U.S. Department of Transportation

SUMMARY OF COMMENTS [Docket No. DOT–OST–2025–0897]

RIN: 2105-AF33

Final Rule - [DATE]

Disadvantaged Business Enterprise Program (DBE) and Airport Concession Disadvantaged Business Enterprise Program Implementation Modifications 49 C.F.R. Parts 23 and 26

The Department of Transportation (DOT) published an Interim Final Rule (IFR) modifying the Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) programs on October 3, 2025. In preparation for our Paperwork Reduction Act (PRA) approval request and Regulatory Impact Analysis (RIA), the Office of the General Counsel has conducted a comprehensive review of the public comments to identify specific feedback regarding the administrative burdens, costs, time, and savings associated with the new and revised information collections. The comments received highlighted profound concerns regarding the financial and temporal impacts on local agencies, Unified Certification Programs (UCPs), and small businesses. To comply with PRA obligations, the Department must accurately calculate the burden hours and costs across various program modifications. Below is a comprehensive summary of the comments categorized by the relevant collection instruments and regulatory topics, formatted for inclusion in our PRA Supporting Statement.

DOT Rule on Personal Narratives (Certification Narratives) (§ 26.67)

The Interim Final Rule revises § 26.67 to implement the removal of unconstitutional race- and sex-based presumptions. The rule requires all small business owners to affirmatively demonstrate individualized social and economic disadvantage through a Personal Narrative and supporting documentation, without reliance in whole or in part on race or sex. The Department's initial PRA calculation estimated 820,000 burden hours across 41,000 firms, averaging 20 hours per firm, with an estimated one-time cost of $91.9 million.

Summary of Comments on Cost and Hour Burden on Personal Narratives: Respondents universally criticized the Department's PRA burden estimates for the new Personal Narrative requirement as vastly understated, asserting that the evidentiary burden creates an insurmountable financial hurdle for small entities. A policy and compliance consulting firm (DOT-OST-2025-0897-0560) asserted that the DOT's PRA methodology is statistically invalid because it relied on a minute sample size of only three stakeholders. The commenter pointed out that while stakeholder evidence indicated narrative preparation actually takes between 240 to 2,000 hours, averaging 1,120 hours, DOT arbitrarily utilized a 20-hour estimate. The firm argued this pushes the rule's true cost well over the $100 million threshold, requiring designation as a "Major Rule" under the Congressional Review Act. A state department of transportation (DOT-OST-2025-0897-0603) similarly noted that the evidentiary burden to produce individualized proof based on the 240-to-2,000-hour estimate could cost up to $80,000 per firm. They warned this will force small firms to hire costly legal and accounting consultants, thereby deterring program participation. A certified DBE supplier (DOT-OST-2025-0897-0638) noted that the IFR imposes nearly $100 million in added compliance costs and more than 800,000 hours of new paperwork nationwide, placing a significant administrative and financial burden on small firms with limited staff. Furthermore, a professional engineering firm (DOT-OST-2025-0897-0443) highlighted the duplicative cost waste for firms already certified under the Small Business Administration 8(a) program, arguing that requiring a new, DOT-specific narrative doubles the compliance cost and time for identical documentation. Finally, a small business enterprise (DOT-OST-2025-0897-0376) stated that drafting these narratives represents hundreds of hours of unbillable work and costs thousands of dollars, diverting critical time away from project delivery, staff training, and business operations.

DOT Response: The Department acknowledges the time required to submit a Personal Narrative; however, this individualized showing is legally required to align the program with constitutional mandates and judicial rulings. To mitigate this administrative burden, the Department is developing an updated Uniform Certification Application and will issue standardized templates and guidance to streamline the narrative drafting process, significantly reducing the hourly burden on firms.

DOT Rule on UCP Reevaluations (Recipient Reevaluations) (§ 26.111)

The IFR adds § 26.111, requiring each Unified Certification Program (UCP) to individually reevaluate any currently certified DBE or ACDBE to determine if they meet the new certification standards. DOT estimated a total cost of $3,447,280 for UCPs to process these reevaluations, estimating two hours of review per firm.

Summary of Comments on Cost and Hour Burden on UCP Reevaluations: State agencies and UCPs expressed that the unfunded mandate to reevaluate over 50,000 certified firms nationwide will overwhelm existing staff, creating severe administrative bottlenecks and unmanageable compliance costs. A public transportation industry association (DOT-OST-2025-0897-0541) argued that DOT’s estimated cost of $3.4 million for UCPs to process reevaluations drastically underestimates the actual time, staff effort, and outside legal consultation required to evaluate complex, highly subjective personal narratives. A state transportation officials association (DOT-OST-2025-0897-0426) emphasized that state DOTs require significant unbudgeted time to develop new DBE recertification processes, update documentation, and train staff to review an estimated 53,500 DBEs nationally, resulting in a lengthy and burdensome bottleneck. Furthermore, a state department of transportation (DOT-OST-2025-0897-0603) pointed out that in large UCPs, reevaluation timelines will vary significantly. While a highly resourced agency might complete its review in 60 to 90 days, smaller UCP members may require 6 to 12 months, creating inconsistent geographic delays. A rural state department of transportation (DOT-OST-2025-0897-0504) warned of severe procedural and administrative burdens for rural states that rely on a single certifier, noting that mass reevaluation risks unmanageable certification backlogs without additional federal funding or staffing flexibility.

DOT Response: The Department recognizes that the mass reevaluation of all affected DBEs and ACDBEs introduces new, immediate administrative procedures for UCPs. To alleviate the burden, the IFR directs UCPs to complete the reevaluation process "as quickly as practicable" rather than imposing a rigid, unfunded national deadline, providing states the necessary flexibility to manage their administrative workloads in accordance with their budgetary constraints.

DOT Rule on Interstate Certification (§ 26.85)

When a DBE applies to another UCP for certification, procedures for interstate reciprocity apply. Under the IFR's implementation guidance, firms that are recertified in their Jurisdiction of Original Certification (JOC) must formally reapply for interstate certification in other states to maintain their multi-state footprint.

Summary of Comments on Cost and Hour Burden on Interstate Certification: Commenters argued that the IFR effectively breaks the streamlined interstate reciprocity system, creating duplicative paperwork and lost revenue opportunities for multi-state firms. A women's procurement trade association (DOT-OST-2025-0897-0559) pointed out that requiring duplicative interstate reviews violates the spirit of the Small Business Paperwork Relief Act by forcing small businesses to litigate their personal narratives across multiple jurisdictions. A small business consulting firm (DOT-OST-2025-0897-0277) emphasized that small businesses have already invested hundreds of hours navigating complex multi-state certifications. The added requirement to reapply for interstate certification after a home-state reevaluation dramatically increases their administrative workload. A construction materials supplier (DOT-OST-2025-0897-0254) similarly stated that the timeline for individualized narrative preparation is especially burdensome for small, multi-state DBEs that must coordinate compliance across several DOT agencies simultaneously, which massively disrupts ongoing interstate projects.

DOT Response: The Department maintains that UCPs are only required to reevaluate the certifications of DBEs for which they are the JOC. The requirement for a firm to reapply for interstate certification ensures that the receiving state can adequately verify that the new individualized disadvantage standard has been met. This is a one-time transitional burden necessary for programmatic integrity.

DOT Rule on the Bidders' List (Active Participants List) (§ 26.11(c))

The IFR requires recipients to continue collecting bidders list information from all DBE and non-DBE contractors and subcontractors, including NAICS codes and gross receipts, but eliminates the requirement to collect the majority owner's race and sex.

Summary of Comments on Cost and Hour Burden on the Bidders' List: Stakeholders requested a pause on these data collection requirements, citing excessive compliance costs, cybersecurity risks, and administrative waste. A national construction trade association (DOT-OST-2025-0897-0553) noted that collecting every subcontractor quote at bid time is highly difficult and inherently duplicative, as subcontractors quote multiple prime contractors. They recommended pausing this paperwork burden until UCP reevaluations are complete and the federal database is fully operational. A transportation builders association (DOT-OST-2025-0897-0627) urged a pause on the mandate to collect all quotes at the time of bid, noting that one prime contractor had to submit 767 additional data points for a single $1 million project, which represents a massive waste of resources. A rural state department of transportation (DOT-OST-2025-0897-0504) pointed out that rural states lack the automated data systems required to collect, store, and manually verify gross receipts and NAICS codes for every bidder, creating an unmanageable administrative burden for state staff.

DOT Response: The Department estimates that recipients will ultimately experience a reduced burden in implementing § 26.11 due to the elimination of race- and sex-based reporting requirements. Once the Department completes the development of a centralized, searchable database, recipients will be able to seamlessly enter the required information with minimal additional burden.

DOT Rule on the List of ACDBE Certified Firms (§ 23.27)

The IFR updates reporting and recordkeeping requirements for the ACDBE program to remove race- and sex-based data collections and requires structural overhauls to existing airport concession programs and their certified firm directories.

Summary of Comments on Cost and Hour Burden on ACDBE Certified Firms: Airports and concessionaires noted general confusion regarding surviving reporting obligations and the administrative strain of overhauling ACDBE directories. A car rental trade association (DOT-OST-2025-0897-0550) highlighted ambiguity for airport concessionaires, specifically requesting clarification from the FAA on what ACDBE reporting obligations, including those uniquely required by contract, remain in effect following the goal suspension to avoid wasted compliance costs and redundant legal reviews. An airport industry council (DOT-OST-2025-0897-0516) requested that DOT provide further guidance, including templates, for recipients to use in revising their ACDBE programs to minimize the administrative strain of overhauling the nation's 3,500 ACDBE certifications.

DOT Response: To ensure a level playing field, the Department requires each UCP to reevaluate any currently certified ACDBE. The Department will issue further guidance and updated forms to assist airport sponsors in navigating these updates with minimal operational disruption and cost.

DOT Rule on MAP-21 Reporting (§ 26.11(e))

The IFR eliminates the requirements in § 26.11(e)(1) through (e)(6) that recipients report and categorize the percentage of in-State and out-of-State DBE certifications by sex and ethnicity, as well as the number of applications for "individualized" determinations.

Summary of Comments on Cost and Hour Burden on MAP-21 Reporting: Commenters noted that the IFR’s removal of race and gender presumptions creates transitional reporting confusion and renders statutory MAP-21 data collection effectively obsolete. A state department of transportation (DOT-OST-2025-0897-0603) questioned the ongoing utility and administrative cost of the MAP-21 reporting requirement. Because MAP-21 primarily captures race and ethnicity data, which the IFR removes from focus, the commenter asked how states should transition historic program data and whether DOT will issue new templates to avoid wasted state administrative effort. A local grant recipient (DOT-OST-2025-0897-0335) requested explicit confirmation from the Department that the IFR's elimination of the reporting requirements in § 26.11(e)(1) through (e)(6) means the MAP-21 report to USDOT is no longer required in its entirety.

DOT Response: Because the IFR requires all owners to demonstrate social and economic disadvantage affirmatively without regard to race or sex, the previous MAP-21 reporting requirements regarding demographic data and individualized showings are rendered unnecessary and are eliminated. This directly relieves recipients of the administrative burden and staff hours previously required to track, categorize, and report this data.

DOT Rule on the Uniform Report (§ 26.11(a))

Recipients must submit a report on DBE participation containing all the information described in the Uniform Report. Under the IFR, recipients are not required to submit Uniform Reports until a new overall annual DBE goal is established following the completion of the reevaluation process.

Summary of Comments on Cost and Hour Burden on the Uniform Report: There is widespread confusion regarding whether the time and administrative cost required to compile Uniform Reports is still mandated during the program transition. A regional transit agency (DOT-OST-2025-0897-0588) sought clarification on whether they must still expend administrative resources to complete and submit a Shortfall Analysis for FY 2025 or the December 2025 Uniform Report while goal-setting is formally suspended. A local transportation district (DOT-OST-2025-0897-0567) explicitly questioned whether recipients are required to spend staff time completing the Uniform Report for DBE participation obtained between April 1 and September 30, 2025, given the rule's immediate effective date. A state department of transportation (DOT-OST-2025-0897-0603) sought similar clarification on whether Uniform Reports are required for the 2024-2025 Federal Fiscal Year, given that the IFR paused goal setting.

DOT Response: As stated in the Department's guidance, recipients are not required to submit Uniform Reports until the recipient has established a new overall annual DBE goal following the completion of the reevaluation process, saving recipients an estimated 29,502 burden hours annually during the suspension.

DOT Rule on Goal Setting (§ 26.45, 26.51)

The IFR adds § 26.51(h) to provide that until a UCP completes the reevaluation process described in § 26.111, a recipient covered by that UCP may not set any contract goals or count DBE participation toward existing goals.

Summary of Comments on Cost and Hour Burden on Goal Setting: The immediate suspension of goal-setting is cited as a source of catastrophic financial loss for DBEs and a massive unbudgeted administrative strain for state agencies tasked with modifying procurements. A certified DBE supplier firm (DOT-OST-2025-0897-0624) reported losing out on nearly $2 million in anticipated contract revenue within just one month of the IFR's publication due to the immediate suspension of DBE goals by prime contractors. A professional engineering firm

(DOT-OST-2025-0897-0428) reported losing $200,000 of planned design work immediately when a prime consultant no longer needed to meet participation goals and reclassified the work as optional. A port authority and grant recipient (DOT-OST-2025-0897-0569) pointed out that the immediate goal suspension required significant, unbudgeted administrative resources to answer contractor questions, develop internal policies, and revise or amend active procurements to comply with the IFR.

DOT Response: The IFR explicitly provides that until a UCP completes the reevaluation process, a recipient may not count any DBE participation toward goals. This provision ensures that existing DBEs do not continue to receive benefits as a result of an unconstitutional certification. Recipients are not required to update their overall goals until the UCP completes the process, ensuring fairness during the transition.

DOT Rule on Disparity Studies (§ 26.45(c)(3))

The IFR amends regulations to clarify that any disparity studies utilized by recipients in setting their goals must provide a "detailed capacity analysis," including the methodology used, to ensure goals include only ready, willing, and able DBEs.

Summary of Comments on Cost and Hour Burden on Disparity Studies: The IFR's new requirements have created confusion regarding the financial validity and legal viability of existing disparity studies, representing a massive potential sunk cost. A state department of transportation (DOT-OST-2025-0897-0603) warned that the new detailed capacity analysis requirement creates confusion on whether currently completed or ongoing multi-million-dollar state disparity studies must be paused, rescoped, or discarded entirely before new goals can be set, costing states significant time and taxpayer money. A law and policy consulting firm specializing in disparity studies (DOT-OST-2025-0897-0599) noted that the IFR requires defining a capacity methodology which may invalidate prior expensive disparity studies without clear guidance, causing a significant waste of state funds, empirical research, and administrative effort. A regional transit agency (DOT-OST-2025-0897-0549) noted that their recent 2023 Disparity Study found statistically significant disparities, costing significant agency resources, yet the IFR fails to address how existing, valid disparity studies documenting structural inequities will be treated under the new framework.

DOT Response: The Department requires that disparity studies include detailed capacity analyses, which may necessitate additional economic modeling and data collection. While this requirement could increase the cost of producing disparity studies, estimated at $0.46 million annually, it is a necessary qualitative enhancement to ensure that overall goals reflect true market availability rather than unconstitutional presumptions.

Below is the targeted list of PRA-relevant commenters, categorized by the specific regulatory topics they addressed:

1. Personal Narratives (Certification Narratives)

These commenters explicitly cited the hourly burdens (e.g., 20 hours vs. 240–2,000 hours), consulting costs (e.g., up to $80,000), unbillable time, or directly referenced the Department's estimated $91.9 million / 820,000-hour paperwork burden.

- **Armand Resource Group, Inc.** (DOT-OST-2025-0897-0560)
- **Anonymous Policy Consultant** (DOT-OST-2025-0897-0011)
- **California Department of Transportation (Caltrans)** (DOT-OST-2025-0897-0416, -0603)
- **EG&R Engineering PC** (DOT-OST-2025-0897-0443)
- **CompCamp, Inc.** (DOT-OST-2025-0897-0376)
- **DBE Alliance** (DOT-OST-2025-0897-0605)
- **Marie Staub / WBE Products** (DOT-OST-2025-0897-0638)
- **Talson Solutions, LLC** (DOT-OST-2025-0897-0459)
- **Priority Group, Inc.** (DOT-OST-2025-0897-0384)
- **TechProc** (DOT-OST-2025-0897-0546)
- **Toll International LLC** (DOT-OST-2025-0897-0536)
- **SGH Welding Company, LLC** (DOT-OST-2025-0897-0423)
- **Information Design Consultants Inc. (IDCI)** (DOT-OST-2025-0897-0398)
- **Dikita Enterprises, Inc.** (DOT-OST-2025-0897-0389)
- **Cole Partners Inc.** (DOT-OST-2025-0897-0488)
- **William G. Moore & Son Inc.** (DOT-OST-2025-0897-0502)
- **AMG Demolition Inc.** (DOT-OST-2025-0897-0496)
- **Pure+Applied** (DOT-OST-2025-0897-0497)
- **KAG Engineering, PLLC** (DOT-OST-2025-0897-0500)
- **Azar Design Co.** (DOT-OST-2025-0897-0594)
- **Construction Clean Up Company** (DOT-OST-2025-0897-0486)
- **Iconic Consulting Group, Inc. and employees** *(Multiple IDs including -0579, -0580, -0578, -0538, -0479, -0447, -0392, -0354)*

2. UCP Reevaluations (Recipient Reevaluations)

These commenters highlighted the unfunded administrative mandate, staffing shortfalls, legal review costs, and the inadequacy of the Department's estimated $3.4 million UCP cost burden.

- **American Public Transportation Association (APTA)** (DOT-OST-2025-0897-0541)
- **American Association of State Highway and Transportation Officials (AASHTO)** (DOT-OST-2025-0897-0426)
- **California Department of Transportation (Caltrans)** (DOT-OST-2025-0897-0416, -0603)
- **South Dakota Department of Transportation (SDDOT)** (DOT-OST-2025-0897-0504)
- **Multnomah County** (DOT-OST-2025-0897-0625)
- **San Francisco Bay Area Rapid Transit District (BART)** (DOT-OST-2025-0897-0588)
- **Western Connecticut Council of Governments (WestCOG)** (DOT-OST-2025-0897-0563)
- **City and County of San Francisco (Airport/SFMTA)** (DOT-OST-2025-0897-0511)
- **Armand Resource Group, Inc.** (DOT-OST-2025-0897-0560)
- **Anonymous Policy Consultant** (DOT-OST-2025-0897-0011)

3. Interstate Certification

These commenters specifically addressed the duplicative paperwork burdens and administrative hurdles caused by requiring firms to completely reapply across state lines after home-state reevaluations.

- **Women's Procurement Circle** (DOT-OST-2025-0897-0559) –
- **American Road & Transportation Builders Association (ARTBA)** (DOT-OST-2025-0897-0627)
- **TraConcepts, LLC** (DOT-OST-2025-0897-0277)
- **Laser Bridge Industries LLC** (DOT-OST-2025-0897-0254)

4. Bidders' List (Active Participants List)

These commenters provided feedback on the direct data entry burdens, cybersecurity risks of collecting financial data, and system inadequacies related to collecting quotes at the time of bid.

- **American Road & Transportation Builders Association (ARTBA)** (DOT-OST-2025-0897-0627)
- **Associated General Contractors of America (AGC)** (DOT-OST-2025-0897-0553)
- **South Dakota Department of Transportation (SDDOT)** (DOT-OST-2025-0897-0504)

- **Anonymous Compliance Professional** (DOT-OST-2025-0897-0138, -0132) –

5. List of ACDBE Certified Firms

These commenters focused on the administrative strain and compliance costs of overhauling airport directories and adjusting existing concession agreements.

- **American Car Rental Association (ACRA)** (DOT-OST-2025-0897-0550)
- **Airports Council International - North America (ACI-NA)** (DOT-OST-2025-0897-0516)

6. MAP-21

These commenters specifically questioned the ongoing utility, alleged administrative waste, and transitional data collection costs regarding the statutory MAP-21 report in light of the rule changes.

- **California Department of Transportation (Caltrans)** (DOT-OST-2025-0897-0416, -0603)
- **Anonymous Local Grant Recipient** (DOT-OST-2025-0897-0335)

7. Uniform Report

These commenters explicitly questioned the staff time, financial resources, and reporting protocols required to compile the Uniform Report and Shortfall Analyses during the goal-setting suspension.

- **San Francisco Bay Area Rapid Transit District (BART)** (DOT-OST-2025-0897-0588)
- **Golden Gate Bridge, Highway & Transportation District** (DOT-OST-2025-0897-0564)
- **California Department of Transportation (Caltrans)** (DOT-OST-2025-0897-0416, -0603)

8. Goal Setting

These commenters provided quantitative estimates of lost revenue/sunk costs or detailed the unbudgeted staff hours required by agencies to modify active solicitations due to the immediate goal suspension.

- **Port of Seattle** (DOT-OST-2025-0897-0569) –
- **AUTC** (DOT-OST-2025-0897-0624)

- **Anonymous DBE Civil Engineering Firm** (DOT-OST-2025-0897-0428)
- **Western Connecticut Council of Governments (WestCOG)** (DOT-OST-2025-0897-0563)

9. Disparity Studies

These commenters noted concerns regarding administrative waste and financial sunk costs of potentially invalidating expensive, multi-million-dollar state disparity studies due to new, undefined "capacity analysis" requirements.

- **California Department of Transportation (Caltrans)** (DOT-OST-2025-0897-0416, -0603)
- **Griffin & Strong, P.C.** (DOT-OST-2025-0897-0599)

Los Angeles County Metropolitan Transportation Authority (LA Metro) (DOT-OST-2025-0897-0549)