and thus not considered an information collection. The burden associated with writing them is not a paperwork burden.

The only paperwork burdens are for recipients to send the notices by certified mail to firms and maintain an electronic copy.

*Respondents:* Recipients that perform DBE certification.

*Number of Respondents:* 132.

*Frequency:* 5 times each year.

*Number of Responses:* 660.

*Total Annual Burden:* 420 hours and \$38,000.

### 15. Sending the Department a Full Administrative Record When the Department Gives Notice That a Denied or Decertified Firm Appeals to the Department and Maintaining a Copy of the Record

Under § 26.89(d), recipients must comply with the Department's request to timely (within 20 days of the request) provide a full administrative record when the Department gives notice that a denied or decertified firm has filed an appeal with the Department.

The total annual burden hours below were calculated based on the average of three stakeholder responses ranging from 2–200 hours. The total annual cost burden was calculated based on one response from one stakeholder response of \$7,600.

*Respondents:* Recipients that perform DBE certification that have denied or decertified firms that appeal to the Department.

*Number of Respondents:* 50.

*Frequency:* 3 times each year.

*Number of Responses:* 150.

*Total Annual Burden:* 12,600 hours and \$7,600.

### 16. Providing a Copy of Application Materials to an Additional State in Which a Firm Certified in Another State Applies to Another State for Certification (Interstate Certification)

Under § 26.85(c), when a firm currently certified in its home state (state A) applies to another state (state B) for DBE certification, state B is permitted to require the firm to submit a complete copy of all the materials the firm submitted to its home state/state A for initial certification. State B reviews the information to determine whether there is "good cause" (a term specifically described in the interstate certification rule) to believe that state A's certification is not erroneous or should not apply in its state. The interstate certification rule describes the limited circumstances under which state B could validly make such a determination.

*Respondents:* DBE firms applying for interstate certification.

*Number of Respondents:* 68.

*Frequency:* Once.

*Number of Responses:* 68.

*Total Annual Burden:* 20 hours and \$2,000.

**17. Writing and Submitting Narratives of Social and Economic Disadvantage When Applying for DBE Certification Based on an Individualized Showing of Disadvantage**

The DBE program is intended to be as inclusive as possible while still remaining narrowly tailored. Individuals who are not members of groups whose members are presumed socially and economically disadvantaged may still qualify for DBE certification. Appendix E of the regulation states that to demonstrate their eligibility, these individuals must submit a narrative describing the individual's experiences of social disadvantage and a separate narrative in which the individual describes why the individual is economically disadvantaged. This information collection is critical for ensuring that only fully qualified firms receive DBE certification.

*Respondents:* DBE certification applicants whose owners are not presumed socially and economically disadvantaged under the DBE regulation.

*Number of Respondents:* 264.

*Frequency:* Once.

*Number of Responses:* 264.

*Total Annual Burden:* 90 hours and \$8,000.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC on September 8, 2021.

**Irene B. Marion,**

*Director, Departmental Office of Civil Rights,  
U.S. Department of Transportation.*

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**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

[Docket No. DOT-OST-2021-0105]

**Agency Request for Renewal of a Previously Approved Information Collection(s): Disadvantaged Business Enterprise (DBE) Program Collections**

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew information collections associated with DOT's Disadvantaged Business Enterprise (DBE) and Airport Concessions DBE (ACDBE) program. These collections are: Uniform Report of DBE Awards or Commitments and Payments, the Uniform Certification Application (UCA), Annual Affidavit of No Change, DOT Personal Net Worth Form, and Reporting Requirements for Percentages of DBEs in Various Categories.

**DATES:** Written comments should be submitted by October 15, 2021.

**ADDRESSES:** You may submit comments [identified by Docket No. DOT-OST-2021-0105] through one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marc Pentino, (202)366-6968, [marc.pentino@dot.gov](mailto:marc.pentino@dot.gov), or Aarathi Haig, [aarathi.haig@dot.gov](mailto:aarathi.haig@dot.gov)/Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, 20590

**SUPPLEMENTARY INFORMATION:** All five collections were previously approved under one OMB Control Number to allow DOT to more efficiently administer the DBE program. The information to be collected is necessary because it helps to ensure that State and local recipients that let federally funded contracts carry out their mandated responsibility to provide a level playing field for small businesses owned and controlled by socially and economically

disadvantaged individuals. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended (Pub. L. 104-13).

*OMB Control Number:* 2105-0510.

*Title:* Disadvantaged Business Enterprise Program Collections.

*Form Numbers:* Not applicable.

*Type of Review:* Renewal of an information collection.

*Background:* DOT's DBE program is mandated by statute, including Section 1101(b) of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114-94) and 49 U.S.C. 47113. The Department's final regulations implementing these statutes are 49 CFR parts 23 and 26. The program is implemented by recipients of DOT financial assistance (State highway agencies, transit authorities, and airports).

The "Uniform Report of DBE Awards or Commitments and Payments" is necessary for the Department to be able to carry out its oversight responsibilities. It implements statutory reporting requirements and 49 CFR 26.11 and 26.47.

The "Uniform Certification Application Form" is required under 49 CFR 26.83(c)(2) and is necessary for determining whether a particular firm qualifies for DBE certification.

The "Annual Affidavit of No Change" is mandated under 49 CFR 26.83(j) and is necessary to ensure the integrity of the DBE program that requires DBEs annually state that they remain eligible for the program.

The "Personal Net Worth Form" is necessary to implement the requirement found in 49 CFR 26.67(a)(2) that a firm applying for DBE status must certify that the personal net worth of the disadvantaged owner(s) on whom the firm relies for certification eligibility does not exceed the current limit of \$1.32 million.

The "Percentages of DBEs in Various Categories" collection is necessary to implement a long-standing statutory requirement calling on States to report annually, a list of small businesses certified as DBEs that are owned and controlled by socially and economically disadvantaged individuals, most recently included at section 1101(b)(4)(A) and (B) of the FAST Act. Submission of this information will also satisfy 49 CFR 26.11(e).

The information collections support one of DOT's strategic objectives of mission efficiency and support. The collection also helps ensure that State and local recipients that let federally funded contracts carry out their