

**Supporting Statement for
Paperwork Reduction Act Submission
Department of Transportation Acquisition Regulation (TAR)
Part 1239 Clauses 1252.239-72 and 1252-239-74
2105-0582**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary. Identify legal or administrative requirements that necessitate the collection of information.

As a result of proposed rule, RIN 2105-AE26: Streamline and Update the Department of Transportation Acquisition Regulation posted to the [Federal Register, 86FR69452](#) on December 7, 2021, TAR Case 2020-001, this is a request from the Department of Transportation (DOT) for OMB approval of a new Information Collection (IC). Under Public Law 113-283, Federal Information Security Modernization Act of 2014, each agency of the Federal Government must provide security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source.

To comply with Public Law 113-283, Federal Information Security Modernization Act of 2014, DOT developed clauses 1252.239-72, Compliance with Safeguarding DOT Sensitive Data Controls, and 1252.239-74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting. These clauses contain the following information collection requirements from the public:

1252.239-72, Compliance with Safeguarding DOT Sensitive Data Controls: Requires contractors to submit to the Government the submittal and approval(s) of current or previous NIST 800-171 Variance requests and approvals.

1252.239-74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting: Requires contractors to submit to the Government—

- Submittal and approval(s) of current or previous NIST 800-171 Variance requests and approvals, along with subcontractor reporting of the same;
- Cyber incident reporting and assessment; and subcontractor reporting of the same;
- Submittal of malicious software; and
- Submittal of media images of known information systems and relevant monitoring / packet capture data.

2. Indicate how, by whom, and for what purposes the information is to be used; indicate actual use the agency has made of the information received from current collection.

Clause 1252.239-72, Compliance with Safeguarding DOT Sensitive Data Controls, is required to implement security requirements contained in clause 1252.239-74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting, for DOT sensitive data on Contractor information systems that support the performance of the contract. If the Offeror proposes to vary from any security requirements specified by NIST SP 800-171, Revision 2, the Offeror shall submit to the

Contracting Officer, for consideration by the DOT Chief Information Officer (CIO), a written explanation of—1) Why a particular security requirement is not applicable; or 2) How the Contractor will use an alternative, but equally effective, security measure to satisfy the requirements of NIST SP 800-171, Revision 2,. DOT would use the information collection requirements to assess the contractor's compliance with specific Federal and DOT IT security requirements. The information is necessary to ensure DOT information and information systems are adequately protected.

Clause 1252.239-74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting, requires that contractors shall provide adequate security on all covered contractor information systems. To provide adequate security, the contractor shall implement, at a minimum, information security protections set forth in the clause. DOT would use the information collection requirements to assess the contractor's compliance with specific Federal and DOT IT security requirements. The information is necessary to ensure DOT information and information systems are adequately protected.

3. 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.

Information collection requirement responses and plans can be submitted via electronic submission.

4. Describe efforts to identity 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 collections required by the clause are based on specific requirements for DOT to ensure contractor compliance with Federal and DOT security requirements. Each contract awarded require specific information collections and other contract submissions cannot be used. Submissions are specific to individual contracts. Therefore, there will be no duplication.

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

Small businesses will be affected in the same way as large businesses in order to comply with statutes and other Federal requirements which require security of information technology, information and information systems.

6. Describe the consequences 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.

Failure to collect the information could expose vulnerabilities in DOT information technology and protection of information and information systems.

7. Explain any special circumstances that would cause an information collection to be conducted more often than quarterly or require respondents to prepare written responses to a collection of information in fewer than 30 days after receipt of it; submit more than an original and two copies of any document; 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 and require the use of a statistical data classification that has not been reviewed and approved by OMB.

DOT does not expect that any contractor/subcontractor would submit a response more often annually for NIST 800-171 variances. However, in the case of specific cyber incidents, the reporting and associated information collection requirements would be on an event by event basis which is unknown.

8. a. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the sponsor's notice, required by 5 CFR 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 sponsor in responses to these comments. Specifically address comments received on cost and hour burden.

There were no public comments received on the proposed information collection instruments.

b. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure or reporting format, and on the data elements to be recorded, disclosed or reported. Explain any circumstances which preclude consultation every three years with representatives of those from whom information is to be obtained.

There were no efforts to consult with persons outside the agency beyond the publication of this proposed rule in the Federal Register.

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

No payments or gifts have been provided.

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

This information is disclosed only to the extent consistent with prudent business practices and current regulations.

11. Provide additional justification for any questions of a sensitive nature (Information that, with a reasonable degree of medical certainty, is likely to have a serious adverse effect on an individual's mental or physical health if revealed to him or her), such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private; include specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

The request for information does not include any questions of a sensitive nature.

12. Estimate of the hour burden of the collection of information:

Summary of total burdens for the two clauses:

Total Burden Hours: 73

Average Number of Respondents: 145

Average Annual Responses: 145

Total Burden Cost: \$2,076.85

a. The number of respondents, frequency of responses, annual hour burden, and explanation for each form is reported as follows:

For Clause 1252.239-72:

Total Burden Hours: 21

Average Number of Respondents: 41

Average Annual Responses: 41

No. of respondents	x No. of responses per respondent	x No. of minutes	÷ by 60 min/hour	Number of Burden Hours
41	1	30		21

Note: DOT has estimated the number of respondents based on identified NAICS reflecting previous contract awards averaged over the last three fiscal years—FY 2017, FY 2018, and FY 2019 where the clause may be required. DOT estimates that in the future for a typical contract performance period estimated of five years, that the majority of the information collection requirements might be required in one of the years and thus estimates 2% of the total average of contract awards represents the potential pool of number of respondents who might submit an information collection requirement (ICR) response as shown below principally pertaining to cyber incidents.

NAICS: (As shown below)

**(Respondents)
Contract Award Actions (Average 3 FY)**

518210	196
541199	12
541513	357
541618	60
541990	932
541110	335
561499	22
561621	158
	<u>2072</u>

Basis for estimated number of respondents: Number of NAICS contract actions = 2072
 x 2% estimated number of annual respondents might submit a NIST 800-171 variance request or approval ICR = 41.

For Clause 1252.239-74:

Total Burden Hours: 52
 Average Number of Respondents: 104
 Average Annual Responses: 104

No. of respondents	x No. of responses per respondent	x No. of minutes	÷ by 60 min/hour	Number of Burden Hours
104	1	30		52

NAICS: (As shown below)

**(Respondents)
Contract Award Actions (Average 3 FY)**

518210	196
541199	12
541513	357
541618	60
541990	932
541110	335
561499	22
561621	158
	<u>2072</u>

Basis for estimated number of respondents: Number of NAICS contract actions = 2072
 x 5% estimated number of annual respondents might submit a NIST 800-171 variance request or approval ICR or report and submittal of cyber incidents and associated submittals = 104.

b. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB 83-1.

No other form is required by the TAR for use in these collections.

c. Provide estimates of annual cost to respondents for the hour burdens for collections of information. The cost 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.

For Clause 1252.239-72:

Total estimated annual cost to all respondents: \$597.45 (21 hours at \$28.45 per hour).

This is based on Bureau of Labor Statistics (BLS) May 2021 Occupational Employment and Wages code 43-0000 Office and Administrative Support Occupations (<https://www.bls.gov/oes/current/oes430000.htm>) Mean Hourly Wage of \$20.88 plus 36.25% fringe benefits per OMB Memo M-08-13 dated March 11, 2008.

For Clause 1252.239-74:

Total estimated annual cost to all respondents: \$1,479.40 (52 hours at \$28.45 per hour). This is based on Bureau of Labor Statistics (BLS) May 2021 Occupational Employment and Wages code 43-0000 Office and Administrative Support Occupations (<https://www.bls.gov/oes/current/oes430000.htm>) Mean Hourly Wage of \$20.88 plus 36.25% fringe benefits per OMB Memo M-08-13 dated March 11, 2008.

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

There are no capital or start-up costs associated with the information collection.

14. Provide estimates of annual cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operation 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.

TAR clause 1252.239-72, Compliance with Safeguarding DOT Sensitive Data Controls.

Estimated annualized cost to the Government: \$1,397.69

Estimate based on 41 responses x 1 hour (estimate of 1 hour of Government review time per response) = 41 hr. at \$34.09/hourly rate from 2021 OPM GS Salary Table, of the average GS 9, Step 5, DOT IT specialist / staff). Rate of \$34.09 per hour including benefits based on the average GS-9, Step 5, on the [OPM Salary Table, 2021-GS](#) with a base hourly rate of \$25.02 + \$9.07 OMB Civilian Position Fringe Benefits rate of 36.25% (per OMB Memorandum M-08-13, March 11, 2008).

TAR clause 1252.239-74, Safeguarding DOT Sensitive Data and Cyber Incident Reporting.

Estimated annualized cost to the Government: \$3,545.36

Estimate based on 104 responses x 1 hour (estimate of 1 hour of Government review time per response) = 104 hours at \$34.09/hourly rate from 2021 OPM GS Salary Table, of the average GS 9, Step 5, DOT IT specialist / staff). Rate of \$34.09 per hour including benefits based on the average GS-9, Step 5, on the [OPM Salary Table, 2021-GS](#) with a base hourly rate of \$25.02 + \$9.07 OMB Civilian Position Fringe Benefits rate of 36.25% (per OMB Memorandum M-08-13, March 11, 2008).

15. Explain the reason for any burden hour changes since the last submission

This is a new information collection (Question 12 is using BLS rates, in lieu of OPM rates, for burden cost calculation).

16. 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.

There are no plans to publish any data received from this information collection.

17. If seeking approval to omit the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

DOT will display the expiration date for OMB approval of the information collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB 83-1.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods will not be employed.