

Department of Transportation
Disadvantaged Business Enterprise (DBE) Program
Information Collection Supporting Statement

Introduction

This is to request the Office of Management and Budget’s (OMB) approval of the Department of Transportation’s (Department/DOT) information collection titled “Disadvantaged Business Enterprise Program Collections” (Collection). The Bipartisan Infrastructure Law (BIL, enacted as the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58 (Nov. 15, 2021)) states that Congress continues to find that there is a compelling need for the continuation of the DBE program. The BIL directs, except to the extent that the Secretary of Transportation determines otherwise, that not less than 10 percent of the amounts made available for any program under Division A-Surface Transportation, with limited exceptions, shall be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals. The statutory provision governing the DBE program as it relates to airport financial assistance programs is 49 U.S.C. 47113. The Department’s implementing regulations are set forth in 49 CFR Parts 23 and 26.

1. Circumstances that make the collection of information necessary. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The DBE program for DOT-assisted contracts is intended to prevent discrimination, and remedy the effects of past discrimination, against small businesses owned and controlled by Asian-Pacific Americans, Subcontinent Asian Americans, Hispanic Americans, Black Americans, Native Americans, women, and other groups as designated by the Small Business Administration (SBA). Members of those groups are rebuttably presumed to be socially and economically disadvantaged (SED). The DBE program’s overarching goal is to create and maintain equity in contracting opportunities in the Department’s highway, mass transit, and airport financial assistance programs. The program is implemented by recipients that receive financial assistance from three of the Department’s Operating Administrations (OAs): Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The Departmental Office of Civil Rights (DOCR) oversees the DBE program. Each item below is a necessary element of the program that involves an information collection.

1. Maintaining bidders lists

49 CFR 26.11 and 49 CFR Appendix B require recipients to create and maintain a list of all bidders who bid on their federally assisted contracts. The purpose of the list is to provide recipients information about the universe of DBE and non-DBE contractors and subcontractors who seek to work on federally assisted contracts. It also helps recipients set their overall contract goals.

2. Maintaining DBE directories

49 CFR 26.81(g) requires that recipients create and maintain a DBE directory, and 49 CFR 26.31 requires that the directory listing for each firm includes 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 focus of the directory is certification eligibility. It is a list of firms that have been certified as eligible DBEs, with sufficient identifying information to allow interested prime contractors to contact them.

3. Monitoring the performance of DBE program participants

49 CFR 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. Monitoring mechanisms are critical to protecting the program's integrity and preventing fraudulent practices. For example, recipients need to confirm that prime contractors are using the DBE subcontractors that they committed to hiring.

4. Addressing overconcentration of DBEs in certain types of work

49 CFR 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.

5. Setting overall goals for DBE participation in DOT-assisted contracts

49 CFR 26.45 mandates that, in three-year intervals, recipients set and submit to the relevant OA an overall goal for DBE participation in DOT-assisted contracts. 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 DBE program regulation requires recipients to meet the maximum portion of their overall DBE goals through race-neutral means. Requiring recipients to list their planned race-neutral activities and projections of the portion of the overall goal they anticipate meeting through those activities, creates accountability for recipients to comply with section 26.45 requirements.

6. Analyzing discrepancies between Uniform Report data and recipients' overall goals

49 CFR 26.47(c) provides that if the awards and commitments shown on a recipient's Uniform Report of DBE Awards or Commitments and Payments (Uniform Report) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the recipient must, 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. Under section 26.47(c)(3)(i), 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, the analysis and corrective actions to the appropriate OA for approval. A transit authority or airport not meeting these criteria must retain analysis and corrective actions in its records for three years and make it available to FTA or FAA on request for their review.

7. Requiring transit vehicle manufacturers (TVMs) to comply with the DBE regulation's goal setting requirements

49 CFR 26.49 states that transit vehicle manufacturers awarded FTA-assisted contracts must comply with the reporting requirements of section 26.11, including the submission of Uniform Report data. TVMs must do so to remain eligible to bid on FTA assisted transit vehicle procurements.

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

49 CFR 26.51(c) describes the methods recipients use to meet their overall goals. Each time a recipient submits an overall goal for review by the relevant OA, the recipient must also submit a projection of the portion of the goal that the recipient expects to meet through race-neutral means, along with the basis for that projection. This projection is subject to approval by the relevant OA, in conjunction with its review of the recipient's overall goal. Most state DOTs have an overall goal with projections of race-neutral and race-conscious portions. A state DOT is not required to wait until it knows it will not meet its overall goal with race-neutral measures alone before it implements DBE goals on individual contracts (race-conscious efforts).

9. Documenting and submitting evidence of having made “good faith efforts” to secure DBE participation in DOT-assisted contracts

49 CFR 26.53(b)(2) and Appendix A address the good faith efforts (GFE) procedures recipients follow in situations where there are contract goals. A recipient analyzes a bidder's GFE on a contract-by-contract basis if a bidder does not meet a contract goal through DBE subcontracting alone. The bidder's GFE documents must reflect that the bidder made those efforts one would use if it were actively and aggressively trying to meet the contract goal, but nonetheless fell short.

10. Drafting Unified Certification Program (UCP) agreements

49 CFR 26.81 requires recipients and sponsors implementing DBE and Airport Concession DBE (ACDBE) programs to establish a UCP in their respective jurisdictions (50 states, District of Columbia, Northern Mariana Islands, and Puerto Rico). UCPs make certification decisions on behalf of all DOT recipients in their jurisdiction. The primary purpose of having a UCP is to provide “one-stop shopping” to certification applicants, such that a firm has to apply only to one certification entity in a state. If that certification entity approves the firm's application, the firm is automatically certified throughout that entire state. For example, if a firm is certified by the City of Phoenix, the firm does not have to separately apply for certification by the Arizona Department of Transportation. Section 26.81(a) requires each UCP to draft or update a UCP agreement in coordination with the relevant OA and submit the agreement to the Department for approval. Forty nine of 50 states (with Iowa as the exception) have submitted UCP agreements to the Department since 1999.

11. Evaluating the DBE certification eligibility of applicant firms

Under 49 CFR 26.83(c), one of the required steps a recipient must take when evaluating an applicant firm's DBE certification eligibility is to conduct an on-site visit (virtual or in-person) to the firm's principal place of business and interview the principal officers, as well other personnel as the recipient sees fit. Following each visit, recipients customarily write a report of

the visit and maintain a copy of it. The information in the report is critical for recipients to determine whether an SED individual owns and controls the firm. Recipients send a copy to the Department if a firm found ineligible files an appeal.

12. Maintaining copies of written denial letters sent to applicant firms and sending copies to DOT upon request

Under 49 CFR 26.86(a), when a recipient denies the 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 explanation of the reasons 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. The denied firm relies on the recipient's denial reasons to file an informed appeal to DOT.

13. Removing the eligibility of a DBE firm

If a recipient finds reasonable cause to believe that a certified firm is no longer eligible for certification, 49 CFR 26.87(a)(3) mandates that the recipient gives the firm written notice of its intent to decertify it. Section 26.87(d) requires a recipient to 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, section 26.87(g) requires the recipient to provide the firm written notice of the decision. 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. Recipients must maintain copies of notices of intent to decertify, final decertification decisions, hearing transcripts, and other documents related to the decertification process described in section 26.87. Recipients must make the copies available to DOT if a decertified firm appeals to DOT.

14. Mailing and maintaining copies of summary suspension notices

The DBE regulation permits recipients, in limited circumstances, to summarily suspend a firm's certification. 49 CFR 26.88 explains that if a recipient does so, 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.

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

49 CFR 26.89(d) requires recipients to comply with the Department's requests to timely provide a full administrative record when the Department gives notice that a denied, decertified, or summarily suspended firm has filed an appeal with the Department.

16. Providing a copy of application materials to an additional state when a firm certified in its home state applies to another state for certification (interstate certification)

49 CFR 26.85 says that 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 in-state certification.

17. Writing and submitting narratives of social and economic disadvantage when applying for DBE certification based on an individualized showing of social and economic disadvantage (49 CFR 26.67(d) and Appendix E)

The DBE program is intended to be as inclusive as possible while still remaining narrowly tailored and demonstrating a compelling interest for its continuance. Thus, individuals who are not members of groups whose members are presumed socially and economically disadvantaged may still qualify for DBE certification. To demonstrate their eligibility, these individuals must submit personal narratives describing why they are socially and economically disadvantaged under section 26.67(d) and the criteria listed in Appendix E.

2. How, by whom, and for what purpose the information is to be used. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

This collection activity supports DOT's strategic goal of supporting and engaging people and communities to promote safe, affordable, accessible, and multimodal access to opportunities and services while reducing transportation related disparities, adverse community impacts, and health effects.

1. Maintaining bidders lists

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 section 26.45. They update the list each time they let a new contract to make sure they are fully capturing the information.

2. Maintaining DBE directories

UCPs add new firms to their directories as the firms are certified, and remove firms that are no longer eligible. Each UCP displays its directory on its website. The primary purpose of the directories is to show the results of the certification process, i.e., all firms that the recipient has certified. Since DBE certification pertains to the various kinds of work a firm's disadvantaged owner can control (as described in 49 CFR 26.71), it is important to list those kinds of work in the directories. Prime contractors use the information to find potential DBE subcontractors.

3. Monitoring the performance of DBE program participants

Recipients collect the information so they can confirm at project sites that the DBE to whom the work was committed is performing the work. If OAs conduct a compliance review or investigation, they check to see if the recipient in question has the required written certifications and tallies. Recipients do not otherwise submit the information.

4. Addressing overconcentration of DBEs in certain types of work

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.

5. Setting overall goals for DBE participation in DOT-assisted contracts

Setting an overall goal is essential to a legally defensible DBE Program. The goal represents the DBE participation that would be expected in the relevant market area given the availability of DBEs as compared to actual participation. Each recipient must set a narrowly tailored goal specific to its market area. The relevant OA reviews the goal setting methodologies, submitted by recipients triennially, to ensure that they are developed consistent with regulatory requirements and DOT official guidance. The OA review prevents recipients from using methodologies that are not narrowly tailored, and ensures the methodologies are supported by the best data available. This mitigates the risk of litigation or other legal challenges at the state and federal level.

Courts typically consider a recipient's overall DBE goal methodology in response to legal challenges to a recipient's implementation of its DBE program.

6. Analyzing discrepancies between Uniform Report data and recipients' overall goals

If a recipient does not meet its goal in any given year, it is required to analyze why it fell short. For example, were enough contract goals set? Were contract goals set high enough? Were too many contracts awarded through documented GFE instead of DBE subcontracting? After the analysis, the recipient strategizes on changes to its procedures that could minimize the shortfall in the upcoming year and sends the relevant OA a copy of the shortfall analysis.

7. Requiring transit vehicle manufacturers (TVMs) to comply with the DBE regulation's goal setting requirements

Setting an overall goal is essential to a legally defensible DBE Program. The goal represents the DBE participation that would be expected in the relevant market area given the availability of DBEs as compared to actual participation. Each TVM must set a narrowly tailored goal specific to its market area. FTA reviews the goal setting methodologies to ensure that they are developed pursuant to regulatory requirements and DOT official guidance. FTA's review prevents the use of methodologies that are not narrowly tailored, and ensures the methodologies are supported by the best data available. This mitigates the risk of legal challenges to the DBE program.

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

Recipients use the information to determine what combination of race neutral and race conscious efforts they should undertake to meet their overall goal. Recipients strategize the number and percentage of contract goals needed, along with its race neutral efforts, to achieve its overall annual goal.

9. Documenting and submitting evidence of having made good faith efforts (GFE) to secure DBE participation in DOT-assisted contracts

Recipients analyze a bidder's GFE on a contract-by-contract basis if a bidder does not meet a contract goal through DBE subcontracting alone. The GFE documentation a bidder submits to the recipient must demonstrate that the bidder made those efforts one would use if it were actively and aggressively trying to meet the contract goal but fell short. In reviewing a bidder's

documented GFE, recipients must determine if the bidder identified sufficient subcontracting opportunities for DBEs to perform, made contact with the firms that were beyond pro-forma, and negotiated fairly with these firms.

10. Drafting and updating Unified Certification Program (UCP) agreements

In January 2020, the Department confirmed that nearly all 53 UCPs (the 50 States, the District of Columbia, the Northern Mariana Islands, and Puerto Rico) drafted a UCP agreement between 1999–2002. The Department evaluated all the agreements and found that over 20 have errors, have not been updated to reflect changes to the DBE regulation made in 2011 and 2014, and contain significant changes that require approval 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.

11. Evaluating the DBE certification eligibility of applicant firms

Under 49 USC 26.83, 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, refer to the information in it when making a final eligibility decision, and maintain a copy of it. They send a copy to the Department if a firm found ineligible files an appeal. The Department evaluates the report (along with the other documents in the administrative record) to adjudicate the appeal. The recipient and DOT both maintain a copy of the report.

12. Maintaining copies of written denial letters sent to applicant firms and sending copies to DOT upon request

When a recipient denies a certification application, the recipient must provide the applicant 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. The Department reviews the administrative record, which includes the denial letter, to adjudicate the appeal. DOT issues an appeal decision that it sends electronically to the recipient and the firm. DOT and the recipient maintain an electronic copy of the decision. There is virtually no instance in which the Department will request a recipient to provide a copy of a denial letter for a firm that has not appealed.

13. Removing the eligibility of a DBE firm

Recipients must maintain a copy of the notices they send to certified firms to remove those firms' certification eligibility. They must also keep a copy of the notices of intent to remove eligibility that are sent to certified firms. The decisionmaker appointed by the recipient uses the information in the notice of intent to decertify and any evidence presented during or after an optional hearing (or submitted in writing) 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 (or in writing). The firm uses the information in the final decision, in part, to decide whether to file an appeal with the Department. The Department uses all the information collected under section 26.87(g) to determine whether substantial evidence supports the recipient's decision to remove the firm's certification eligibility.

14. Mailing and maintaining copies of summary suspension notices

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.

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

A recipient must provide the Department a complete administrative record within 20 days of the Department's requesting it. The Department requests the information when a firm that that recipient denied or decertified files an appeal. A full administrative record is one that contains all the documents the recipient evaluated to make its decision. The Department reviews the documents in the administrative record to determine whether substantive evidence supports the recipient's decision, or whether to reverse or remand the decision. A court's review of a Department's appeal decision is based entirely on the documents the recipient relied upon to reach its decision. An incomplete administrative record can undermine legal defense of both the recipient's and the Department's decisions.

16. Providing a copy of application materials to an additional state when a firm certified in its home state applies to another state for certification (interstate certification)

Under section 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 in-state 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. This is critical to ensure that only fully eligible firms participate in the DBE program.

17. Writing and submitting narratives of social and economic disadvantage when applying for DBE certification based on an individualized showing of disadvantage

Individuals who are not members of groups whose members are presumed socially and economically disadvantaged may still qualify for DBE certification. Section 26.67(d) and Appendix E of the regulation state 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. Recipients use the narratives to evaluate whether the individual(s) meets the requirements of disadvantage outlined in Appendix E.

3. Extent of automated information collection. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

With the exception of notices of summary suspension, all of the information in this request can be collected electronically. DOT permits electronic submissions so that respondents have as much flexibility as possible in deciding how to collect, maintain, share, and submit information, as they are in the best position to decide what is least burdensome and most efficient for them.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in item 2 above.

The information in each of the collection instruments in this supporting statement is unique and is not available elsewhere because no other agency, including the SBA, administers a DBE or ACDBE program. Some firms already have SBA 8(a)

certification when they apply for DBE or ACDBE certification. However, 8(a) program's information submission and eligibility requirements are not identical.

5. Efforts to minimize the burden on small businesses. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

Four information collections impact small businesses:

- Evaluating the DBE certification eligibility of applicant firms
- Removing the eligibility of a DBE firm
- Providing a copy of application materials to an additional state when a firm certified in its home state applies to another state for certification (interstate certification)
- Writing and submitting narratives of social and economic disadvantage when applying for DBE certification based on an individualized showing of disadvantage

The Department has taken several measures to minimize the burdens of these information collections on small businesses. For example, regarding certification evaluation eligibility, a firm certified by a recipient in a particular state is automatically eligible to participate as a DBE throughout that state pursuant to 49 CFR 26.81; it need not apply separately to each certifying entity in that state. Regarding eligibility removal, there are no mandatory actions a certified firm must take when a recipient tries to remove its eligibility. In those instances, recipients are required to give firms detailed written notices of the evidence on which they rely to support their ineligibility decisions. The requirement that recipients provide a focused decision prevents firms from expending undue time and money to figure out how to best respond to a recipient's decision. Regarding interstate certification, the regulation prohibits the new state in which the firm seeks certification from requiring the firm to submit a new application package. At most, the firm may have to simply forward the application materials that the firm sent to its home state. The regulation places strict limits on what information the new state may require the certified firm to provide, so as to avoid burdening firms from having to reprove their eligibility each time they want to attain certification in a new state. Regarding DBE certification for businesses not owned and controlled by presumed SED individuals, Appendix E of the regulation describes the types of evidence that the owner(s) of such firms should provide.

6. Impact of less frequent collection of information. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The DBE program's overarching goal is to create and maintain equity in contracting opportunities in the Department's highway, mass transit, and airport financial assistance programs. The DBE program is necessary to prevent discrimination, and remedy the effects of past discrimination, against small businesses that are owned and controlled by Asian Pacific Americans, Subcontinent

Asian Americans, Hispanic Americans, Black Americans, Native Americans, and women. Members of those groups are rebuttably presumed socially and economically disadvantaged. Individuals who are not a member of any of those groups are eligible for DBE certification if they demonstrate social and economic disadvantage on an individualized basis. The information collections described in this supporting statement are necessary 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. Eliminating these collection instruments and/or conducting them less frequently would hinder the Department's compliance and oversight efforts.

7. Special Circumstances. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- Requiring respondents to report information to the agency more often than quarterly;
- Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Requiring respondents to submit more than an original and two copies of any document;
- Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Responses to Information Requests More Often than Quarterly and in Fewer than 30 Days

49 CFR 26.85(d) regarding interstate certification provides that when a firm already certified in its home state (State A) applies to another state (State B) for certification, State B must, within 7 days of receiving the firm's request for certification, contact State A and request a copy of the site visit review report for the firm, any updates to the site visit review, and any evaluation of the firm based on the site visit. State A must transmit this information to State B within 7 days of receiving the request. State A possesses this report and can easily send it electronically to State B. The 7-day turnaround time is reasonable and is in alignment for the expedited process this section of the regulation supports. The purpose of the interstate certification regulation is to eliminate unreasonable and unnecessary barriers burdens for DBEs that apply for certification in additional states after receiving certification in their home state. DBE certification requirements are identical in every state; the interstate certification rule was developed, large part, in response to concerns by DBEs that they were required to go through a burdensome application process with each state to which they applied for certification. It was clear to the Department that

interstate certification, if not accomplished through reciprocity among states, should at least be an expedited process after the DBE has already been certified.

Under 49 CFR 26.89, a firm has 90 days to appeal a recipient's adverse determination. DOT notifies the recipient as soon as it receives an appeal to request that the recipient provide the entire administrative record within 20 days of DOT's request. The 20-day deadline is in the interests of justice to the firm and efficiency for all involved parties. DOCR must log the pertinent details in the appeals docket, verify the completeness of the administrative record, assign the adjudication to an analyst, conduct internal review, and then send the final decision to the recipient and firm. Ten days makes a significant difference for a firm's ability to obtain more work. Because records are electronic and recipients already have them, a 20-day turnaround time is reasonable. Recipients have not reported otherwise to the Department.

49 CFR 26.53(b)(3) addresses the actions prime contractors must take in documenting and submitting evidence of having made good faith efforts (GFE) to secure DBE participation in DOT-assisted contracts. When prime contractors bid on DOT-assisted contracts for which a DBE contract goal has been established, they have two options for submitting documentation of their GFE. Section 26.53(b) explains the two options: (1) as a matter of responsiveness under sealed bid procedures or with initial proposals under contract negotiation procedures, or (2) no later than 7 days after bid opening as a matter of responsibility. The first option requires all bidders to provide the recipient with the required DBE commitment information at the time of bid submission. The second option allows bidders to provide the required information at some point after bid submission but before the recipient makes a contract award. Based on extensive experience and knowledge, the Department determined that allowing more than 7 days will greatly increase the risk of fraudulent practices such as bid shopping, reverse auctions, and bid peddling. These types of practices undermine the integrity of the DBE program.

8. Compliance with 5 CFR section 1320.8(d). If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR section 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to those comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department published a 60-day Federal Register Notice for public comment on June 15, 2021, FR Vol. 86, No. 113, p. 31813 and a 30-day Federal Register Notice on September 15, 2021, FR Vol.86, No. 176, p. 51439. In response to the 60-day notice, a contractors' association commented that a requirement for recipients to include a detailed business description of each DBE in the DBE Directories would help prime contractors conduct more targeted and meaningful outreach to DBE subcontractors. Another contractors' association commented that better data is needed to inform the Department of the overconcentration of DBEs in the trucking industry. One prime contractor described the time and cost of documenting good faith efforts. To further obtain the views of persons outside the agency, the OAs cumulatively contacted fewer than 10 recipients and asked them specific questions about their experiences about the instruments described in this supporting statement. The Department also contacted 5 consultants who assist program applicants prepare their application packages.

9. Payment or gifts to respondents. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

DOT does not provide any payment or gift to respondents.

10. Assurance of confidentiality. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

49 CFR 26.109(a) explains that in responding to requests for information concerning any aspect of the DBE program, the Department complies with the applicable provisions of the Freedom of Information Act (FOIA). The Department may make available to the public any information concerning the DBE program in accordance with federal law. Recipients must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. Recipients must, however, transmit this information to DOT in any certification appeal proceeding under section 26.89 or to any recipient in a state to which the individual's firm has applied for interstate certification under section 26.85.

11. Justification for collection of sensitive information. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the

information, the explanation to be given to persons from the information is requested, and any steps to be taken to obtain their consent.

The writing and submission of individualized narratives of social and economic disadvantage when applying for DBE certification based on an individualized showing of disadvantage involves collecting information that could be considered of a sensitive nature. The DBE program is intended to be as inclusive as possible while still remaining narrowly tailored. 49 CFR 26.67(d) explains that 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 explains that to demonstrate their eligibility, these individuals must submit two narratives – one which provides evidence of social disadvantage, and another that provides evidence of economic disadvantage. In the social disadvantage narrative, individuals often choose to disclose information about, for example, their religious views or disability status. Individuals have full discretion about how many details to provide. Recipients then evaluate the information to determine if an individual should be considered socially and economically disadvantaged despite lack of membership in one of the designated groups. This information collection is critical for ensuring that only fully qualified firms receive DBE certification.

12. Estimate of burden hours for information requested. Provide estimates of the hour burden of the collection of information. The statement should:

- Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The case of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in item 14.**

The Department coordinated efforts with FAA, FHWA, and FTA to obtain burden estimates from a small number of respondents. The hour burden on respondents varies widely for multiple reasons. For example, some recipients have more staff/employees than others; some might have a staff of 25 while others have only 2 employees. Geographic variances also affect the wage rate. Recipient staff hourly wage rate is taken from the U.S. Bureau of Labor Statistics' (BLS) estimate of an Eligibility Interviewer in Government Programs (OEWS Designation). The wage rate is multiplied by 1.62 to get a fully loaded hourly wage rate of \$34.77 to account for the cost of employer provided benefits. For state and local government workers, wages represent 61.9% of total compensation in 2020, therefore the multiplier is 1.62 (1/0.619).

| Collection Instrument | Affected Public | Number of Respondents | Frequency of Response | Estimated Average Annualized Hours Burden Per Response | Estimated Total Annualized Hours Burden | Annualized Burden Hours Estimate Source | Estimated Annualized Cost for Respondents Based on Wage Rate Category |
|---|---|------------------------------|------------------------------|---|--|--|--|
| 1. Maintaining Bidders Lists | Recipients of DOT funds | 1,198 | 3 times per year | 71 hours | 255,174 hours | Average of four responses ranging from 150 – 9,200. DOT obtained the numbers from four recipients. | \$8,872,399 |
| 2. Maintaining DBE Directories | Certifying entities of DOT funding recipients | 132 | 12 times per year | 373 hours | 590,832 hours | Average of five responses ranging from 10 – 1,300. DOT obtained the numbers from five certifying entities. | \$20,543,228 |
| 3. Monitoring the performance of DBE program participants | Recipients of DOT funds | 1,198 | 36 times per year | 1,145 hours | 49,381,560 hours | This is the average of six recipient responses ranged from 45 – 2000 hours. | \$1,716,996,841 |

| Collection Instrument | Affected Public | Number of Respondents | Frequency of Response | Estimated Average Annualized Hours Burden Per Response | Estimated Total Annualized Hours Burden | Annualized Burden Hours Estimate Source | Estimated Annualized Cost for Respondents Based on Wage Rate Category |
|--|-------------------------|------------------------------|------------------------------|---|--|--|--|
| 4. Addressing overconcentration of DBEs in certain types of work | Recipients of DOT funds | 1,198 | 0 times per year | 0 hours | 0 hours | The OAs that administer the program (FAA, FHWA, FTA) reported that they have not received a report of overconcentration in more than 10 years. | \$0 |
| 5. Setting overall goals for DBE participation in DOT-assisted contracts | Recipients of DOT funds | 1,198 | Once a year | 16 hours | 19,168 hours | This is the average of six stakeholder responses ranging from 16 – 500 hours. | \$666,471 |
| 6. Analyzing discrepancies between Uniform Report data and recipients' overall goals | Recipients of DOT funds | 450 | Once per year | 650 hours | 292,500 hours | This is the average of seven stakeholder responses ranging from 3 – 2,000 hours. | \$10,170,225 |

| Collection Instrument | Affected Public | Number of Respondents | Frequency of Response | Estimated Average Annualized Hours Burden Per Response | Estimated Total Annualized Hours Burden | Annualized Burden Hours Estimate Source | Estimated Annualized Cost for Respondents Based on Wage Rate Category |
|---|------------------------|------------------------------|------------------------------|---|--|---|--|
| 7a. Requiring transit vehicle manufacturers to comply with the DBE regulation's goal setting requirements | FTA recipients | 328 | 33 times per year | 1.1 hours | 11,920 hours | This is the average of three recipient responses ranging from 1 – 40 hours. | \$414,458 |
| 7b. Requiring TVMs to comply with the DBE regulation's goal setting requirements | TVMs | 63 | Once per year | 100 hours | 6,300 hours | This is the response from one TVM. | \$219,051 |

| Collection Instrument | Affected Public | Number of Respondents | Frequency of Response | Estimated Average Annualized Hours Burden Per Response | Estimated Total Annualized Hours Burden | Annualized Burden Hours Estimate Source | Estimated Annualized Cost for Respondents Based on Wage Rate Category |
|---|-------------------------|------------------------------|------------------------------|---|--|--|--|
| 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 | Recipients of DOT funds | 1,198 | Once per year | 47 hours | 56,306 hours | This is the average of six recipient responses ranging from 3 – 1,387 hours. | \$1,967,759 |
| 9. Documenting and submitting evidence of having made “good faith efforts” to secure DBE participation in DOT-assisted contracts | Recipients of DOT funds | 1,198 | 72 times each year | 1 hour | 86,256 hours | This is the average of five recipient responses ranging from 2 – 192 hours. | \$2,999,121 |

| Collection Instrument | Affected Public | Number of Respondents | Frequency of Response | Estimated Average Annualized Hours Burden Per Response | Estimated Total Annualized Hours Burden | Annualized Burden Hours Estimate Source | Estimated Annualized Cost for Respondents Based on Wage Rate Category |
|---|--|------------------------------|------------------------------|---|--|---|--|
| 10. Drafting and updating Unified Certification Program (UCP) Agreements | Recipients of DOT funds | 53 | Once per year | 50 hours | 2,650 hours | This is the average of two recipient responses. | \$92,140 |
| 11. Evaluating the DBE certification eligibility of applicant firms | Recipients of DOT funds that perform DBE certification functions | 132 | 40 times per year | 1,146 hours | 6,050,880 hours | This is the average of three recipient responses ranging from 240 – 2000 hours. | \$210,389,097 |
| 12. Maintaining copies of denial letters sent to applicant firms and sending copies to DOT upon request | Recipients of DOT funds that perform DBE certification functions | 132 | 2.5 times each month | 112 hours | 36,960 hours | This is the average of three recipient responses within a very narrow range. | \$1,285,099 |

| Collection Instrument | Affected Public | Number of Respondents | Frequency of Response | Estimated Annualized Hours Burden per Response | Estimated Total Annualized Hours Burden | Annualized Hours Burden Estimate Source | Estimated Annualized Cost for Respondents Based on Wage Rate Category |
|--|--|------------------------------|------------------------------|---|--|---|--|
| 13. Removing the eligibility of a DBE firm | Recipients of DOT funds that perform DBE certification functions | 38 | 53 times each year | 116 hours | 233,624 hours | This is the average of three recipient responses ranging from 60 – 180 hours. | \$8,123,106 |
| 14. Mailing and maintaining copies of summary suspension notices | Recipients of DOT funds that perform DBE certification functions | 132 | 5 times each year | 84 hours | 55,440 hours | This is the average of three recipient responses ranging from 12 – 180 hours. | \$1,927,648 |

| Collection Instrument | Affected Public | Number of Respondents | Frequency of Response | Estimated Annualized Hours Burden per Response | Estimated Total Annualized Hours Burden | Annualized Hours Burden Estimate Source | Estimated Annualized Cost for Respondents Based on Wage Rate Category |
|---|---|------------------------------|------------------------------|---|--|--|--|
| 15. Sending the Department a full administrative record when the Department gives notices that a denied or decertified firm appeal to the Department and maintaining a copy of the record | Recipients of DOT funds | 50 | 3 times per year | 150 hours | 22,500 hours | This is the average of three recipient responses ranging from 2 – 200 hours. | \$782,325 |
| 16. Providing a copy of application materials to an additional state when a certified firm applies to another state | DBE firms applying for interstate certification | 68 | Once per year | 15 hours | 1,020 hours | The Department consulted with two experts who assist firms with the application process. | \$35,465 |

| Collection Instrument | Affected Public | Number of Respondents | Frequency of Response | Estimated Annualized Hours Burden per Response | Estimated Total Annualized Hours Burden | Annualized Hours Burden Estimate Source | Estimated Annualized Cost for Respondents Based on Wage Rate Category |
|--|--|------------------------------|------------------------------|---|--|--|--|
| 17. Writing and submitting narratives of social and economic disadvantage when applying for DBE certification based on an individualized showing of disadvantage | Firms applying for DBE certification whose owners are not presumed socially and economically disadvantaged | 264 | Once per year | 90 hours | 23,760 hours | The Department consulted with two experts who assist firms with the application process. | \$826,135 |
| Total Respondent Burdens: 57,227,091.5 hours / \$19,909,435,723 | | | | | | | |

13. Estimate of the total annual costs burden. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the costs of any hour burden shown in items 12 and 14).

- The cost estimates should be split into two components: (A) a total capital and start-up cost component (annualized over its expected useful life); and (B) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rates(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- Generally, estimates should not include purchases of equipment or services, or portions thereof, made (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

This information is not available, as costs to recipients and DBEs for these collections are not broken out in any way that allows the Department to identify costs specific to this task.

14. Estimates of costs to the Federal Government. Provide estimates of annualized cost to the federal government. Also, provide a description of the method used to estimate costs, which should include quantification of hours, operational expenses such as equipment, overhead, printing, and support staff, and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from items 12, 13, and 14 in a single table.

The table below provides estimates of the annualized cost to the federal government. DOT employees who are involved with the DBE program are located throughout the United States including Los Angeles, CA, Washington, D.C., and New York, NY. To measure the burden on the federal government, this analysis estimates a DOT employee's wage rate based on the average wage rate of the 2021 General Schedule Locality Pay Tables, Hourly Rate GS-13 Step 05 wage rate for these locations. The average hourly compensation rate for a DOT employee who works on DOT's programs is \$56.73. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2021/general-schedule/> Including a compensation factor of 1.75, the DOT employee's compensation rate is \$99.27.

| COLLECTION INSTRUMENT | RESOURCE | PAY GRADE | ESTIMATED TIME TO REVIEW EACH RESPONSE | ESTIMATED ANNUALIZED HOURS BURDEN | ESTIMATED ANNUALIZED COST BURDEN |
|--------------------------------|-----------------|------------------|---|--|---|
| 1. Maintaining Bidders Lists | N/A | N/A | 0 hours | 0 hours | \$0 |
| 2. Maintaining DBE Directories | N/A | N/A | 0 hours | 0 hours | \$0 |

| COLLECTION INSTRUMENT | RESOURCE | PAY GRADE | ESTIMATED TIME TO REVIEW EACH RESPONSE | ESTIMATED ANNUALIZED HOURS BURDEN | ESTIMATED ANNUALIZED COST BURDEN |
|--|------------------------------|--|---|--|---|
| 4. Addressing overconcentration of DBEs in certain types of work | N/A | N/A | 0 hours | 0 hours | \$0 |
| 5. Setting overall goals for DBE participation in DOT-assisted contracts | N/A | N/A | 0 hours | 0 hours | \$0 |
| 6. Analyzing discrepancies between Uniform Report data and recipients' overall goals | Equal Opportunity Specialist | Fully loaded compensation rate based on GS 13 step 5 and 1.75 compensation factor (\$99.27/hour) | 7 hours | 174 hours | \$695 |
| 7. Requiring transit vehicle manufacturers to comply with the DBE regulation's goal setting requirements | N/A | N/A | 0 hours | 0 hours | \$0 |

| COLLECTION INSTRUMENT | RESOURCE | PAY GRADE | ESTIMATED TIME TO REVIEW EACH RESPONSE | ESTIMATED ANNUALIZED HOURS BURDEN | ESTIMATED ANNUALIZED COST BURDEN |
|---|-----------------|------------------|---|--|---|
| 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 | N/A | N/A | 0 hours | 0 hours | \$0 |
| 9. Documenting and submitting evidence of having made “good faith efforts” to secure DBE participation in DOT-assisted contracts | N/A | N/A | 0 hours | 0 hours | \$0 |
| 10. Drafting and updating Unified Certification Program (UCP) Agreements | N/A | N/A | 0 hours | 0 hours | \$0 |
| 11. Evaluating the DBE certification eligibility of applicant firms | N/A | N/A | 0 hours | 0 hours | \$0 |

| COLLECTION INSTRUMENT | RESOURCE | PAY GRADE | ESTIMATED TIME TO REVIEW EACH RESPONSE | ESTIMATED ANNUALIZED HOURS BURDEN | ESTIMATED ANNUALIZED COST BURDEN |
|---|---|--|---|--|---|
| 12. Maintaining copies of denial letters sent to applicant firms and sending copies to DOT upon request | N/A | N/A | 0 hours | 0 hours | \$0 |
| 13. Removing the eligibility of a DBE firm | Equal Opportunity Specialist in the Departmental Office of Civil Rights | Fully loaded compensation rate based on GS 13 step 5 and 1.75 compensation factor (\$99.27/hour) | 1 hour | 12 hours | \$1,191 |
| 14. Mailing and maintaining copies of summary suspension notices | Equal Opportunity Specialist in the Departmental Office of Civil Rights | Fully loaded compensation rate based on GS 13 step 5 and 1.75 compensation factor (\$99.27/hour) | 30 minutes | 6 hours | \$595 |

| COLLECTION INSTRUMENT | RESOURCE | PAY GRADE | ESTIMATED TIME TO REVIEW EACH RESPONSE | ESTIMATED ANNUALIZED HOURS BURDEN | ESTIMATED ANNUALIZED COST BURDEN |
|---|---|--|---|--|---|
| 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 | Equal Opportunity Specialist in the Departmental Office of Civil Rights | Fully loaded compensation rate based on GS 13 step 5 and 1.75 compensation factor (\$99.27/hour) | 1 hour | 12 hours | \$1,191 |
| 16. Providing a copy of application materials to an additional state when a firm certified in its home state applies to another state for certification (interstate certification) | N/A | N/A | 0 hours | 0 hours | \$0 |

| COLLECTION INSTRUMENT | RESOURCE | PAY GRADE | ESTIMATED TIME TO REVIEW EACH RESPONSE | ESTIMATED ANNUALIZED HOURS BURDEN | ESTIMATED ANNUALIZED COST BURDEN |
|---|----------|-----------|--|-----------------------------------|----------------------------------|
| 17. Writing and submitting narratives of social and economic disadvantage when applying for DBE certification based on an individualized showing of social and economic disadvantage (49 CFR 26.67(d) and Appendix E) | N/A | N/A | 0 hours | 0 hours | \$0 |
| TOTAL ANNUALIZED COST BURDEN: \$3,672 | | | | | |

15. Explanation of the program change or adjustments. Explain the reasons for any program changes or adjustments reported in items 13 or 14.

There are no program changes or adjustments.

16. Publication of results of data collection. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

The information in DBE directories is available on UCP websites. Firms ineligible for DBE certification are listed on DOT's website.

17. Approval for not displaying the expiration date of OMB approval. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

DOT is not seeking this approval.

18. Exceptions to the certification statement. Explain each exception to the certification statement “Certification for Paperwork Reduction Act Submissions.”

None of the information collections in this supporting statement have such an exception.