



## **U.S. Department of Transportation**

---

Disadvantaged Business Enterprise and  
Airport Concession Disadvantaged Business Enterprise  
Program Implementation Modifications (49 CFR Parts 23 and 26)

### **Regulatory Impact Analysis**

RIN 2105-AE98  
DOCKET NO. DOT-OST-2022-0051

Office of the Secretary  
Departmental Office of Civil Rights  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

## Table of Contents

<b>List of Acronyms and Abbreviations:</b>	<b>iii</b>
<b>List of Tables</b>	<b>iv</b>
<b>E1. Executive Summary</b>	<b>1</b>
<b>1 Introduction and need for regulatory revisions</b>	<b>1</b>
<b>2 Purpose and methodology of this analysis</b>	<b>2</b>
<b>3 Assumptions used in this analysis</b>	<b>2</b>
<b>4 Rulemaking background and summary of the final rule</b>	<b>3</b>
<b>5.1 Costs of provisions</b>	<b>8</b>
<b>5.2 Benefits of provisions</b>	<b>15</b>
<b>Governmental administrative costs and benefits</b>	<b>23</b>
<b>6.1 Governmental administrative costs of provisions</b>	<b>23</b>
<b>6.2 Governmental administrative benefits of provisions</b>	<b>26</b>
<b>8 Regulatory alternatives considered</b>	<b>31</b>
<b>8.1 Baseline/no action alternative</b>	<b>31</b>
<b>9 Sensitivity analysis</b>	<b>31</b>
<b>10 Summary of analysis</b>	<b>32</b>
<b>Appendix A: Participation threshold evaluation for FTA recipients</b>	<b>34</b>
<b>Appendix B: Personal net worth cap evaluation</b>	<b>38</b>
<b>Appendix C: Final Regulatory Flexibility Analysis</b>	<b>47</b>

## List of Acronyms and Abbreviations:

ACDBE	Airport Concession Disadvantaged Business Enterprise
ACDBEs	ACDBE firms
BDP	Small Business Development Program
CFR	Code of Federal Regulations
DBE	Disadvantaged Business Enterprise
DBEs	DBE firms
DOCR	Departmental Office of Civil Rights
DOT	U. S. Department of Transportation
DOT's programs	ACDBE program and DBE program
DPP	DBE Performance Plan
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
GDP	Gross Domestic Product
IJA	Infrastructure, Investment and Jobs Act
LTE	Long-term, exclusive agreement
MAP-21	Moving Ahead for Progress in the 21 <sup>st</sup> Century Act
NAICS	North American Industry Classification System
NOD	Notice of Decision
NOI	Notice of intent to decertify
NPRM	Notice of Proposed Rulemaking
OAs	Operating Administrations
Part 23	49 CFR Part 23: Participation of Disadvantaged Business Enterprises in Airport Concessions
Part 26	49 CFR Part 26: Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
PEU	Primary Economic Unit
PNW	Personal Net Worth
RIA	Regulatory Impact Analysis
SCF	2019 Survey of Consumer Finances
SEDO	Socially and Economically Disadvantaged Owner
TrAMS	Transit Awards Management System (TrAMS).
TVM	Transit Vehicle Manufacturer
UCP	Unified Certification Program
Uniform Report	Uniform Report of DBE Awards, Commitments and Payments (Appendix B to 49 CFR Part 26)
Volpe	Volpe National Transportation Systems Center

## List of Tables

Table ES.1: Costs and cost savings, 10-year period, dollars, rounded to 1,000

Table ES.2: Governmental administrative costs and cost savings, 10-year period, dollars, rounded to 1,000

Table 1: Costs of Provisions, 10-year period, dollars, rounded to 1,000

Table 2: Cost savings of Provisions, 10-year period, dollars, rounded to 1,000

Table 3: Total governmental administrative cost, 10-year period, dollars, rounded to 1,000

Table 4: Total governmental administrative cost savings, 10-year period, dollars, rounded to 1,000 (Distributional effects)

Table 5: Low, primary, and high-cost savings estimate from no longer estimating retirement assets, dollars, rounded to 1,000

Table A.1: DBE Program Costs for Transit Agencies with Low Levels of Federally funded Contract Activity

Table A.2: Impact of Proposed Threshold for FTA DBE Program (2020 dollars)

Table B.1: Total Net Worth of the Household by Race and Ethnic Group in 2019 (2019 dollars)

Table B.2: Percentile Distribution of the Personal Net Worth for Male, White, Non-Hispanic, Self-Employed, Business Owners, as Calculated under the Primary Proposal (2019 dollars)

Table B.3: Comparison of Adjusted PNW based on Financial Accounts of the United States for Households and Nonprofit Organizations versus Adjusted PNW based on Household Balance Sheet

Table B.4: Financial Accounts of the United States: Balance Sheet of Households; Normalized by Total Households

Table B.5: Growth of CPI, Federal Reserve Total Household Net Worth, and Personal Net Worth 90<sup>th</sup> Percentile of White, Non-Hispanic, Male, Self-Employed Business Owners from the SCF (Indexed to 1992)

## E1. Executive Summary

The U.S. Department of Transportation issued a final rule containing enhancements to the Airport Concessions Disadvantaged Business Enterprises (ACDBE) program and Disadvantaged Business Enterprise (DBE) program (DOT's programs). The objectives of the final rule include reducing stakeholder burden, increasing opportunities for participating firms by streamlining and updating firm eligibility requirements, and improving DOT's ability to implement and measure the effectiveness of DOT's programs.

The DBE program applies to recipients of federal financial assistance from three DOT Operating Administrations (OAs): the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). The ACDBE program applies only to FAA sponsors receiving Airport Improvement Program funds. Among other objectives, DOT's programs try to create a level playing field where all firms may compete fairly for federally assisted transportation contracts and airport concession opportunities. The final rule includes the following nine categories of revisions:

- (1) alleviating reporting burdens for FTA recipients
- (2) streamlining the DBE and ACDBE certification and eligibility process
- (3) adjusting the personal net worth (PNW) cap for inflation for small business owners
- (4) formalizing guidance establishing successful COVID-19 flexibilities
- (5) enhancing state directories of certified firms
- (6) enhancing the information collected under the uniform reporting of DBE and ACDBEs participation
- (7) modernizing the rules for counting participation by DBE material suppliers and clarifying terminology
- (8) including holdovers in the definition of "long-term exclusive leases (LTEs)," and
- (9) making technical corrections and other updates such as improved interstate reciprocity.

### Analysis of costs and benefits to program applicants, participants, the government, and the public

This analysis measures the costs, cost savings, benefits, and lost benefits that would come from the final rule.<sup>1</sup> Over the 10-year period of analysis DOT estimates the final rule will generate net cost savings of \$58.70 million (Present Value (PV), 3%) and \$47.33 million (PV, 7%).<sup>2</sup>

Over the 10-year period of analysis DOT estimates the final rule will generate net governmental administrative costs of \$2 million (Present Value (PV), 3%) and \$1.9 million (PV, 7%).

## 1 Introduction and need for regulatory revisions

Congressional surface and aviation authorizations mandate that DOT remedy the effects of past and present discrimination in federally assisted aviation, highway, and transit contracting markets and in the airport concession markets. The DOT's programs provide opportunities to socially and economically disadvantaged owners (SEDOs) of DBEs or ACDBEs.

A DBE is a for-profit small business concern owned and controlled by socially and economically disadvantaged (SED) individuals. In IIJA, the term "socially and economically disadvantaged individuals" has the meaning given the term in section 8(d) of the Small Business Act (15 U.S.C. 637(d))

---

<sup>1</sup> Due to data limitations, some impacts, such as the improved ability for DOT to measure the successfulness of DOT's programs, were qualitatively explained.

<sup>2</sup> Unless otherwise noted, all costs and cost savings in this analysis are in 2022 dollars.

and relevant subcontracting regulations issued pursuant to that Act, except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of [the program].” Citizens who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are afforded the presumption of social and economic disadvantage per §26.67(a)(1). Individuals who belong to a group(s) whose members are presumed SED could be too wealthy to be considered “disadvantaged.”

Many of the 43,000+ DBEs and the approximately 3,700 ACDBEs work on the vast array of projects funded with DOT dollars and in concession opportunities at airports receiving Airport Improvement funds.<sup>3</sup> For example, in fiscal year 2022, DOT financial assistance recipients awarded or committed over \$7 billion (prime and subcontract dollars) to DBEs, and ACDBE concessions at primary airports generated non-car rental revenue of \$2.7 billion.<sup>4</sup>

DOT continuously monitors and evaluates the implementation of DOT’s programs. From stakeholder outreach and experience administering DOT’s programs, DOT determined that regulatory revisions would improve and clarify many portions of regulatory revisions. DOT reviewed information presented by the Transportation Research Board, the Airport Cooperative Research Program, prime contractor associations, airport representatives, consultants in the industry, industry organizations and small businesses submitting certification appeals to the Departmental Office of Civil Rights (DOCR). From this research and stakeholder outreach efforts, DOT determined that the final rule’s revisions: (1) increase opportunities available to ACDBEs and DBEs and facilitate their ability to grow and succeed; (2) expand recipients’ and sponsors’ ability to effectively monitor program compliance; and (3) revise overly prescriptive, outdated, and burdensome requirements that impede program goals.

## **2 Purpose and methodology of this analysis**

This economic analysis estimates the costs, cost savings, and distributional effects that comes from issuing the final rule. This analysis measures the marginal changes expected to come from the final rule as compared to the existing economic environment absent the revisions. Essentially, this analysis compares what the world would look like if DOT issued the final rule as compared to the no-action baseline alternative.

## **3 Assumptions used in this analysis**

Unless otherwise noted, the following assumptions apply to this analysis.

1. This analysis qualitatively explains benefits and lost benefits.
2. This analysis quantitatively estimates costs and cost savings over a 10-year period that follows the final rule’s anticipated effective date.
3. Unless otherwise stated, all provisions are effective on the same day in FY 2024.
4. When estimating costs and cost savings, this analysis relies on marginal analysis to describe the impacts on stakeholders (e.g., prime contractors, recipient agencies, DBEs and ACDBEs) and the federal government.
5. Unless otherwise stated, this analysis uses 2022 data.
6. Formulas for discounted present value (i.e., present value 3% and 7%) do not discount the first

---

<sup>3</sup> State departments of transportation must report yearly the percentage and location in the State of certified DBEs in the state DBE Directory controlled by the following: (1) Women; (2) Socially and economically disadvantaged individuals (other than women); and (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals. See §§26.11, 26.81, IIJA §1101(e)(4).

<sup>4</sup> See Uniform Report of DBE Participation and Uniform Report of ACDBE Participation (2022).

year of analysis.<sup>5</sup>

#### 4 Rulemaking background and summary of the final rule

Congress has reauthorized the DBE program several times in its 40-year history, most recently in the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58) (November 15, 2021). Congress codified the ACDBE program in 1987 (See 49 U.S.C. 47107(e)). In reauthorizing the programs, Congress received testimony about the discrimination and related barriers that continue to pose significant obstacles for minority and women owned businesses seeking to do business in Federally assisted surface transportation markets and in airport concession industries.

DOT's regulations addressing these barriers stretch back to the early 1980s. Regulations implementing the programs at 49 CFR Parts 23 and 26, were last substantively updated in 2012 and 2014. A minor inflationary adjustment to a business size calculation was made in January 2021.

Following the 2014 rule update, the Department collected input from construction trade and advocacy organizations, prime contractors, State agency recipients implementing the programs (e.g., State departments of transportation, airport sponsors, and transit authorities), and small businesses. Through this stakeholder outreach and Department staff experiences implementing its programs, the Department identified amendments that would reduce burden and costs; improve operational cohesiveness; and provide contemporary solutions for out-of-date rules and other deficiencies.

On July 21, 2022, the Department issued a non-significant NPRM (87 FR 43620) to make technical and process updates that enhance the programs' effectiveness. On August 1, 2023, OMB designated the rulemaking as significant.

The final rule addresses the comments received from State departments of transportation, transit authorities, airports, DBEs and non-DBEs, representatives of various stakeholder organizations, and individuals. This section summarizes the changes to the provisions that are contained in the final rule, including 26 provisions for Part 26 and 15 provisions for Part 23. For the purpose of evaluating the final rule, this analysis assumes that current regulatory and enforcement practice (the status quo) is an accurate characterization of the baseline. We assume that, in the absence of the rulemaking, the status quo would continue. These descriptions are for informational use only (refer to the final rule preamble for definitive language and detail on definitions, intent, and legal authority).

Provision number in the Preamble to the  
Final Rule

Change

##### 49 CFR Part 26

1 (Bipartisan Infrastructure Law and  
Jobs Act and FAST Act)

Adds citations to these laws, which authorize the Department's  
DBE program.

2 (Definitions)

Adds new definitions and revises some existing definitions.

---

<sup>5</sup> Present values (PV) for costs and cost savings are calculated over a 10-year period. PV provides a way of converting future amounts into equivalent dollars today. The formula used to calculate these flows is:  $1/(1+r)^t$  where "r" is the discount rate, and "t" is the year.

Provision number in the Preamble to the Final Rule	Change
3 (Reporting Requirements)	Expands reporting Part 26 requirements: (1) the MAP-21 data reports, (2) bidders list data, and (3) Uniform Report.
4 (Threshold Program Requirement for FTA Recipients)	For FTA recipients, increases the prime contracts threshold from \$250,000 to \$670,000.
5 (UCP DBE/ACDBE Directories)	Directs UCPs to expand their certification directories to display additional firm specific information.
6 (Monitoring Requirements)	Clarifies that a recipient must monitor all DBE contract participation, including race-neutral participation, to be counted toward a recipient's overall goal.
7 (Prompt Payment and Retainage)	Adds a provision about the need for affirmative monitoring of subcontractor prompt payment and return of retainage by the recipient.
8 (Transit Vehicle Manufacturers)	Clarifies roles and responsibilities when transit vehicles are procured from Transit Vehicle Manufacturers or other entities.
9 (Good Faith Efforts Procedures for Contracts with DBE Goals)	Advises recipients requesting proposals for a design-build project to require a design-builder to submit an Open-Ended DBE Performance Plan (DPP) within 5 days of proposal submission.
10 (Terminations)	Changes are clarifying in nature.
11 (DBE Supplier Credit)	Limits to 40 percent the credit that can be claimed from DBE distributors, provided the DBE bears the risk for loss or damage of such items. This is a change from a revision proposed in the NPRM that allowed prime contractor's expenditures with DBE suppliers (manufacturers, regular dealers, distributors, and transaction facilitators) to no more than 50 percent of the contract goal, with exceptions on a contract-by-contract basis with prior approval of the OA.
12 (General Certification Standards)	Permits indirect ownership and control of a subsidiary DBE through a parent company that is owned and controlled by SEDOs.
13 (Business Size)	Changes are clarifying in nature (receipts will be reported on a cash basis)
14 (Personal Net Worth Adjustment)	Establish basis for SEDO economic disadvantage based on a PNW cap; establish future adjustments to the PNW cap and remove retirement assets from the calculation.



Provision number in the Preamble to the Final Rule	Change
15 (Presumption of Social and Economic Disadvantage)	Changes are clarifying in nature.
16 (Ownership)	Reworks and simplifies the essential concepts and moves them to places in § 26.69 that correspond to their role in explaining the general rule.
17 (Control)	Shifts the focus from the actions and experience of non-disadvantaged participants in the firm to those of the SEDO. Replaces the current checklist-type requirements with less prescriptive general rule. Clarifies that a disadvantaged owner must be the ultimate decision maker.
18 (Technical Corrections to UCP Requirements)	No changes from status quo. Changes are clarifying in nature.
19 ( <b>Virtual On-Site Visits</b> )	Makes permanent the virtual on-site interview flexibilities.
20,21 ( <b>Timely Processing of In-State Certification Applications and Curative Measures</b> )	Reduces the time a certifier may extend its review of an initial application for DBE certification.
22 (Interstate Certification)	Streamlines the interstate certification process.
23 (Denials of Initial Requests for certification)	Removes the requirement for the recipient to gain OA approval before adopting a shorter waiting period.
24 (Decertification Procedures)	Reorders, streamlines, and strengthens the current language in § 26.87.
25 (Counting DBE Participation after Decertification)	Clarifies the effect of removing a DBE's eligibility prior to a prime contractor executing a subcontract with the DBE or prior to the recipient entering into a prime contract with the DBE. Makes an exception to the general rule in situations where the DBE's disqualification occurred because a non-DBE purchased or merged with the DBE.
24 (Virtual Decertification Hearings)	Allows virtual decertification hearings if recipients maintain a complete hearing record.
26 (Summary Suspension)	Requires the certifier to send the DBE a notice of the suspension and procedural protections by email. Alters the list of events requiring or permitting summary suspension, changes death and incarceration to discretionary grounds for suspension.

Provision number in the Preamble to the Final Rule	Change
27 (Appeals to DOCR)	Shortens the timeframe for a firm to file an appeal from 90 to 45 days.
28 (Updates to Appendices F and G)	Removes from Part 26 forms in Appendix F (Uniform Certification Application/UCA) and Appendix G. (Personal Net Worth Statement)
<b>49 CFR Part 23</b>	
29 (Miscellaneous Program Elements and Concerns)	No changes from the status quo. Responds to various comments outside of the scope of this rulemaking.
30 (Aligning Part 23 with Part 26 Objectives)	Aligns Part 23 and Part 26 objectives.
31 (Definitions)	Adds new definitions and revise some existing definitions.
32 (Socially and Economically Disadvantaged Owned Financial Institutions)	Adds new provision for recipients to investigate the full extent of services offered by financial institutions owned by SEDOs and make reasonable efforts to use these institutions.
33 (Direct Ownership, Goal Setting, and Good Faith Effort Requirements)	Amends § 23.25(e) and § 23.25(f) to clarify direct ownership goal setting and good faith effort requirements.
34 (Fostering ACDBE Small Business Participation)	Adds a small business requirement, as under Part 26, to the ACDBE program (49 CFR Part 23).
35 (Retaining and Reporting Information about ACDBE Program Information)	Adds a similar “bidders list” requirement in Part 26 to Part 23, called an “active participants list.” Includes expanded information about ACDBE and non-ACDBE contractors and subcontractors who seek work on airport concession opportunities.
36 (Size Standards)	Publishes the revised business size standards on the DBE program webpage in lieu of posting in the Federal Register.
37 (Certifying Firms That do not Perform Work Relevant to an Airport’s Concessions)	Instructs certifiers to not certify an applicant firm if it intends to perform activities exclusively related to “build-out” for which participation would not count toward an ACDBE goal.
38 (Removing Consultation Requirement When No New Concession Opportunities Exist)	Requires consultation only when the ACDBE goal methodology includes opportunities for new concession agreements.

Provision number in the Preamble to the Final Rule	Change
39 (Non-Car Rental Concession Goal Base)	Amends § 23.47(a) to provide for the goal setting requirements set forth in § 23.25.
40 (Counting ACDBE Participation after Decertification)	Requires that an ACDBE firm report a change in ownership to a recipient by submitting a notice-of-change declaration, since the change in ownership may impact the recipient's ability to count the ACDBE firm's participation. Upon notice of a sale or change of ownership, recipients should verify via state electronic directories whether the sale of a firm or a controlling interest in a firm is to a certified ACDBE.
41 (Shortfall Analysis Submittal Date)	Extends the due date of the Part 23 Shortfall Analysis until after a recipient submits its Uniform Report.
42 (Long-Term Exclusive Agreements)	Amends the period within the definition of "long-term agreement" under § 23.75(a) from seven to ten years. This definition now includes the DOT's interpretation from its LTE Guidance that options are subject to the regulation's requirements if the options result in a lease period of more than ten years. It also includes holdovers in the definition of "long-term agreement" under § 23.75(a). This revision treats holdovers the same as an extension.
43 (Local Geographic Preferences)	Makes it clear to recipients that, regardless of concession certification status, they cannot make preferences based on a firm's local geography.
44 (Appendix A to Part 23: Uniform Report of ACDBE Participation)	Removes the Uniform Report from Appendix A to Part 23 and places it on DOT websites.
45 (Technical corrections)	<p>Amendments to existing regulation: (1) additions and amendments to make provisions in Part 23 consistent with the provisions of Part 26; (2) additions or amendments to provisions to clarify existing requirements in Part 23; and (3) corrections of typographical errors, and revisions to obsolete and/or duplicative provisions, and cross-references within the regulation.</p> <p>Part 23 adopts the Part 26 provisions related to use of alternative methods to meet the notary requirements.</p>
46 (Duration)	Caps the number of years a firm may remain in the program (not adopted)

## 5 Cost and Benefits

### 5.1 Costs of provisions

#### 5.1.1 Revise and expand reporting requirements under Part 23 and Part 26

In Provision 3, Reporting Requirements, DOT is changing recipient reporting requirements for: (1) the MAP-21 data reports, (2) bidders list data, and (3) the Uniform Report. The revision to the reporting requirements impacts 1,198 State and local recipients of DOT funds who oversee DBEs. (592 FAA sponsors, 53 FHWA recipients, and 553 FTA recipients), 136 certifying agencies, 43,814 DBEs,<sup>6</sup> 3 OAs, and DOT staff.

Regarding bidders list information, because DOT's centralized database has not been designed, DOT is unsure what percentage of recipients would utilize an automatic upload option for bidders list information if such option were available. Therefore, this analysis errs on the side of overestimating costs and assumes that all recipients would manually enter this data. Based on DOT's Uniform Reports, each year there are approximately 175,000 prime contracts awarded. Based on subject matter expert input, the average prime contract awarded receives 5 bids and it would take a recipient approximately 10 minutes to enter bidders list information for one bid. Therefore, each year there are 875,000 prime contract bids<sup>7</sup> that would take recipients 145,833 hours<sup>8</sup> to enter at an annual cost of \$6.6 million.<sup>9,10</sup> Over the 10-year period of analysis, the cost for recipients to submit bidders list information is \$65.5 million (undiscounted), \$57.6 million (PV, 3%), and \$49.2 million (PV, 7%).

This analysis estimates that it would take a recipient approximately 40 hours per year to provide the expanded MAP-21 information. Therefore, each year, burden on recipients is approximately 47,920 hours<sup>11</sup> or \$2.2 million.<sup>12</sup> Over the 10-year period of analysis, the cost for recipients to provide the expanded MAP-21 information is \$21.5 million (undiscounted), \$18.9 million (PV, 3%), and \$16.2 million (PV, 7%).

The final rule codifies that recipients will transmit the Uniform Report in a method determined by the OAs in the future. This analysis concluded that requiring electronic submission will not result in any costs. Each year, for each of the 175,000 prime contracts awarded it would take 10 additional minutes for recipients to provide the additional in Uniform Report information required under the final rule or an

---

<sup>6</sup> Based on the number of DBEs from MAP-21 for 2022.

<sup>7</sup> Number of prime contract bids, per year = Number of prime contracts (175,000) \* Average number of bids per contract (5) = 875,000.

<sup>8</sup> This analysis assumes that the number of contracts awarded stays constant over the 10-year period of analysis. Number of prime contract bidders (175,000) \* 5 bids per contract = 875,000 bids; 0.166 hours to upload each bid = total hours of 145,833.

<sup>9</sup> A recipient's employee's wage rate is based on BLS' estimate of a Transit Agency Compliance Officer at \$27.73/hour (see [Urban Transit Systems - May 2022 OEWS Industry-Specific Occupational Employment and Wage Estimates \(bls.gov\)](#)). The wage rate is multiplied by 1.62 to get a fully loaded wage rate (i.e., compensation rate) of \$44.92 to account for the cost of employer provided benefits. (See [Employer Costs for Employee Compensation – March 2023 \(bls.gov\)](#)).

<sup>10</sup> Recipient burden to enter bidders list information, per year = number of hours to enter bidders list information (145,833 hours) \* recipient employee wage rate (\$44.92) = \$6,550,833.

<sup>11</sup> MAP-21 data, recipient burden, annual = Number of recipients (1,198) \* number of hours to provide additional information (40 hours) = 47,920 hours.

<sup>12</sup> DBE program, recipient burden to submit additional MAP-21 information, annual = MAP-21 data, recipient burden, annual (47,920) \* recipient employee compensation rate (\$44.92) = \$2,152,566.

additional 29,167 hours<sup>13</sup> at a cost of \$1.3 million.<sup>14</sup> Over the period of analysis, the cost for recipients to submit Uniform Report data to DOT is \$13.1 million (undiscounted), \$11.5 million (PV, 3%), and \$9.8 million (PV, 7%).

### 5.1.2 Read the revised Part 23 and Part 26

In order to maintain compliance with Part 26, the stakeholders that will read the amended Part 26 include 43,814 SEDOs of DBEs, 3,700 SEDOs of ACDBEs,<sup>15</sup> 5,990 recipient employees (1,198 recipients \* 5 employees per recipient = 5,990), and 680 certifying agency employees (136 certifying agencies \* 5 employees per certifying agency = 680). Five employees per certifying agency is based on subject matter expert estimates. We estimate that it will take each individual 5 hours to read the revised Part 26 in the current year. The burden that would result from individuals reviewing the proposed revisions to Part 26 is \$10.3 million<sup>16,17,18</sup>

In order to maintain compliance with Part 23, the individuals that will read the amended Part 23 in the current year include approximately 3,700 SEDOs of ACDBEs, 1,188 airport employees,<sup>19</sup> and 160 certifying agency employees.<sup>20</sup> This analysis estimates that it will take each individual 5 hours to read the revised Part 23. The burden on stakeholders from reviewing the revisions to Part 23 is \$848,548.<sup>21</sup>

Note, Table.1 (costs of provisions, over a 10-year period) includes the undiscounted figures to read both parts 23 and 26, but the present value calculations reflected are for current years only as stakeholders are only expected to read the amended Part 26 and Part 23 once.

---

<sup>13</sup> This analysis assumes that the number of contracts awarded stays constant over the 10-year period of analysis.

<sup>14</sup> Recipient burden to enter bidders list information, per year = number of hours to enter bidders list information (29,167 hours) \* recipient employee wage rate (\$44.92) = \$1,310,167.

<sup>15</sup> There is no requirement to collect and report the number of certified ACDBEs each year. The number of ACDBEs is based on subject matter expert input. Based on FAA subject matter expert insight, DOT does not have a precise count of the number of ACDBEs.

<sup>16</sup> Airport employee wage rate taken from BLS' estimate of a Compliance Officer in Air Transportation at \$40.73/hour (see [Support Activities for Air Transportation - May 2022 OEWS Industry-Specific Occupational Employment and Wage Estimates \(bls.gov\)](#)). For State and Local government workers, wages represent 61.8% of total compensation in 2023, therefore the multiplier is 1.62 (1/0.618) (see [Employer Costs for Employee Compensation – March 2023 \(bls.gov\)](#)). The wage rate is multiplied by 1.62 to get a fully loaded wage rate (compensation rate) of \$65.17 to account for the cost of employer provided benefits.

<sup>17</sup> For a SEDO, this analysis uses a wage rate without additional benefits, as a SEDO would pay the benefits to themselves. Occupational Employment and Wages, May 2022, 13-0000 Business and Financial Operations Occupations (Major Group), Hourly Wage, 50% Median, \$36.95. See <https://www.bls.gov/oes/current/oes130000.htm>

<sup>18</sup> Burden to review amendments to Part 26 = (number of DBE firm owners (43,814) \* DBE firm owner hourly compensation rate (\$36.95) + number of ACDBE firm owners (3,700) \* ACDBE firm owner hourly compensation rate (\$36.95) + number of certifying employees (680) \* certifying employee hourly compensation rate (\$44.92) + number of recipient employees (5,990) \* recipient hourly compensation rate (\$44.92)) \* (hours to read and review Part 26 amendments (5 hours)) = \$8,094,637 + \$1,345,354 + \$152,728 + \$683,575 = \$10,321,294.

<sup>19</sup> 396 airports \* 3 employees per airport = 1,188.

<sup>20</sup> 80 agencies \* 2 employees per certifying agency.

<sup>21</sup> Burden to review amendments to Part 23 = (number of ACDBE firm owners (3,700) \* ACDBE firm owner hourly compensation rate (\$36.95) + number of certifying employees (680) \* certifying employee hourly compensation rate (\$44.92) + airport employees (1,188) \* airport employee compensation rate (\$65.17) + certifying agency employees (160) \* recipient hourly compensation rate (\$65.17)) \* (hours to read and review Part 23 amendments (5 hours)) = \$683,575 + \$129,037 + \$35,936 = \$848,548.

### 5.1.3 Expand UCP directories of certified ACDBE and DBE firms

In Provision 5, UCP Directory of Certified DBEs, the primary purpose of the directory is to list all firms within the UCP that are eligible to participate in the ACDBE and DBE program. The UCP directory should contain sufficient identifying information about the ACDBEs and DBEs so that interested firms (i.e., contractors) may identify and contact ACDBEs or DBEs for those areas of work or supply they possibly could perform or provide on a potential project or concession opportunity.

The rule continues the existing requirement in §26.81(g) of the rule that directories list a firm's address, phone number, and the types of work the firm has been certified to perform as a DBE (using applicable NAICS code designations).

In the NPRM, DOT proposed to require that UCPs more items than we codified in the final rule. Although the Department did not adopt most of those items, the final rule requires that all 53 UCPs<sup>22</sup> amend their directories that make public information about DBEs by creating a searchable directory that includes this information and a new item, the firm website). This analysis determined that the burden on UCPs remain the same between the proposed rule and the final rule with regard to expanding the UCP directory. Certifiers may, at their discretion, add other fields in their directories, including those proposed for inclusion in the NPRM. This analysis estimates that the cost for a UCP to update its directory is \$50,000 per UCP and the annual cost to maintain the directory is \$10,000 per UCP. In the first year of analysis, the cost for UCPs to update their directories is \$3,180,000.<sup>23</sup> Over the period of analysis, the cost for recipients to update their UCP directories is \$8.0 million (undiscounted), \$7.3 million (PV, 3%), and \$6.6 million (PV, 7%).

### 5.1.4 Fostering ACDBE Small Business Participation

For purposes of monitoring compliance, Provision 31, Fostering ACDBE Small Business Participation, includes a requirement that all hub primary airports periodically report on their implementation of race neutral strategies under the small business element for their programs. Hub primary airports already implement race neutral strategies, so their only additional cost is the creation of a periodic report. This analysis estimates that it would take 35.6 hours for a hub primary airport to prepare a report on the implementation of race neutral strategies and that a recipient would prepare such report every other year.<sup>24</sup> To prepare such a report, DOT expects that hub primary airports will use existing information collected for their race neutral strategies. In the first year of analysis, the cost for hub primary airports to periodically report on the implementation of race neutral strategies is \$304,996.<sup>25</sup> This analysis assumes that hub primary airports will prepare a report each year (or annually). Over the 10-year period of analysis, the cost of requiring hub primary airports to prepare a report on the implementation of race neutral strategies is \$3.0 million (undiscounted), \$2.7 million (PV, 3%), and \$2.3 million (PV, 7%).

### 5.1.5 ACDBE Program Information a Recipient Retains and Reports

Provision 35, ACDBE Program Information a Recipient Retains and Reports, creates paragraph (c) in § 23.27 that requires each recipient to develop and maintain an "active participants list" for their ACDBE programs. This new requirement (the "active participants list") for ACDBEs under Part 23 is similar to

---

<sup>22</sup> The 50 States, the District of Columbia, the Virgin Islands, and Puerto Rico.

<sup>23</sup> \$60,000 \* 53 UCPs = \$3,180,000.

<sup>24</sup> The average number that we received from 3 stakeholders is 35.6 hours, rounded to 36 hours. One stakeholder (airport) we consulted, indicated 24 hours on the front end to set it up. This number was averaged with 80 hours and 3 hours from two other airports.

<sup>25</sup> Cost for hub primary airports to report race neutral strategies = number of hub primary airports (130) \* number of hours to complete report (36) \* Airport liaison officer compensation rate (\$65.17) = \$304,996.

the “bidders list” requirement for DBEs under Part 26. Based on ACDBE Uniform Reports, each year there are approximately 168 prime concession agreements awarded. Based on subject matter expert input, the average prime concession agreement receives 3 responses. Therefore, each year, there are 504 prime concession agreement responses (168 prime concession agreements \* 3 responses = 504). On average, this analysis estimates that it will take a recipient 10 minutes to enter participants list information for each bid for a total annual burden of 84 hours or annual cost of \$3,773.<sup>26</sup> Over the 10-year period of analysis, the cost for recipients to submit participants list information is \$38,000 (undiscounted), \$33,000 (PV, 3%), and \$28,000 (PV, 7%).

### **5.1.7 Certification Appeals to DOT**

Provision 27, Certification Appeals to DOT, will shorten the timeframe for a firm to file an appeal from 90 to 45 days. Under the existing rule, a DBE or applicant firm may appeal a decision challenging a certifying agency’s adverse certification decision. The 90-day timeframe was enacted prior to the Internet and electronic filing ability afforded by DOCR. The narrowing of time in which a firm may file an appeal amounts to a lost benefit which cannot be quantified given DOT does not have the applicable data on receipt of appeals between 45 and 90 days.

### **5.1.8. Submitting Long Term Exclusive Lease Agreements to FAA**

The FAA estimates seven respondents are required to submit LTE agreement to FAA for approval under § 23.75(e) each year. This estimate is derived from the total number of respondents (7) from whom the FAA received LTE agreements in fiscal year 2020. The FAA received a total annual burden hours estimate of 0.5 hours from the respondent, a large hub airport, and calculated an annual burden cost of \$2,280.95.<sup>27</sup>

### **5.1.9. Tier II FTA Recipients with Low Contracting Activity Submitting Contracting Data**

The NPRM RIA evaluated the impacts of creating a tiered program for FTA recipients but did not look at the full scope of those impacts. The NPRM RIA determined that approximately 80 FTA recipients award between \$250,000 and \$670,000 in FTA funds and evaluated the cost savings to these recipients expected from the rule change. The NPRM RIA also looked at the impact on FTA considering FTA would no longer need to devote resources to reviewing those 80 recipients’ program plans and goal methodologies. However, the NPRM RIA did not evaluate the impacts of expanding reporting and other requirements to recipients that award \$250,000 or less in FTA funds annually (i.e., the recipients that will be FTA Tier II Recipients under the Final Rule that were not subject to any program requirements previously), or the cost to FTA to oversee these smallest of recipients. Here, the Department describes a review of potential costs and benefits to these recipients and the Department.

Under the Final Rule, FTA Tier II Recipients (Tier IIs) are required to: (1) submit and retain records as described in section 26.11; (2) adopt and implement the contract assurances as described in section 26.13;

---

<sup>26</sup> Recipient burden to enter bidders list information, per year = number of hours to enter active participants list information (84 hours) \* recipient employee compensation rate (\$44.92) = \$3,773.

<sup>27</sup> The estimated burden hour per response, based on the information received from the respondent, is .5 hours. The frequency of responses per respondent each year is 10, totaling 70 annual responses for all respondents. This response rate was based on information received from the respondent that they encounter 18 concession agreements per year whose lease terms extend beyond ten years due to a holdover tenancy. The FAA adjusts this number downward to account for extending the period under the definition of long-term in section 23.75(a) from 7 to 10 years. The resulting calculation is (Total annual burden hours (.5 hours) \* number of responses (70) = 35 hours \* fully loaded state government wage rate \$65.17 = \$2,280.95)).

(3) issue a signed and dated policy statement as prescribed in section 26.23; (4) implement a small business element as described in section 26.39; and (5) follow the provisions in section 26.49 regarding transit vehicle procurements. The NPRM RIA evaluated the cost of the reporting requirements of section 26.11, thus the Department applied those cost figures to determine the costs to Tier IIs, as discussed herein. The Department does not anticipate any noticeable cost to be incurred by adopting and implementing contract assurances, since doing so only requires transcribing the text of section 26.13 to contract documents, which is most often templated. Similarly, the Department expects the cost of issuing a signed and dated policy statement to be de minimis because the statement only needs to be issued once and may be done so electronically.<sup>28</sup> There will be some costs to establish the small business element, as discussed herein. Since all FTA recipients of planning, capital, and operating assistance have been required to follow the provisions of section 26.49 since the inception of the DBE program, the Department does not expect any additional costs related to these requirements to recipients awarding \$250,000 or less in FTA funds annually.<sup>29</sup>

In the following narrative discussion, the values are presented as first-year present values and do not utilize discount rates; 10-year and annualized projections (with discount rates) are presented in the tables. It is important to note that the cost projections contained herein err on the side of over-inclusivity. Additionally, this narrative discussion may use rounding and approximations that result in values slightly different from what is presented in the relevant tables and figures contained elsewhere in this notice.

## **Reporting Requirements (Costs)**

### *1. Uniform Reports and Bidders Lists*

The Department expects that Tier IIs will be required to submit Uniform Reports and bidders list data but will not be required to submit information related to certification (referred to as “Map-21” data).<sup>30</sup> To estimate the volume of impacted recipients that were not evaluated in the NPRM RIA, the Department reviewed internal data on FTA recipients. In FY 2023, there were 942 active FTA recipients. FTA’s Transit Asset Management System (TrAMS) database shows that in FY 2022 approximately 550 FTA recipients submitted Uniform Reports, approximately 196 of which were from recipients that awarded \$250,000 or less in that fiscal year. Thus, there are as many as 588 FTA recipients that may qualify as Tier IIs that were not evaluated in the NPRM RIA.<sup>31</sup> Some of these recipients will not be subject to Part 26 because they do not receive planning, capital, or operating assistance, or do not award any contracts. Of the approximate 196 recipients that reported awarding \$250,000 or less, approximately 110 (or 60 percent) reported awarding \$0.00. Most of the 110 recipients that reported awarding \$0.00 in the reporting periods reviewed were still required to submit Uniform Reports because they either had awarded or will award more than \$250,000 in FTA funds in a Federal fiscal year. Thus, to assume that only 40 percent of the 588 potentially affected recipients will be subject to DBE reporting requirements in the 10 years after the rule takes effect would likely undercount the volume of recipients actually affected. Additionally, the Department does not know the contracting practices of FTA recipients that award \$250,000 or less in FTA funds annually and there may be years in which a recipient that typically receives exempt funds (e.g., Tribal Transit funds) may receive and award FTA planning, operating, or capital assistance. Thus,

---

<sup>28</sup> The Department expects that staff time will be devoted to the policy statement exclusively, just not so much as to have a noticeable effect on the recipient’s resources. Someone will need to develop and draft the policy statement, and senior leadership will need to review and approve the statement. Staff will need to distribute the statement internally and research and determine who to share with externally.

<sup>29</sup> See Participation by Minority Business Enterprises in Department of Transportation Program 48 Fed. Reg. 33432 (July 21, 1983) at 33443.

<sup>30</sup> This Map-21 requirement only applies to State departments of transportation.

<sup>31</sup>  $(942 - 550) + 196 = 588$ .



the Department will assume that 75 percent of the 588 potentially affected recipients will be subject to part 26's requirements for Tier IIs under the final rule in any given year. Thus, as a conservative estimate, the Department assumes 441 recipients will be required to submit Uniform Reports and bidders list data (that is, Tier IIs that were not accounted for in the NPRM RIA).<sup>32</sup>

The Department estimates that the average FTA recipient with low levels of federally funded contract activity spends 80 hours and incurs \$3,594 in costs per year to fulfill the reporting requirements of part 26.<sup>33</sup> The Department expects that, in practice, most recipients that award \$250,000 or less in FTA funds annually will spend less time and incur less costs because they award fewer and less complicated contracts. Thus, the \$1,584,954 annual aggregate additional cost projection likely represents the maximum these recipients will incur to submit the Uniform Report.<sup>34</sup>

## 2. Bidders List

With respect to bidders list data, the NPRM RIA estimated that each contract receives 5 bids, and it would take 10 minutes to report a bid. Thus, the cost per recipient will vary depending on the number of contracts awarded in a reporting period. Of the approximately 196 FTA recipients that reported awarding less than \$250,000 in FTA funds annually in Federal fiscal year 2022, between 21 and 30 reported awarding more than 10 contracts during a reporting period, and more than half reported awarding zero contracts. Thus, there will be many years in which more than half of the relevant recipients will not solicit any contracts and therefore will not incur any costs; there will also be years in which an individual recipient's costs will be significantly higher than the average because the recipient awarded a large volume of contracts. To account for these variances, the Department assumes that the average FTA recipient that awards \$250,000 or less in FTA funds annually will award 10 contracts per year. The aggregate additional annual cost is approximately \$165,081 under these assumptions.<sup>35</sup> The Department expects that actual value will be lower in most years.

## 3. Small Business Element

To establish and implement a sufficient small business element as described in section 26.39, recipients will need to evaluate their current contracting practices and determine what barriers (if any) exist that prevent small businesses from participating and develop and undertake a strategy to remove those barriers. This will require recipients to devote staff resources or procure assistance. When the Department added the small business element requirement to Part 26 in 2011 the estimated burden was 30 hours per recipient for the one-time task of submitting the element to the Department.<sup>36</sup> The Department estimates that the burden as a function of hours is the same now as it was in 2011, and notes that Tier IIs will not be required to submit their small business elements for approval.

Using the BLS rate for a Transit Compliance Officer (\$44.92), the average cost to a recipient in the first year is approximately \$1,347.<sup>37</sup> Thus, if all 441 FTA recipients considered in the analysis were required to establish a small business element, the annual cost would be approximately \$594,292.<sup>38</sup> Here, it is

---

<sup>32</sup>  $(588 * 0.75) = 441$

<sup>33</sup>  $80 \text{ hours} * (\$44.92) \text{ transit compliance officer wage rate} = \$3,594.$

<sup>34</sup>  $\$3,594 * 441 = \$1,584,954 \text{ (rounded).}$

<sup>35</sup>  $\text{Number of contracts per recipient per year (10)} * \text{bids per contract (5)} * \text{minutes per bid (10)} / 60 * \text{number of recipients (441)} * \text{wage rate of transit compliance officer } ((\$44.92)) = \$165,081 \text{ annually.}$

<sup>36</sup> Disadvantaged Business Enterprise: Program Improvements 76 Fed. Reg 5083 (Jan. 19, 2011) at 5096.

<sup>37</sup>  $\text{Hours per recipient (30)} * \text{transit compliance officer wage rate } (\$44.92) = \$1,347.$

<sup>38</sup>  $\text{Annual hours per year per recipient (30)} * \text{wage rate of transit compliance officer } (\$44.92) * 441 \text{ recipients} = \$594,292.$

important to note that the 2011 Final Rule did not estimate the burden of maintaining the small business element; the Department expects that, on average, Tier IIs will spend approximately 10 hours annually ensuring their small business element is implemented.<sup>39</sup> However, until there is data to support an estimate for ongoing costs, the Department will use the 30-hour figure to approximate the annual cost of the small business element, resulting in a cost of \$594,292.

Over the 10-year period of analysis, the cost for lower tier recipients to comply with the information submission requirements (Uniform Report, bidders list, and small business element) is \$11,722,000 (undiscounted), \$10,939,000 (PV, 3%), and \$10,059,000 (PV, 7%).<sup>40</sup>

### 5.1.10 Summary of cost of provisions

As shown in Table 1, the provisions in the final rule will result in a cost of \$120.07 million (PV, 3%) and \$105.40 million (PV, 7%).

**Table 1: Costs of Provisions, 10-year period, dollars, rounded to 1,000**

	Undiscounted	Present value 3%	Annualized 3%	Present value 7%	Annualized 7%
Bidders list	65,508,000	57,556,000	6,747,000	49,231,000	7,009,000
MAP-21	21,526,000	18,913,000	2,217,000	16,177,000	2,303,000
Uniform report	13,102,000	11,511,000	1,349,000	9,846,000	1,402,000
Read Part 26	10,276,000	10,276,000	1,205,000	10,276,000	1,463,000
Read Part 23	849,000	849,000	99,000	849,000	121,000
UCP directory	7,950,000	7,307,000	857,000	6,633,000	944,000
Fostering ACDBE small business participation	3,050,000	2,680,000	314,000	2,292,000	326,000
Long Term Lease (recipient cost)	9,000	9,000	1,000	9,000	1,000

<sup>39</sup> This estimate is based on anecdotal reports from smaller FTA recipients. Once the policies are established staff compare the procurement instruments and practices to the small business element policies to ensure they are aligned. Thus, the amount of time a given recipient will spend implementing the small business element will vary based on the volume of contracts the recipient awards that year (see the discussion on bidders lists for more information on the range of contracting opportunities per recipient).

<sup>40</sup> The Department discussed the benefits of the small business element in the 2011 Final Rule and expects that the same benefits will be realized at a proportionate scale by requiring FTA recipients that award \$250,000 or less in FTA funds annually to implement a small business element. This expectation is supported by the Department's experience administering the DBE program in the decade since the small business element requirement took effect. Though the Department does not currently track the contracting activities of the relevant FTA recipients, TrAMS data from FTA recipients awarding less than \$1 million in FTA funds annually shows that most of these recipients use only race neutral means. Thus, most of the contracts that are awarded to DBEs by these recipients are a result of the recipients' small business elements. See Rule (76 Fed. Reg 5083 (Jan. 19, 2011) at (5094).

Tier II FTA Recipients with Low Contracting Activity Submitting Contracting Data	11,722,000	10,939,000	1,282,000	10,059,000	1,432,000
Active participants list	38,000	33,000	4,000	28,000	4,000
Total cost	134,030,000	120,073,000	14,075,000	105,400,000	15,005,000

## 5.2 Benefits of provisions

### 5.2.1 Reduce the administrative burden for small FTA recipients

Provision 4, Tiered Program Requirement for FTA Recipients, increases the participation threshold for FTA recipients from \$250,000 in Federal funds awarded in a Federal fiscal year to \$670,000. Appendix A of this analysis provides a detailed discussion of the implications of adjusting this threshold and creating a two-tiered approach that reduces reporting requirements for recipients awarding between \$250,000 and \$670,000. This analysis estimates that the proposed revision will reduce the administrative burden for 80 FTA recipients. Appendix A describes four categories of cost savings: program development and goal setting; monitoring, reporting and outreach; and conference and trainings.

As shown in Appendix A, the average annual recipient administrative cost saving for an FTA recipient is \$8,521.<sup>41</sup> Added across all recipients, the annual cost savings for FTA recipients amounts to \$681,680.<sup>42</sup> Over the 10-year period of analysis, the cost savings is \$6.817 million (undiscounted), \$5.989 million (PV, 3%), and \$5.123 million (PV, 7%).

### 5.2.2 Make permanent virtual on-site interview flexibilities

Provision 19, **Virtual On-site Visits**, allows each recipient to conduct on-site visits virtually for the approximately 4,175 DBE and 200 ACDBE firm annual new applications. In addition, recipients may conduct on-site visits of existing ACDBEs and DBEs to ensure that the ACDBEs and DBEs are still eligible to participate in DOT's programs. Based on subject matter expert input, on average each year

---

<sup>41</sup> This savings amount of \$8,521, described more fully in Appendix A, is the sum of four costs:

Program Developmental and goal setting costs: \$5,000-\$15,000 every three years

Reporting costs: *40 Hours every 6 Months* (Approximately \$3,593 per year)

Other agency costs: 5 hours per year at \$225 per year \* 80 recipients

Cost of conferences and trainings: Transit agency employee's time (8 hours per day at a fully loaded wage rate of \$44.92), attending a two-day training (cost of flight plus two-days of per diem). In this analysis, a two-day training is calculated as: \$348 (flight) + \$192 (two days per diem) + \$110 (two days of meals) + \$719 (16 hours of employee time\*wage rate of \$44.92) = \$1,369.

The cost savings per recipient ranges from \$6,854 to \$10,187 per year. To estimate the total, the cost from each category is summed. The program development and goal setting cost are divided by three to reflect the three-year cycle, but all other values are strictly summed as-is. Note that values are presented here are rounded. Lower range: (Program cost 5,000/3 = \$1,667 + \$3,593 + \$225 + \$1,369 = \$6,854. Higher range: (Program cost 15,000/3 = \$5,000 + \$3,593 + \$225 + \$1,369 = \$10,187). The resulting midpoint calculation used for this analysis is therefore \$6,854+\$10,187/2 = \$8,521.

<sup>42</sup> 80 recipients \* \$8,521 (administrative cost savings) = annual cost savings of \$681,680.

recipients conduct onsite visits of approximately 20 percent of existing ACDBEs and DBEs. Based on input from stakeholders and subject matter experts, most but not all certifiers will take advantage of virtual onsite visits if offered the choice of conducting in-person or virtual on-site visits. This analysis concluded that those certifiers who intend to utilize virtual on-site visits would still, under certain conditions, use physical on-site visits. Therefore, after DOT implements the final rule this analysis estimates that certifiers will use on-site virtual visits for approximately 70 percent of their visits (for new applications and of existing firms). Thus, in the first year of analysis, Provision 17 will result in approximately 9,714 fewer on-site visits of new and existing ACDBEs and DBEs.<sup>43, 44</sup>

The burden to conduct on-site visits varies significantly based on factors including: (1) certifiers' geographical coverage area, (2) inclement weather, and (3) geographical concentration of applicant firms. Time burden and travel cost (i.e., travel expense, lodging, per diem) varies widely based on a certifier's circumstances. To save time and reduce travel costs (i.e., time, transportation, and other expenses), State certifiers try to cluster appointments back-to-back within a geographical area. The option to conduct virtual on-site visits more easily allow certifiers to schedule back-to-back visits and allow certifiers to increase the number of visits that a certifier could conduct in a day. Such flexibility reduces the ACDBE/DBE application processing time, which benefits the applicant firms. For example, one medium sized certifier informed DOT that conducting virtual on-site visits during the pandemic saved about \$20,000 in annual travel costs. Also, that certifier stated that virtual on-site visits decreased the time to process a DBE application by 10 percent. Overall, this analysis concluded that a certifier would save approximately \$500 by conducting a virtual on-site visit instead of an in person on-site visit.

In the first year of analysis, the annual cost savings from fewer in-person on-site visits is \$4,857,230.<sup>45</sup> Over the 10-year period of analysis, the cost savings from permanently allowing certifiers to conduct virtual on-site visits is \$52.18 million (undiscounted),<sup>46</sup> \$45.670 million (PV, 3%), and \$38.8 million (PV, 7%).

### 5.2.3 Technical corrections and clarifying amendments

Provision 45, Technical Corrections, and changes throughout Part 23 and Part 26 adds clarity to Part 23 and Part 26. That is, the technical corrections and clarifying amendments make it easier for stakeholders to read and comply with Part 23 and Part 26.

For example, Provision 16, Ownership, lists the permissible methods for an owner to acquire ownership. It also eliminates higher burden of proof where a SEDO acquires ownership as a gift or transfer without adequate consideration from a non-disadvantaged individual who is still involved with the firm and revises rules for determining ownership percentage for the purposes of the DBE program. Provision 45 also incorporates USDOT curative methods guidance to allow DBE firms to fix ownership errors to conform with rule requirements, eliminate state and marital law concepts to promote uniformity in rule application and reduce unnecessary complexities, and would add broad anti-abuse provisions. Provision

---

<sup>43</sup> Fewer onsite visits, annually = (4,175 (DBE applicants) + 200 (ACDBE applicants) + 43,814 (existing DBEs) + 3,700 (existing ACDBEs)) \* 0.20 (the percentage of existing ACDBEs and DBEs subject to on-site visits each year) \* 0.70 (percentage of visits that certifying agencies would hold virtually) = (4,175 + 200 + 9,502) \* 0.70 = 9,714.

<sup>44</sup> This analysis estimates that each year the number of home state DBEs increases by 1,075 and the number of home state ACDBEs by 70. So, each year the number of onsite visits of existing ABCDEs and DBEs increases by 215 firms. (1075 + 70) \* (.20) = 215).

<sup>45</sup> Fewer onsite visits, cost savings, annually = 9,714 (fewer onsite visits) \* \$500 (average cost to conduct an onsite visit) = \$4,857,230.

<sup>46</sup> This analysis assumes that each year the number of home state DBEs increases by 1,134 and the number of home state ACDBEs increases by 70.

17, Control, eliminates rules pertaining to non-disadvantaged individuals' participation in the DBE. Provision 17 also clarifies existing provisions related to owner's delegation, authority, expertise, and decision-making and clarify the rule pertaining to a DBE's independence from other firms and non-disadvantaged persons.

The added clarity of Part 26 improves stakeholders' ability to follow Part 26 requirements. In general, based on subject matter expert input, the added clarity to Part 26 will result in a time savings of 2 hours per year per stakeholder. The stakeholders who would benefit from added clarity to Part 26 include the 43,814 SEDOs of DBEs, 3,700 SEDOs of ACDBEs, 5,990 recipient employees (1,198 recipients \* 5 employees per recipient = 5,990), and 680 certifying agency employees (136 certifying agencies \* 5 employees per certifying agency = 680). In the first year of analysis, the cost savings from technical corrections and clarifying amendments to Part 26 is \$4.02 million.<sup>47</sup> Over the 10-year period of analysis, this analysis estimates that the cost savings at \$40.22 million (undiscounted), \$35.33 million (PV, 3%), and \$30.22 million (PV, 7%).

The stakeholders who will benefit from added clarity to Part 23 include the 3,700 SEDO of ACDBEs, 396 airport employees (396 airports \* 3 employees per airport = 1,188), and 160 certifying agency employees (80 agencies \* 2 employees per certifying agency). In the first year of analysis, the cost savings from technical corrections and clarifying amendments to Part 23 is \$408,264.<sup>48</sup> Over the 10-year period of analysis, the cost savings is approximately \$4.1 million (undiscounted), \$3.6 million (PV, 3%), and \$3.1 million (PV, 7%).

#### **5.2.4 Allow for use of unsworn declarations in place of sworn declaration or notarized affidavits**

While some sections of Part 26 allow for submission of unsworn declarations, industry practice is that recipients require that SEDOs provide notarized statements or sworn affidavits. Based on the success of the temporary practices in place during the pandemic, DOT concluded that the use sworn declarations in lieu of sworn affidavits provide adequate assurance that a person is providing a truthful statement. Relying on a sworn declaration instead of sworn affidavit provides a SEDO with time and cost savings; especially for a SEDO who does not have ready access to a notary public. Therefore, in many sections of Part 23 and Part 26, DOT amended its regulation to eliminate the requirement for sworn affidavits and notarization and require the use of unsworn declarations under penalty of perjury. These sections include §§ 26.61(c), 26.67(a), 26.83(c)(3), and (j); and 26.85(c)(4)). 26.23, 23.39, 23.55.

Submitted statements related to: (1) PNW for new applicants, (2) membership in a presumptively disadvantaged group for new applicants, (3) annual affidavits to certify that a firm meets eligibility requirements for all firms, (4) certification review of existing firms (usually requiring a SEDO to submit a PNW statement), and (5) interstate certification application. In the first year of analysis, SEDOs will need to obtain 77,900 fewer sworn statements or notarized affidavits.<sup>49</sup> This analysis assumes that SEDOs do not have direct access to a notary public and need to travel to obtain notary service at a time burden of

---

<sup>47</sup> \$4.02 million is the sum of the [number of DBEs (43,814) \* wage rate (\$34.74) = \$1,522,098 \* hours cost savings (2) = \$3,044,197] + [number of recipients (1198) \* average number of employees (5) \* wage rate (\$53.99) \* 2 = \$646,800] + [number of certifying agency employees (136) \* wage rate (\$34.74) \* hours cost savings (2) = \$73,426] plus [the number of ACDBE firms (3,700) \* wage rate (\$34.74) \* hours cost savings (2) = \$257,076].

<sup>48</sup> \$408,264 is the sum of the [the number of ACDBEs (3,700) \* wage rate (\$34.74) \* hours cost savings (2) = \$257,076] + [the number of airports (396) \* average number of employees (3) \* wage rate (\$56.36) \* hours cost savings (2) = \$133,911] + [the number of certifying agencies (80) \* the average number of employees (2) \* wage rate (\$53.99) \* hours cost savings (2) = \$17,277].

<sup>49</sup> Fewer unsworn affidavits, year 1 = 65,000 (annual affidavit) + 4,375 (DBE applicants (4,175) + ACDBE applicants (200)) + 4,375 (membership in disadvantaged group) + 3,000 (firms under certification review) + 1,150 (1,100 DBE applicants and 50 ACDBE applicants; interstate certification applicants)

one hour and the cost for notary service of ten dollars per transaction.<sup>50</sup> In the first year of analysis, the cost saving from using unsworn declarations is \$3,657,405.<sup>51</sup> Each year, this analysis estimates that the number of firms in DOT's programs increases by 2,295.<sup>52</sup> By year 10 of this analysis, SEDOs will need to obtain 98,555<sup>53</sup> fewer sworn statements or notarized affidavits. Over the 10-year period of analysis, the cost savings of SEDOs submitting unsworn declarations in place of sworn declarations or notarized statements is \$36.6 million (undiscounted), \$32.1 million (PV, 3%), and \$27.5 million (PV, 7%).

### **5.2.5 Increase the PNW cap and no longer consider retirement assets when calculating PNW**

Provision 14, Personal Net Worth, will raise the PNW cap to \$2.047 million (a change from the \$1.6 million proposed in the NPRM) and exclude retirement assets when calculating a SEDO's net worth. This provision will encourage SEDOs to save for retirement and will reduce burden on SEDOs and certifiers related to measuring a SEDO's PNW.

Each year there are 4,175 new DBE applications, 210 new ACDBE applications, and 3,150 certification reviews (2,900 DBEs and 250 ACDBEs) for a total of 7,535 applications or certification reviews. In addition, each year approximately three percent of SEDOs, or approximately 1,400 SEDOs, have a PNW sufficiently close to the PNW cap that it requires them to calculate their PNW.<sup>54</sup> Based on subject matter expert input, the time burden to estimate the after-tax net present value of an applicant's retirement assets varies with the degree of complexity. This analysis assumes that an applicant firm (SEDO) spends on average 5 hours to estimate the SEDO's retirement assets and a certifier spends 4 hours to verify the accuracy of such information. In the first year of analysis, the cost savings that comes from no longer requiring SEDOs to estimate the after tax and penalty value of retirements assets is \$3.0 million.<sup>55</sup> Over the 10-year period of analysis, this cost savings would be \$30.0 million (undiscounted), \$26.4 million (PV, 3%), and \$22.6 million (PV, 7%).

- The Survey of Consumer Finances (SCF) is a survey conducted every three years by the Federal Reserve and U.S. Department of Treasury. This data was specifically analyzed for business owners by race and gender to reach the original \$1.6 million PNW threshold.
- The NPRM proposed an adjustment based on the growth in the Federal Reserve measure of total household net worth from "Financial Accounts of the United States: Balance Sheet of Households and Nonprofit Organizations Table Z.1" using 2019 as the base year. However, this data is a combination of households and nonprofit organizations when really only households should be considered. Additionally, by using solely the growth in net worth we are not accounting for the normal population growth.

<sup>50</sup> <https://www.nationalnotary.org/knowledge-center/about-notaries/notary-fees-by-state>

<sup>51</sup> Fewer sworn declarations and notarized affidavits = 77,900 (number of fewer sworn declarations and notarized affidavits) \* ((1 hour (time for SEDO to obtain notary service) \* \$36.95 (SEDO's wage rate) + \$10 (cost of notary service)) = 77,900 \* \$46.95 = \$3,657,405.

<sup>52</sup> Annual increase in number of firms in DOT's programs = 1,075 (increase in number of home state DBEs) + 70 (increase home state certification ACDBEs) + 1,100 (increase in number of interstate DBEs) + 50 (increase in number of interstate ACDBEs) = 1,075 + 70 + 1,100 + 50 = 2,295.

<sup>53</sup> Number of firms (77,900) + increase per year (2,295) \* 9 years = 98,555.

<sup>54</sup> Most SEDOs have a PNW far below the PNW cap. However, some SEDOs have a PNW sufficiently close to the PNW cap that they must calculate their exact PNW pursuant to completing their annual declaration of eligibility.

<sup>55</sup> PNW retirement asset calculation, cost savings, annual = (4,175 (number of DBE applicants) + 200 (number of ACDBE applicants) + 3,150 (certification review) + 1,400 (number of SEDOs who calculate to submit their annual no change affidavit) \* (5 (hours a SEDO spends calculating the value of retirement assets) \* \$36.95 (SEDO's wage rate) + (4 (hours a certifying agency spends verifying the accuracy of the estimated value of a SEDO's retirement assets) \* (\$44.92 (a certifying agency employee's compensation rate) = \$3,004,630.

- The first adjustment is a change in the dataset to the “Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h)” effectively removing nonprofit organizations from the net worth calculation.
- The second adjustment is to normalize household net worth by the number of households as calculated by the Census (Families and Households, Total Households [TTLHH]).  
<https://www.census.gov/topics/families/families-and-households.html>)

The PNW adjustment will be based on the following formula to reach an adjusted PNW of \$2,047,280.

The PNW adjustment will be made using the following formula:

$$\text{Future Year PNW Cap} = [\$1,600,000] * \frac{\text{Q1-Q4 Average Household Net Worth of Future Year / Total Households of Future Year}}{\text{Q1-Q4 Average Household Net worth of 2019 (\$106,722,704 million / Total Households of 2019 (128,579))}}$$

### 5.2.6 Streamline the interstate certification process

Provision 22, Interstate Certification, the final rule streamlines the interstate certification process while preserving the integrity of the DBE program. The expedited processing of interstate certification will benefit DBEs/ACDBEs, as they may become eligible for work sooner. Based on data from the Uniform Reports, each year there are approximately 1,670 interstate certification applications.<sup>56</sup> This analysis concluded that streamlining the interstate certification process reduces the time it takes for a certifier to process an interstate certification application by 10 hours. The annual cost savings for certifiers from streamlining interstate certification is 16,700 hours or \$791,929.<sup>57</sup> Over the 10-year period of analysis, the cost savings that comes from streamlining the interstate certification process is \$7.5 million (undiscounted), \$6.6 million (PV, 3%), and \$5.6 million (PV, 7%).

The final rule creates post-interstate certification procedures where certifying agencies can join together in a decertification effort against a DBE. The rule also affirms that, generally, if DOT finds that a firm is ineligible upon appeal in one jurisdiction, then that firm automatically becomes ineligible in all jurisdictions. Previously, the regulation did not automatically make a firm ineligible in all jurisdictions. That is, each certifying agency had to conduct its own investigation and go through the decertification procedures. Allowing certifying agencies to join efforts in a singular decertification procedure, thereby making a firm ineligible in all jurisdictions upon denial of a firm’s appeal to DOT, reduces duplicative efforts and certifying agencies’ workload.

### 5.2.7 Fewer denial letters and decertifications

Provision 13, General Certification, Provision 15, social and economic disadvantage, Provision 16, Ownership, Provision 17, Control, Provision 22, Interstate Certification, and Provision 24 certification among others include amendments will reduce the number of certification appeals that firms will make to DOCR. In addition, these provisions will reduce the complexity of appeals brought forth.

<sup>56</sup> Including 1,110 DBEs and 50 ACDBEs approved and 500 DBE applicants and 10 ACDBE applicants denied.

<sup>57</sup> Interstate certification, cost savings, annual = 1,670 (number of annual interstate certification applications) \* 10 (reduction in hours to process an interstate certification application) \* \$44.92 (certifying agency employee compensation rate) = \$791,929.

Because the final rule clarifies many certification issues, DOT anticipates that certifiers will decertify fewer firms for reasons that DOCR would overturn upon appeal. Each year, there are approximately 60 ACDBE and 2,000 DBE decertifications.<sup>58</sup> Based on subject matter expert input, the final rule is expected to reduce the number of decertifications by 35 percent, or 721 fewer decertifications. Therefore, this analysis estimates that each year certifying agencies will write approximately 829 fewer Notice of intent to decertify (NOI) letters<sup>59</sup> and 721 fewer final decertification Notice of Decision (NOD) letters. On average, it takes approximately 30 hours to write a NOI and 15 hours to write a NOD. Therefore, in the first year of analysis, the cost savings that comes from writing fewer NOIs is \$1.1 million<sup>60</sup> and fewer NODs is \$0.5 million<sup>61</sup>. Over the 10-year period of analysis, the cost savings that comes from writing fewer NOIs and NODs is \$16.0 million (undiscounted), \$14.1 million (PV, 3%), and \$12.0 million (PV, 7%).

Also, each year, there are approximately 180 certification appeals made to DOT. Based on subject matter expert input, the final rule will reduce the number of appeals to DOT by 35 percent, or approximately 63 appeals.<sup>62</sup> On average, it takes 4 hours for a certifying agency and 80 hours for a firm to prepare a certification appeal. In the first year of analysis, the cost savings is \$197,548.<sup>63</sup> Over the 10-year period of analysis, the cost savings from fewer certification appeals is \$2.0 million (undiscounted), \$1.7 million (PV, 3%), and \$1.5 million (PV, 7%).

### 5.2.8 Allow virtual decertification hearings

Provision 24, Virtual Decertification Hearings, amends § 26.87(d) to allow firms to attend virtual decertification hearings in lieu of an in-person proceeding. Reasons for decertification hearings include failure to cooperate, exceeding PNW cap, no longer meeting control criteria, etc. Based on subject matter expert input certifiers will utilize virtual decertification hearings about 35 percent of the time. Each year, there are approximately 60 ACDBE and 2,000 DBE decertifications,<sup>64</sup> so this analysis estimates that each year recipients will conduct about 721 virtual decertification hearings.

The cost to hold an in-person hearing includes the travel costs for the SEDOs and their representatives, the UCP hearing officers, and the representatives of the recipients that initiate the decertification proceedings. Based on subject matter expert input, the average travel time savings for a SEDO and their representative is \$250 per hearing, a UCP hearing officer is \$150 per hearing, and the representative of the recipient that initiated the decertification proceedings is \$150; for a total travel cost of \$550 for all participants. In the first year of analysis, the cost savings from allowing virtual decertification is \$396,550.<sup>65</sup> Over the 10-year period of analysis, the cost savings that comes from reduced travel time from allowing virtual decertification hearings is \$4.0 million (undiscounted), \$3.5 million (PV, 3%), and \$3.0 million (PV, 7%).

---

<sup>58</sup> Based on a review of decertification the past few years. <https://www7.transportation.gov/civil-rights/disadvantaged-business-enterprise/denials-appeals>

<sup>59</sup> Based on subject matter input, this analysis estimates that certifying agencies send approximately 15 percent more NOI letters than they send NOD letters.

<sup>60</sup> 829 fewer NOIs \* 30 hours per NOD \* \$44.92 hourly wage = \$1,117,160.40.

<sup>61</sup> 721 fewer NODs \* 15 hours per NOD \* \$44.92 hourly wage = \$485,809.10.

<sup>62</sup> 180 appeals \* 0.35 = 63 less appeals.

<sup>63</sup> Fewer certification appeals, cost saving, annual = (4 (hours certifying agencies spend on certification appeals) \* \$44.92 (certifier compensation rate) + 80 (hours SEDOs spend preparing a certification appeal) \* \$36.95 (SEDO's wage rate) \* 63 (number of fewer decertification hearings)) = \$11,320 + \$186,228 = \$197,548.

<sup>64</sup> Based on a review of decertification the past few years. <https://www7.transportation.gov/civil-rights/disadvantaged-business-enterprise/denials-appeals>

<sup>65</sup> 721 hearings \* \$550 = \$396,550.



In addition, the cost savings to hold an in-person hearing includes the cost of a physical hearing room as compared to the cost of a virtual hearing room. An ancillary review of hearing rooms available across the country indicates that the average cost to rent a hearing room ranges from \$200 per day to \$1,000 per day. Taking the average (\$600), the cost to rent a physical hearing for 721 hearings is \$432,600.<sup>66</sup> Based on an ancillary review of virtual meeting rooms, the monthly cost for a virtual meeting room account is \$20 per month or \$120 per year. Collectively, the 10-year cost savings from allowing virtual decertification hearings is \$8.3 million (undiscounted), \$7.3 million (PV, 3%), and \$6.2 million (PV, 7%)

### **5.2.9 Expand UCP directories of certified DBE and ACDBE firms**

Provision 5, UCP Directory of Certified DBEs, requires UCPs to expand their directories to include firm websites (the online directories already include firm name, location, and NAICS codes). The directory must also include a prominently displayed disclaimer (e.g., large type, bold font) that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work. The provision also allows UCPs the option of adding to this list to display other essential information about DBEs and ACDBEs. DOT anticipates that most UCPs will avail themselves of this opportunity, recognizing this is a cost effective and timesaving alternative to market firm qualifications while providing a one-stop baseline tool for prime contractors and prime concessionaires as they seek out potential subcontractors and sub-concessionaires. A searchable centralized database with bidders list information and active bidders list information that includes an expanded and uniform dataset will help recipients in evaluating DBEs and ACDBEs for goal-setting purposes. The searchable UCP directory will also help prime contractors find DBEs and ACDBEs based on firm location and NAICS codes.

### **5.2.10 Fostering ACDBE small business participation**

Provision 34, Fostering ACDBE Small Business Participation, is a conforming provision that adds a small business requirement to the ACDBE program that is modeled after Part 26. This provision creates a requirement in § 23.26 that closely mirrors the § 26.39; recipients will create an element for their ACDBE program specifically designed to foster small business participation by eliminating obstacles by unbundling contracts, submitting a plan to the FAA that includes race-neutral strategies to support more participation by small ACDBEs, and the submission of an annual report to FAA.

### **5.2.11 ACDBE Program information a recipient retains and reports**

Provision 35, ACDBE Program Information a Recipient Retains and Reports, requires recipients to create and maintain an "active participants list" for their ACDBE programs. The "active participants list" for the ACDBE program is similar to the existing "bidders list" requirement for the recipients' DBE programs. DOT believes that creating and maintaining an active participants list will give recipients another valuable tool to measure the relative availability of ready, willing, and able ACDBEs when setting their overall goals. In addition, a searchable centralized database with active participants list information that includes an expanded and uniform dataset would aid recipients in evaluating ACDBEs for goal-setting purposes. The searchable database will also help prime contractors find ACDBEs based on desired skillsets. Therefore, DOT expects that more ACDBEs will receive work, as DOT expects that DBEs will use the active participants list to promote themselves by providing more details than what was previously listed.

### **5.2.12 Certifying firms that do not perform work relevant to the airport's concessions**

Provision 37, Certifying firms that do not perform work relevant to the airport's concessions, addresses firms seeking their ACDBE designation to perform construction-related activities exclusively in connection with build-out of concession facilities. The final rule requires that applicants state the type of work that they expect to perform on a concessions opportunity. Firms whose participation comes from

---

<sup>66</sup> 721 hearings \* \$600 = \$432,600.

construction-related activities do not count toward goals should not receive certification.<sup>67</sup> This provision reduces the burden on certifiers' resources, as they will not need to process applications from firms that do not perform work relevant to the airport's concessions.

### 5.2.13 Removing consultation requirement when no new concession opportunities exist

Provision 38, Removing Consultation Requirement When No New Concession Opportunities Exist, requires recipients to engage in consultation only when the ACDBE goal methodology includes opportunities for new concession agreements. This provision reduces recipient's burden because the current regulation requires recipients to engage in consultation even when no opportunity exists for new concession agreements. Examples of stakeholders with whom recipients must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves. The Department agrees that consultation under § 23.43 is still necessary when an adjustment is being made, or is proposed to be made, to the base figure of the recipient's ACDBE goal.

### 5.2.14 "Shortfall Analysis" submittal date

Provision 41, Shortfall Analysis Submittal Date, the final rule amends § 23.57(b)(3)(i) to allow recipients to submit the Shortfall Analysis 30 days after they submit their Uniform Report. This amendment provides additional time for recipients to analyze the data in the Uniform Report prior to submitting their Shortfall Analysis report. The final rule sets the due date to April for the shortfall analysis.

### 5.2.15 Summary of benefits and cost savings of provision

This section provides a qualitative description of benefits and a quantitative description of cost savings that come from the final rule. The benefits include: (1) expand UCP directories of certified DBE and ACDBE firms, (2) changes to DBE supplier credit to provide more opportunities for DBEs to gain experience, and (3) several provisions that expedite the ACDBE/DBE certification process. Table 2 present a summary of the quantified cost savings that follow from the final rule.

**Table 2: Cost savings of Provisions, 10-year period, dollars, rounded to 1,000**

	Undiscounted	Present value 3%	Annualized 3%	Present value 7%	Annualized 7%
Tiered program for FTA recipients	6,817,000	5,989,000	702,000	5,123,000	729,000
Virtual on-site visits	52,179,000	45,674,000	5,354,000	38,880,000	5,536,000
Clarifying amendments, Part 26	40,215,000	35,333,000	4,142,000	30,223,000	4,303,000
Clarifying amendments, Part 23	4,083,000	3,587,000	421,000	3,068,000	437,000
Sworn declarations	36,574,000	32,134,000	3,767,000	27,486,000	3,913,000
PNW cap	30,046,000	26,399,000	3,095,000	22,580,000	3,215,000

<sup>67</sup> See § 23.55 (k).

Interstate certification	7,457,000	6,552,000	768,000	5,604,000	798,000
Decertification appeals	1,975,000	1,736,000	203,000	1,485,000	211,000
Virtual decertification hearings	8,292,000	7,285,000	854,000	6,231,000	887,000
Fewer NOIs and NODs	16,030,000	14,084,000	1,651,000	12,047,000	1,715,000
Total cost savings	203,668,000	178,773,000	20,957,000	152,727,000	21,744,000

## Governmental administrative costs and benefits

### 6.1 Governmental administrative costs of provisions

#### 6.1.1 Create database to support bidders list and active participant list data collection

Provision 3, Reporting Requirements, and Provision 35, ACDBE Program Information a Recipient Retains and Reports, requires DOT to create a database to support the active participants' list data collection. This analysis assumes that DOT will use contractors to create and maintain the database, which would collect data for both the ACDBE program and the DBE program. Based on DOT subject matter expert input, this analysis estimates that DOT's cost to build the database is \$500,000 and the annual cost to maintain the database is \$250,000. Over the 10-year period of analysis, the governmental administrative cost for DOT to develop and maintain a database is \$3.0 million (undiscounted), \$2.7 million (PV, 3%), and \$2.4 million (PV, 7%).

#### 6.1.2 Costs to review bidders list submissions by recipients to USDOT database

Provision 3, Reporting Requirements, and Provision 35, ACDBE Program Information a Recipient Retains and Reports, expands DOT's data collection efforts. These provisions require DOT to allocate resources to oversee the data collection process and assess data submitted by 1,198 recipient agencies. As noted in 5.1.1 above, DOT's centralized database has not been designed, however, we estimate it would take DOT staff 90 hours per year at an annual cost of \$9,506<sup>68</sup> to distill the data and manipulate outputs if needed to run reports for OA and OST leadership and internal working groups, and when needed to follow up with recipients that may enter submissions timely. Over the 10-year period of analysis, the cost would be \$95,000 (undiscounted), \$84,000 (PV, 3%), and \$71,000 (PV, 7%).

#### 6.1.3 Costs related to additional data collection efforts for Map-21 and Uniform Reports

Provision 3, Reporting Requirements, and Provision 5, UCP Directory of Certified DBEs, expands DOT's data collection efforts. These provisions require DOT to allocate resources to oversee the data collection process and provide technical assistance to the 53 UCPs. Based on subject matter expert input, this

---

<sup>68</sup> DOT employees who work on DOT's programs are located throughout the country 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 2023 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 the programs is \$60.35. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2023/general-schedule/> Including a compensation factor of 1.75, the DOT employee's compensation rate is \$105.62. (90 hours\*\$105.62 = \$9,506).

provision will result in DOT providing 2 hours twice a year of technical assistance to each of the 53 UCPs, or 212 hours per year on Uniform Report technical assistance.<sup>69</sup> In the first year of analysis, the cost of DOT providing technical assistance to UCPs is \$22,391.<sup>70</sup> Over the 10-year period of analysis, the cost of providing technical assistance to UCPs is \$224,000 (undiscounted), \$197,000 (PV, 3%), and \$168,000 (PV, 7%).

#### **6.1.4 Cost to Oversee FTA Tier II Recipients with Low Contracting Activity**

Provision 3 and 4, will require FTA staff to review contract activity by an additional 441 lower tier recipients (a subset of the recipients termed FTA Tier II Recipients in the final rule). This provision will result in DOT expending no more than 24 hours in the first year and 8 hours per year in the following years.

FTA collects Uniform Reports through its Transit Awards Management System (TrAMS). TrAMS is FTA's platform to award and manage federal grants; it uses a set of logical and mathematical rules that reduce the likelihood of erroneous reports.<sup>71</sup> TrAMS is capable of collecting the additional data required under the Final Rule; the Department expects that TrAMS developers can update and expand the form in less than six hours, and there are no expected additional maintenance costs.<sup>72</sup> The additional burden to FTA to review Tier II Uniform Reports is unlikely to exceed two hours per year. FTA has review tools and processes in place that can be expanded at effectively no cost.

Regarding the bidders list data, as is noted elsewhere in this document, the Department has not yet determined how the information will be collected. The Department does not anticipate additional costs specific to the additional Tier IIs under the Final Rule.

To determine compliance with the contract assurances, policy statement, small business element, and transit vehicle procurement provisions, the Department expects the first-year burden to be approximately 18 hours and the annual burden thereafter to be less than 6 hours. The Department has not yet determined the exact process for ensuring Tier IIs comply with the relevant provisions; the Department is guided by the rationale that these smaller recipients should not be subject to strenuous administrative requirements and instead should focus their limited resources on operating effective DBE programs. At a minimum, the Department will require Tier IIs to certify compliance with these provisions, and there are several low-cost options available to the Department to accomplish this. For example, FTA already requires all funding recipients to sign what are known as the Master Agreement and the Certifications and Assurances, both of which cross-reference 49 CFR part 26 and are recorded in TrAMS;<sup>73</sup> the Department could easily revise these forms to specify the requirements for FTA Tier I Recipients versus Tier IIs.

Whatever form the certification takes, FTA will need to ensure the recipient actually made the certification. Thus, the Department has estimated that it will take approximately 18 hours to create the certification mechanism and verify that all Tier IIs made the appropriate certification in the first year the Final Rule takes effect. After the first year, the Department intends to take a risk-based approach to

---

<sup>69</sup>  $(2 \text{ (biannual support)} * 2 \text{ (hours of technical support per UCP)} * 53 \text{ (the number of UCPs)}) = 212 \text{ hours.}$

<sup>70</sup>  $\text{DOT employee hourly rate, } (\$105.62) * 212 \text{ hours} = \$22,391.$

<sup>71</sup> TrAMS was deployed in February 2016 to provide an efficient, user-friendly, and flexible tool to award and manage grants and cooperative agreements and to strengthen the integrity and consistency of our award and management financial and programmatic information. TrAMS replaced the Transit Electronic Award Management (TEAM) system, which had been in operation since 1998.

<sup>72</sup> These estimates are based on internal discussions with TrAMS developers.

<sup>73</sup> See for example <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements> and <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-assurances>.

overseeing Tier IIs' compliance with part 26, which should require no more than an additional six hours per year.<sup>74</sup> Additionally, many Tier IIs are already subject to FTA's triennial review process, which includes an analysis of the recipient's DBE program compliance.

Using the higher end of 24 hours, each year, the cost to FTA as a function of staff time will be \$2,534.88.<sup>75</sup> Over the 10-year period of analysis, the cost of overseeing these recipients is \$25,000 (undiscounted), \$22,000 (PV, 3%), and \$19,000 (PV, 7%).

### **6.1.5 Long-Term Exclusive (LTE) Agreements Reviewed by FAA**

Provision 42, Long-Term Exclusive Agreements, contains several amendments that reduce stakeholder burden and enhance oversight. The final rule will extend the period within the definition of "long-term" from five to ten years. The rule will also adopt the LTE Guidance's interpretation that options are subject to the regulation's requirements if the options result in a lease period of more than ten years. DOT will treat agreements whose terms are extended by holdovers arrangements as long term if the effect of the holdover is a term of more than ten years. For agreements subject to the LTE approval requirements, DOT will allow recipients to submit the solicitation or request for proposals prior to their release and to subsequently provide the final agreements prior to awarding the contract. This revision to this subsection will reduce the burden on recipients subject to the LTE approval requirements and prevent potential ACDBE participation from being precluded from opportunities due to unjustified holder arrangements that cause exclusive agreements to become long-term.

The FAA estimates seven respondents submit LTE agreements for approval under § 23.75(e) each year. This estimate is derived from the total number of respondents (7) from whom the FAA received LTE agreements in fiscal year 2020. Under the changes of the final rule, subjecting agreements whose terms are extended by holdover arrangements beyond ten years to the LTE approval requirements will cause an estimated seventy (70) agreements (7 respondents x 10 agreements) to be submitted by recipients to FAA for approval per year. The FAA estimates the review time per response is three hours per each LTE agreement, totaling 210 burden hours per year, resulting in a total annualized government cost of \$22,180.20.<sup>76</sup> Over the 10-year period of analysis, the government cost of reviewing these LTE Agreements is \$222,000 (undiscounted), \$195,000 (PV, 3%), and \$167,000 (PV, 7%).

---

<sup>74</sup> That is, the Department will focus oversight efforts on recipients that present the greatest risk for noncompliance. For example, if the Department receives an unusually high volume of complaints from a given geographic region the Department may look more closely at the recipients in that region.

<sup>75</sup> Compensation rate of \$105.62 referenced in a previous footnote is used again here. The cost to DOT staff will be \$2,534.88 (24 hours \* \$105.62).

<sup>76</sup> FAA employees who are involved with the ACDBE program and 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 2023 General Schedule Locality Pay Tables, Hourly Rate GS-13 Step 05 wage rate for these locations. Including a compensation factor of 1.75, the DOT employee's compensation rate is \$105.62. The average hourly compensation rate for a DOT employee who works on the programs is \$60.35. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2023/general-schedule/>. Including a compensation factor of 1.75, the DOT's employee's compensation rate is \$105.62. Total number of annual responses (70 agreements) \* Total government burden hours per agreement (3 hour) \* Compensation rate (\$105.62) = Estimated annualized Government Cost \$22,180.20.

## 6.1.6 Governmental administrative cost, total

**Table 3: Total governmental administrative cost, 10-year period, dollars, rounded to 1,000**

	Undiscounted	Present value 3%	Annualized 3%	Present value 7%	Annualized 7%
Build/maintain database	3,000,000	2,697,000	316,000	2,379,000	339,000
Technical assistance	224,000	197,000	23,000	168,000	24,000
Review LTE Agreements	222,000	195,000	23,000	167,000	24,000
Oversee Lower Tier Recipients	25,000	22,000	3,000	19,000	3,000
Review Bidders List Information	95,000	84,000	10,000	71,000	10,000
Total governmental admin cost	3,566,000	3,194,000	374,000	2,804,000	399,000

## 6.2 Governmental administrative benefits of provisions

### 6.2.1 Fewer certification appeals to DOCR

Provision 12, General Certification, Provision 15, social and economic disadvantage, Provision 16, Ownership, Provision 17, Control, Provision 22, Interstate Certification, and Provision 24 decertification among others include amendments that will result in DBEs making fewer certification appeals to DOCR. Currently, each year, there are approximately 49 decertification appeals made to DOT. Based on subject matter expert input, the final rule will reduce the number of certification appeals to DOT by 35%, or the final rule will reduce the number of certification appeals made to DOCR by approximately 63 appeals. The cost of adjudicating appeals for DOT varies based on complexity. DOT subject matter experts estimate that: (1) a basic fact pattern costs \$1,800, (2) a complex fact pattern costs \$2,700, and (3) a multi-faceted or lengthy pattern cost \$3,600. Taking the average of these costs, the cost savings that comes from fewer certification denial appeals to DOCR is \$170,100.<sup>77</sup> Over the 10-year period of analysis, the governmental administrative cost savings from fewer decertification appeals is \$1.7 million (undiscounted), \$1.5 million (PV, 3%), and \$1.3 million (PV, 7%).

In addition, DOT expects that it will receive 63 fewer appeals, which means that DOT will need to write 63 fewer decision letters. Based on subject matter input, it takes on average 40 hours to write one decision letter or a burden of \$4,225 per letter. In the first year of analysis, the cost savings from DOT writing few decision letters is \$266,162.<sup>78</sup> Over the 10-year period of analysis, the governmental administrative cost savings from writing fewer decertification appeals decision letters is \$2.7 million (undiscounted), \$2.3 million (PV, 3%), and \$2.0 million (PV, 7%).

<sup>77</sup> \$2,700 \* 63 appeals = \$170,100.

<sup>78</sup> \$105.62 (DOT Employee compensation) \* 40 (hours to write one decision) \* 63 (fewer decision letters) = \$266,162.

### 6.2.2 Tiered program for FTA recipients

Provision 4, Tiered Program Requirement for FTA Recipients, increases the DBE threshold that affect FTA requirements in Part 26. This analysis concluded that the FTA Office of Civil Rights will experience reduced workload related to monitoring, oversight, and training of 80 recipients who will no longer be subject to various DBE program requirements. As shown in Appendix A, this will free up approximately 480 hours<sup>79</sup> or \$50,697<sup>80</sup> per year for FTA to spend on other recipients and other program activities. Collectively, over a 10-year period of analysis, the cost savings in reduced DOT staff time spent on oversight of these 80 recipients is \$507,000 (undiscounted), \$445,000 (PV, 3%), and \$381,000 (PV, 7%).

### 6.2.3 Removing forms from the Appendices in Part 23 and Part 26 (Reduced CFR Publication Cost)

Provision 26 removes 14 pages from Part 26 forms in Appendix F<sup>81</sup> (Uniform Certification Application/UCA) and 5 pages from Appendix G<sup>82</sup> (Personal Net Worth Statement), and Provision 42 removes the Uniform Report 3 pages from Part 23 form in Appendix A (Uniform Report of ACDBE Participation).<sup>83</sup> In total, removing these forms from the CFR reduces 22 pages from the CFR. Removing these forms from the CFR is an administrative action and will not impact the ability of the public to comment on any amendments to the information collections contained in these forms. The cost to print a page in the CFR is \$453, which DOT would save by no longer publishing forms in the CFR.<sup>84</sup> By not publishing DOT's programs forms in the CFR, each year DOT will save \$9,996.<sup>85</sup> Over the 10-year period of analysis, the governmental administrative cost savings from no longer publishing these forms in the CFR is \$100,000 (undiscounted), \$88,000 (PV, 3%), and \$75,000 (PV, 7%).

### 6.2.4 Modernize the administration of and enhance the integrity of DOT's programs

The final rule includes several related goals: burden reduction, simplification, improved understanding and thus compliance, streamlined administration, consistent results, and enhanced DOT's programs integrity. This analysis concluded that the final rule improves DOT's ability to implement and measure the success of DOT's programs.

### 6.2.5 Revise and expand reporting requirements

Provision 3, Reporting Requirements, and Provision 32, ACDBE Program Information a Recipient Retains and Reports, will expand DOT's data collection efforts. The expansion of reporting requirements is critical to DOT's efforts to improve data-driven program evaluation and DOT's programs decision-making going forward. DOT concluded that the expansion of data collection will remedy the current report deficiencies and is a meaningful first step toward a data-driven and uniform approach to future program improvements and coordination among program actors.

The proposed expansion in data collection efforts as specified in Provision 3 will make it possible for DOT to connect information from three datasets: (1) the new MAP-21 report (the total number of certified DBEs), (2) bidders list (those DBEs that are actively bidding on Federally-assisted contracts), and (3) Uniform Report (those DBEs who are awarded contracts and subcontracts). The combined information will improve DOT's ability to evaluate trends in DOT's programs and would help DOT establish a national baseline of the status of DOT's programs.

---

<sup>79</sup> 80 recipients \* 6 hours.

<sup>80</sup> 480 hours \* \$105.62 for DOT employee compensation = \$50,697

<sup>81</sup> <https://www.govinfo.gov/content/pkg/CFR-2020-title49-vol1/pdf/CFR-2020-title49-vol1-part26.pdf>

<sup>82</sup> Ibid

<sup>83</sup> <https://www.govinfo.gov/content/pkg/CFR-2020-title49-vol1/pdf/CFR-2020-title49-vol1-part23.pdf>

<sup>84</sup> <https://www.gpo.gov/how-to-work-with-us/agency/circular-letters/new-federal-register-publishing-rates>

<sup>85</sup> \$453 per page \* 22 pages = \$9,996.

Provision 5, UCP Directory of Certified DBEs, directs UCPs to expand their certification directories to include firm name, location, NAICS code(s), and websites. Certifiers may at their discretion, allow DBEs to display other information, such as their ability, availability, and capacity to perform work. If UCPs took advantage of the option to expand their directories further, as the final rule suggests, they must use a standard set of options that DBEs/ACDBEs choose to make public. The final rule requires that UCPs incorporate these information fields as additional searchable criteria so that prime contractors may more easily find ACDBEs/DBEs. DOT could utilize such expanded UCP certification directories when evaluating DOT's programs and for decision-making purposes.

Provision 35, ACDBE Program Information a Recipient Retains and Reports, will create a "bidders list" requirement for Part 23 like that in Part 26. The final rule adds a new paragraph to § 23.27 that requires state Departments of Transportations, on behalf of their UCP members, to include ACDBE data in the yearly report to the DOCR. This data collection will provide DOT with a yearly snapshot of the number and percentage of certified ACDBEs and those ACDBEs actively seeking work. This proposed data collection requirement will provide DOT with a precise count of the number of ACDBEs and the number of ACDBEs who are actively seeking work. Such information addresses an existing data deficiency of not having a precise count of ACDBEs. The reporting of data on ACDBEs to DOT will provide DOT with a clearer understanding of the firms that participate in the ACDBE program and how such firms compare with the rest of the airport concession community. The expanded collection of data on ACDBEs will enhance DOT's ability to conduct more detailed trend analyses of changes in ACDBE participation levels and assess the ACDBE program's overall success.

Eventually, this analysis concluded that an expanded data collection effort may allow DOT to conduct a longitudinal study (a type of correlational research study that involves looking at variables over an extended period of time) of DOT's programs. Near term, DOT believes that access to the expanded information collection will help DOT identify areas that DOT may need to address through future policy decisions and regulation revisions. For example, the numbers of ACDBEs/DBEs by NAICS codes and their amount of contracted work will allow the DOT to identify the type of firms working on contracts. This information will allow DOT to determine whether DOT's programs are benefiting all certified DBEs across a large cross section of NAICS code industries.

#### **6.2.6 Remove requirement to adjust the ACDBE business size standard every two years**

In December 2020, the DOT removed the requirement from Part 26 to publish a Federal Register document informing the public of inflationary adjustments. Provision 13, Business Size, includes a similar change to Part 23 that removes the regulatory requirement for DOT to adjust the ACDBE business size in § 23.33 standard every two years. By removing the requirement to adjust the ACDBE business size standard every two years, this provision make the size standard adjustment voluntary. This provision also allows DOT to inform the public of adjustments by placing notifications on DOT's website; removing the requirement to publish a notification in the Federal Register.

#### **6.2.7 Governmental administrative cost savings, total**

**Table 4: Total governmental administrative cost savings, 10-year period, dollars, rounded to 1,000 Distributional effects**

	Undiscounted	Present value 3%	Annualized 3%	Present value 7%	Annualized 7%
Fewer decision letter	2,662,000	2,339,000	274,000	2,000,000	285,000



Fewer certification appeals	1,701,000	1,495,000	175,000	1,278,000	182,000
Tiered program for FTA recipients	507,000	445,000	52,000	381,000	54,000
Reduced CFR publication cost	100,000	88,000	10,000	75,000	11,000
Government cost savings, total	4,969,000	4,366,000	512,000	3,735,000	532,000
Governmental costs	3,566,000	3,194,000	374,000	2,804,000	399,000
Governmental net cost savings	1,403,000	1,172,000	137,000	930,000	132,000

### **7.1 Greater opportunities for DBEs to participate in design-build contracts**

Provision 9, Good Faith Efforts Procedures for Contracts with DBE Goals, revises § 26.53(e), to advise recipients requesting proposals for a design build project to require a design-builder to submit a DBE Performance Plan (DPP) with its proposal or within 5 days. The DPP replaces the need to commit to specific DBEs or submit good faith efforts at the time of the proposal or prior to final selection. DOT concluded that this added flexibility will result in greater opportunities for DBEs to participate in design-build contracts. Thus, this change may have a distribution effect of moving work to SEDOs and away from non-disadvantaged business owners. Based on subject matter expert input, across all modes DOT expects that there will be over 200 new projects each year that will use design-build.

### **7.2 Changes to DBE drop-shipping supplier credit**

Provision 11, DBE supplier credit, revises a provision at § 26.55(e)(3) to limit to 40 percent the credit that can be obtained from dropped shipped goods, provided the DBE bears risk for loss or damage of such items. This is a change from a revision proposed in the NPRM, which suggested allowing prime contractor's expenditures with DBE suppliers (manufacturers, regular dealers, distributors, and transaction facilitators) to count no more than 50 percent of the contract goal, with exceptions on a contract-by-contract basis with prior approval of the OA. The added definition of "distributor" may have a distributional effect of taking work away from this category of DBE suppliers and providing more opportunities to DBEs who perform other types of work.

### **7.3 No longer consider retirement assets when calculating PNW**

Provision 14, Personal Net Worth, excludes retirement assets when calculating PNW. The removal of retirement assets from estimating an individual's PNW may result in some individuals, who have substantial retirement assets and are currently ineligible from participating in DOT's programs due to exceeding the PNW threshold to become eligible. Any work that firms owned by such SEDOs did would displace work opportunities of firms owned by SEDOs with less significant retirement assets.

### **7.4 Timely processing of initial applications and curative measures**

Provision 20,21, Timely Processing of Initial Applications and Curative Measures, reduces the extension period from 60 days to 30 days. After DOT implements the final rule, a certifier will need OA approval for any extension beyond 30 days, which may limit the number of requests. DOT concluded that the technological advances that exist today eliminate the need for a 60-day extension. A reduced approval process time period will benefit SEDOs who are waiting for approval before they are eligible for work.

## **7.5 Decertification procedures**

Provision 24, Decertification Procedures, finalizes a 30-day deadline in § 26.87(h) for a recipient to issue a NOD following an informal hearing or receiving written information from the DBE. This change ensures that recipients timely completed the review process, which benefits SEDOs. The final rule allows a 15-day extension of the 30-day period, with email notice to the parties of the reason for the extension.

## **7.6 Require SEDO to answer all questions about issues of control**

Provision 24, Decertification Procedures, finalizes the proposal that during an informal hearing, only the SEDO may answer questions related to the SEDO's control of the firm. Often, the purpose of the informal hearing is for the recipient to ascertain whether the SEDO in fact controls the firm. Responses from someone other than the SEDO do not allow a recipient to make an accurate or meaningful determination about the SEDO's role in the firm, such as whether the SEDO makes independent decisions about the firm's daily and long-term operations. Currently, some recipients permit a SEDO to have another party speak on their behalf regarding issues of control. The final rule results in a lost benefit for some SEDOs who have had someone speak on their behalf during the informal hearing process.

## **7.7 Summary suspension of certification**

Provision 26, Summary Suspension of Certification, requires mandatory suspension where there is clear and credible evidence of the DBE's involvement in fraud or other serious criminal activity. The preamble to the final rule addresses how the former provision of death and incarceration is to be now viewed as discretionary grounds for suspension. DOT believes that, in general, the regulation should not require suspension at a time when the DBE is most vulnerable. DOT proposes leaving to the certifier's discretion which deaths or incarcerations demand immediate action. The final rule, therefore, adds language that makes it a discretionary ground if the certifier has "clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity." The added discretion benefits ACDBEs/DBEs.

## **7.8 Fostering ACDBE small business participation**

Provision 34, Fostering ACDBE Small Business Participation, is a conforming provision that adds a small business requirement as under Part 26 to the ACDBE program. That is, this provision creates a requirement (and §23.26) in Part 23 that closely mirrors the § 26.39 requirement for recipients to create an element for their ACDBE program specifically designed to foster small business participation. DOT concluded that this provision would help achieve race neutral participation in the ACDBE program from small businesses.

## **7.9 Change the Measurement for the NAICS Code size calculations from 3 years to 5 years**

Provision 13, Business Size, DOT incorporates the 5-year calculation changes in the DBE regulation § 26.65(a) to meet these requirements. Under the final rule, a firm is eligible as a DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR § 121.104), over the firm's previous five fiscal years. The final rule made a similar change in § 23.33, which will require calculation of an ACDBE business size eligibility based on the firm's previous 5 fiscal years. This analysis concluded that using a 5-year calculation will likely result in more opportunity for ACDBEs and DBEs.

## **7.10 Remove waiting period for a firm to reapply to DOT's programs**

Provision 23, Denials of initial requests for certification, removes the requirement for a recipient to gain OA approval before adopting a shorter waiting period. Under paragraph (c) of § 26.86, when a recipient denies a firm's application, the recipient must establish a waiting period of no more than twelve months before the firm may reapply. Previously, the clock for the waiting period for reapplication began to run on the date the applicant receives the denial letter. DOT amended the final rule to state that the period begins on the date the recipient sends the denial letter. These revisions in Provision 20 benefit SEDOs. The shorter timeframe for filing an appeal and changing the date on which the 12-month time period begins benefits SEDOs as it would expedite the appeals process.

### **7.11 Non-car rental concession goal basis**

Provision 39, Non-Car Rental Concession Goal Base, amends § 23.47(a) to provide for the goal setting requirements set forth in § 23.25. This provision may result in more opportunities for ACDBEs to perform work.

### **7.12 Counting of ACDBE participation following eligibility removal**

Provision 40, Counting of ACDBE participation following eligibility removal, makes three changes to the counting of ACDBE participation following eligibility removal. First, firms will report changes to recipients rather than UCPs, given that they affect counting participation by airports. Second, an ACDBE will need to submit a notice of change declaration to inform the recipient of a change in ownership, since it may impact the recipient's ability to count the participation of that firm. Third, upon notice of a sale or change of ownership, recipients should verify via state electronic directories whether the sale of a firm or a controlling interest in a firm is to a certified ACDBE.

## **8 Regulatory alternatives considered**

### **8.1 Baseline/no action alternative**

The baseline alternative to the final rule is to maintain the status quo (i.e., do nothing.) Under the baseline scenario, DOT would not enact revisions to improve implementation of DOT's programs under Part 23 and Part 26. DOT would not: (1) update the PNW cap and program size thresholds for inflation; (2) modernize rules for counting of material suppliers; (3) incorporate procedural flexibilities enacted during the COVID-19 pandemic; (4) add new program elements to foster greater usage of DBEs and ACDBEs with concurrent, proactive monitoring and oversight; (5) update certification provisions with less prescriptive rules that give certifiers flexibility when determining eligibility; and (6) correct technical errors that have led to substantive misinterpretations of the rules by recipients, program applicants, and participants. As such, DOT's programs would continue to have deficiencies that limit DOT's ability to advance equity and increase the participation of minority and women-owned small businesses in federally-assisted projects.

Because the final rule results in a net beneficial outcome, the final rule is better than the no action alternative. DOT's ability to advance equity, civil rights, racial justice, and equal opportunity in federally funded contracts and airport concession contract is greater under the final rule than the no action alternative.

## **9 Sensitivity analysis**

The findings, results, and conclusions of this analysis could change if the assumptions or inputs were to change. In other words, the findings of this analysis are sensitive to its assumptions. This section analyzes two input changes that would alter the cost savings estimates presented in the primary analysis.

Based on subject matter input, the time burden to estimate the after-tax net present value of an applicant's retirement assets varies with the degree of complexity. It is possible that the primary analysis overestimated or underestimated the cost savings that will come from no longer requiring SEDOs to estimate the after tax and penalty value of their retirement assets. This sensitivity analysis provides: (1) a low estimate that assumes that an applicant firm spends 4 hours to estimate its retirement assets and a certifier spends 2 hours to verify the accuracy of such information; and (2) a high estimate that assumes that an applicant firm spends 10 hours to estimate its retirement assets and a certifier spends 5 hours to verify the accuracy of such information. This analysis assumes that each year there are 4,175 new DBE applications, 210 new ACDBE applications, and 3,150 certification reviews (2,900 DBEs and 250 ACDBEs)<sup>86</sup> for a total of 7,535 applications or certification reviews. In addition, each year approximately three percent of SEDOs, or approximately 1,400 SEDOs, have a PNW sufficiently close to the PNW cap that it requires them to calculate their PNW.<sup>87</sup>

Therefore, the amount of this cost savings could fall within a range of \$17.6 million (PV, 3%) lower<sup>88</sup> or \$43.9 million (PV, 3%) higher<sup>89</sup> than the estimate presented in the primary analysis.

**Table 5: Low, primary, and high-cost savings estimate from no longer estimating retirement assets, dollars, rounded 1,000**

	Undiscounted	Present value 3%	Annualized 3%	Present value 7%	Annualized 7%
Low estimate	19,975,000	17,551,000	2,057,000	15,012,000	2,137,000
Primary estimate	30,046,000	26,399,000	3,095,000	22,580,000	3,215,000
High estimate	49,938,000	43,876,000	5,144,000	37,530,000	5,343,000

## 10 Summary of analysis

This analysis found that the proposed amendments to each Part 23 and Part 26 will result in a net benefit. The final rule clarifies several areas to the administration of DOT's programs including certification, goals, good faith efforts, counting, joint ventures, long-term exclusive agreements, and participatory reporting. The final rule helps DOT meet its objective of enhancing its programs by reducing participant

<sup>86</sup> The cost savings comes from the SEDOs who have a PNW close to the PNW cap who under the NPRM would no longer need to spend time calculating the net present value of their retirement assets.

<sup>87</sup> Most SEDOs have a PNW far below the PNW cap. However, some SEDOs have a PNW sufficiently close to the PNW cap that they must calculate their exact PNW.

<sup>88</sup> Low estimate cost savings calculations for PNW are based on number of new DBE applicants (4,175) + new ACDBE applicants (210) + review of existing DBEs (2,900) + review of existing ACDBEs (2,900) + review of existing ACDBEs (250). This total (8,935) is multiplied by 4 hours at the DBE owner compensation rate of \$36.95, which = \$1,320,593, and added to 7,535 (the percent of SEDOs, or approximately 1,400 SEDOs, that have a PNW sufficiently close to the PNW cap that it requires them to calculate their PNW) \* 2 hours at the certification agency employee compensation rate \$44.92, resulting in \$676,944. The lower estimate of \$1,997,537 (the yearly cost savings) is the sum of \$1,320,593 and \$676,944.

<sup>89</sup> Higher estimate cost savings calculations for PNW are based on number of new DBE applicants (4,175) + new ACDBE applicants (210) + review of existing DBEs (2,900) + review of existing ACDBEs (2,900) + review of existing ACDBEs (250). This total (8,935) is multiplied by 10 hours at the DBE owner compensation rate of \$36.95, which = \$3,301,482, and added to 7,535 (the percent of SEDOs, or approximately 1,400 SEDOs, that have a PNW sufficiently close to the PNW cap that it requires them to calculate their PNW) \* 5 hours at the certification agency employee compensation rate \$44.92, resulting in \$1,692,361. The higher estimate of \$4,993,844 (the yearly cost savings) is the sum of \$3,301,482 and \$1,692,361.

burdens, improving the quality of participating, reducing program fraud, and providing stakeholders with clarification as warranted via training, guidance, or rulemaking.

Over the 10-year period of analysis DOT estimates the final rule will generate net cost savings of \$57.53 million (Present Value (PV), 3%) and \$46.26 million (PV, 7%). DOT estimates that the final rule will generate net governmental administrative costs of \$3.19 million (Present Value (PV), 3%) and \$2.80 million (PV, 7%).

## Appendix A: Participation threshold evaluation for FTA recipients

Under the prior rule, FTA recipients that award prime contracts with a cumulative total value exceeding \$250,000 in a federal fiscal year are required to have a DBE program. This amount was first introduced in a 1983 final rule, but it originally meant that FTA recipients that *received* over \$250,000 in a fiscal year had to have a DBE program—in 2000, the \$250,000 threshold was updated to apply to contract awards. Given that the threshold amount was originally set 40 years ago, the final rule adjusts this threshold to \$670,000. DOT based this adjustment on observed changes in the consumer price index (CPI) from 1983 to 2020. The final rule also empowers DOT to make future adjustments of this threshold for inflation without the need for future rulemaking.

This analysis estimates the number of recipients on average per year that will no longer be subject to all DBE program requirements. Those recipients will experience cost savings resulting from lower administrative burdens. The precise impact that this provision will have will vary from year to year, given that recipients have varying amounts of federal contract dollars every year. However, this analysis estimates an average annual impact. Costs are analyzed using 2020 dollars. The four categories of cost savings include:

- **Program Development and Goal Setting:** These are the administrative costs associated with the development of their DBE program plan and establishing the DBE program goals every three years. This work involves some amount of staff effort, and in some cases a recipient may contract this work out to a consultant.
- **Monitoring, Reporting, and Outreach:** These are the administrative costs incurred by the recipient related to administering their DBE program every year. The recipient must monitor their contracts to ensure the work committed to DBEs is performed by DBEs, and verify payments made to DBEs. The recipient performs this work by conducting contract reviews and work site visits. Entities must report on their DBE participation twice a year to FTA. Recipients must also conduct regular outreach to DBEs in their community.
- **Conferences and Trainings:** Recipients may send their employees to conferences or trainings related to the programs. The cost to the recipient is incurred through travel expenses and the opportunity cost of the employee's time. Some trainings provided by private companies and organizations include registration fees, but DOT offers training free of charge. This analysis assumes no registration fees for the conferences and trainings.
- **USDOT Technical Assistance:** FTA provides technical assistance to transit agencies and airports for their DBE programs. This cost is measured by the typical number of hours spent by FTA staff providing such assistance per recipient.

Although these cost savings may follow from the final rule, the total contract awards to DBEs may decrease with the higher threshold, since recipients awarding total contracts falling below the threshold would no longer need to set DBE goals on those contracts. The DBE program encourages recipients to perform outreach to DBEs to encourage them to bid on all contracting opportunities as part of their race neutral efforts. If a grant recipient does not meet their DBE participation goals using race neutral efforts, the recipient would also let contracts with race conscious goals. DOT expects that recipients below the revised threshold will eliminate all race conscious sub-contracting awards, since the program no longer requires such. The impact on race neutral efforts and awards is not known. It is possible that DBEs may continue to win these small contracts without the use of contract goals. However, it is also possible that

without the use of contract goals, the final rule will result in lower DBE participation. Thus, the impact of revising the threshold for race neutral awards is unclear.

It is difficult to place a value on promoting equity in the business markets, one of the goals of the DBE program. However, diversity contracting programs such as the DBE program benefit members of historically socially and economically disadvantaged groups through increased income for owners and employees, an expanded network of opportunities through their acquired contacts, and greater visibility in their communities that may encourage other diverse businesses to pursue similar opportunities.<sup>90</sup>

Without the DBE program, contracts would still get awarded but they may no longer be awarded to DBEs as much. This may indicate a transfer of funds from a DBE to a non-DBE firm. The value of the contract is not lost to society as it has simply been transferred to another business, but there may be a lost social benefit from fewer contracts and associated revenue going to DBEs. This social benefit is quantified in this analysis.

To understand the implications of adjusting the DBE participation threshold for FTA recipients, DOT examined the DBE uniform reporting data for 2017–2019. The data was averaged across the three years to estimate the number of recipients impacted in a typical year by the inflation adjustment. On average, the data shows that 424 recipients a year are currently above the \$250,000 threshold, and of these, DOT expects that 80 recipients (~19%) will fall below the inflation-adjusted threshold of \$670,000.

This analysis concluded that each of these 80 recipients will have administrative cost savings from no longer being subject to various program requirements for exceeding the DBE participation threshold. In addition, this analysis concluded that the FTA Office of Civil Rights will also experience reduced workload related to monitoring, oversight, and training of these smaller recipients and would be able to deploy their staff resources to recipients who are better situated to produce effective DBE programs. FTA estimates that it spends 6 to 10 hours per recipient per year—this would free up anywhere from 480 hours to 800 hours (80 recipients x 6 hours for the lower bound) or (80 recipients x 10 hours for the higher bound) per year for FTA to spend on other recipients and other program activities.

**Table** presents the DBE program costs estimated by FTA for their recipients with low levels of federally funded contracting activity. The estimated cost of DBE program administration is roughly \$8,521 per year per recipient.

**Table A.1: DBE Program Costs for Transit Agencies with Low Levels of Federally funded Contract Activity**

Cost Categories	Cost Estimate
Program Development and Goal Setting	\$5,000-\$15,000 every three years
Reporting Cost	40 Hours every 6 Months

<sup>90</sup> National Academies of Sciences, Engineering, and Medicine 2020. Guidance for Diversity in Airport Business Contracting and Workforce Programs. Washington, D.C.: The National Academies Press. <https://doi.org/10.17226/25896>.

	Approximately \$3,593 per year <sup>91</sup>
Other Agency Costs (Monitoring, Outreach)	<i>Very minimal, assume 5 hours per year</i> Approximately \$225 per year <sup>92</sup>
Conferences/Trainings	<i>One 2–3-day training per year. No registration fee, but travel expenses and cost of transit agency employee's time</i> Approximately \$1,369 per year <sup>93</sup>
<b>Total Costs for Recipients</b>	Range of \$6,854 to \$10,187 per year <i>Midpoint used for analysis, \$8,521 per year</i> <sup>94</sup>
FTA Technical Assistance	<i>FTA provides 6-10 hours of assistance per year per small agency</i>

This analysis concluded that the threshold revision will also result in social costs related to a reduction in contract dollars that currently go to DBEs from these FTA recipients. The contract revenues themselves are not the measure of those social costs. The value of those contracts is not lost but is instead transferred to non-disadvantaged businesses or other small businesses. It is difficult to estimate or monetize the social value of this transfer, but DOT notes that the social value is likely proportional to the magnitude of the change in contract revenues going to DBEs. DOT notes that the magnitude of the potential reduction of contract revenues going to DBEs is relatively small, less than one-third of one percent of total DBE contract revenues from FTA recipients, at most. DOT believes that some of the contract dollars may still be awarded to DBEs on merit alone, particularly on contracts that are currently awarded as race neutral. But if all the contracts currently awarded to DBEs by recipients who let contracts between the current threshold of \$250,000 and the proposed threshold of \$670,000 were transferred to other businesses, it

---

<sup>91</sup> A recipient's employee's wage rate is based on BLS' estimate of a Transit Agency Compliance Officer at \$27.73/hour (see [Urban Transit Systems - May 2022 OEWS Industry-Specific Occupational Employment and Wage Estimates \(bls.gov\)](https://www.bls.gov/news.release/urbantransit.pdf)). The wage rate is multiplied by 1.62 to get a fully loaded wage rate (i.e., compensation rate) of \$44.92 to account for the cost of employer provided benefits. (see [Employer Costs for Employee Compensation – March 2023 \(bls.gov\)](https://www.bls.gov/news.release/empcost.pdf)). Forty hours every six months is equivalent to 80 hours/year.

<sup>92</sup> Use the fully loaded wage rate of \$44.92, multiplied by 5 hours/year.

<sup>93</sup> Average cost of a roundtrip domestic U.S. flight is \$347.82 (see: <https://www.airlines.org/dataset/annual-round-trip-fares-and-fees-domestic/#>)—the value is based on 2019 data, but adjusted for inflation to 2020 dollars. The amount spent on hotels and food is calculated using GSA's standard per diem rates for federal employees, set at \$96 for lodging per night and \$55 for meals and incidental expenses per day in fiscal year 2020 (see: <https://www.gsa.gov/about-us/newsroom/news-releases/fy-2020-per-diem-rates-for-federal-travelers-released>). The cost of the transit agency employee's time is calculated as 8 hours per day at a fully loaded wage rate of \$44.92. In this analysis, a two -day training is calculated as: \$348 (flight) + \$192 (two days per diem) + \$110 (two days of meals) + \$719 (16 hours of employee time \* wage rate of \$44.92) = \$1,369.

<sup>94</sup> To estimate the total, the cost from each category is summed. The program development and goal setting cost are divided by three to reflect the three-year cycle, but all other values are strictly summed as-is. Note that values are presented here are rounded. Lower range: (Program cost 5,000/3 = \$1,667 + \$3,593 + \$225 + \$1,369 = \$6,854. Higher range: (Program cost 15,000/3 = \$5,000 + \$3,593 + \$225 + \$1,369 = \$10,187). Resulting midpoint calculation is: \$6,854+\$10,187/2 = \$8,521.



amounts to a transfer of approximately \$2.7 million per year in 2020 dollars.<sup>95</sup> This represents less than 0.3% of the total dollars that are awarded to DBEs in a typical year from FTA recipients.<sup>96</sup> Table A.2. provides a full description of the impacts of this adjustment.

**Table A.2: Impact of Proposed Threshold for FTA DBE Program (2020 dollars)**

<b>Type of DBE Participation</b>	<b>Average Annual Contract Awards to DBEs from Recipients Between Current Threshold and Proposed Threshold  (Percent of Total Program Awards to DBEs)</b>	<b>Total Current Program Contract Awards to DBEs</b>	<b>Total Program Contract Awards to DBEs with Proposed Threshold</b>
Prime Contracts: Race Neutral	\$2 million (0.2%)	\$200.1 million	\$198.1 million
Sub-contracts: Race Conscious	\$0.2 million (0.02%)	\$686 million	\$685.7 million
Sub Contracts: Race Neutral	\$0.5 million (0.05%)	\$133.5 million	\$133 million
<i>Total</i>	<i>\$2.7 million (0.26%)</i>	<i>\$1,019.6 million</i>	<i>\$1,016.8 million</i>

(Table A.2 shows that if FTA recipients that typically award between \$250,000 and \$670,000 in FTA funds annually stop awarding contracts to DBEs under the final rule then DBEs would be awarded approximately \$2.7 million less on a national and annual basis. Note that “Race Conscious” refers to contracts with DBE contract goals and “Race Neutral” refers to contracts that did not have DBE contract goals.)

<sup>95</sup> The average annual contract awards to DBEs from recipients between the current threshold and the proposed threshold is calculated as Prime contracts: Race Neutral (\$2 million) + Race Conscious Subcontracts (\$0.2 million) + Race Neutral Subcontracts (\$0.5 million) = \$2.7 million.

<sup>96</sup> The year 2020 data was used in the RIA accompanying the NPRM and does not reflect an analysis of more recent years' TrAMS data. This was not adjusted for the purpose of this document as the amount is illustrative only and does not factor into the costs and cost savings estimates in this document.

## Appendix B: Personal net worth cap evaluation

### Background

As a mechanism for excluding non-disadvantaged individuals from the DBE program, DOT adopted a PNW cap of \$750,000 in its 1999 final rule; an amount mirroring SBA regulations for eligibility in the 8(d) program.<sup>97</sup>

A PNW cap means that, regardless of membership in a group whose members are presumed SED, any owner whose PNW exceeds the rule's limit is not considered economically disadvantaged and the firm is ineligible as a DBE.<sup>98</sup> This helps ensure that the DBE program is narrowly tailored. DOT's January 2011 final rule raised the PNW limit from \$750,000 to \$1.32 million to keep up with inflation.<sup>99</sup> The program's prior rule excluded from the calculation of total net worth the individual's interest in the business in question, equity in their primary residence, and 50 percent of any asset held as community property between a couple.

### Rationale for Raising the PNW Cap

The existence of a PNW cap highlights a tension between the DBE program's multiple objectives. If the PNW cap is set too high, the program would include business owners who are not in fact economically disadvantaged.<sup>100</sup> If the PNW cap is set too low, the program will exclude some truly disadvantaged business owners who could benefit from participating in the program and whose participation would advance the program's progress towards achieving equity in federal contracting. A 2007 report commissioned by the Congressional Black Caucus Foundation, *Increasing the Capacity of the Nation's Small Disadvantaged Businesses*, points out that businesses need resources to build capacity and be competitive. Thus, a PNW cap that is too low will limit the success of participating businesses.

In 2019 the FAA conducted listening sessions related to this rulemaking. Commenters noted that the current \$1.32 million PNW cap hinders the success of the ACDBE program. They noted that restaurants in airports can have very high upfront financing needs related to build-out costs, covering initial operating costs, and the need to refresh their facilities midway through a typical 7 to 10-year lease. In addition, because of the nature of those types of expenses (and possibly the risk inherent with the airport concession industry), banks require a high amount of collateral for loans to finance those upfront expenses.<sup>101</sup> Consequently, a PNW cap that is too low means that the business owners who have the means to provide the collateral for airport concessions with high upfront investment requirements are generally not eligible to participate in the ACDBE program. Note, however, that the business owner's

---

<sup>97</sup> The rationale cited by the Department was centered on congressional floor debate on the topic of economic disadvantage and the usage of that figure by SBA, which the Department believed at the time was "well established and effective part of [its] programs."

<sup>98</sup> The final rule, as in its previous iteration, permits a certifier from rebutting a person's claim of economic disadvantage even in situations wherein their net worth is *below* the cap. See §26.67(c)(2).

<sup>99</sup> The PNW cap of \$750,000 was adjusted using the CPI from the base year of 1989. As explained in previous rulemakings, 1989 was used as the base year because this was the year the Small Business Administration (SBA) initially proposed the PNW cap of \$750,000.

<sup>100</sup> Per DOT's guidance, the DBE program "should not include people who can reasonably be regarded as having accumulated wealth too substantial to need the program's assistance." Official Questions and Answers, Disadvantaged Business Enterprise Program Regulation (49 CFR 26).  
<https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/55851/official-questions-and-answers-disadvantaged-business-enterprise-program-regulation-49-cfr-26-4-25.pdf>

<sup>101</sup> Fed. Aviation Admin., *49 C.F.R. Part 23 Review Virtual Listening Session Subpart C* (Apr. 4, 2019).

total household net worth can be used as collateral for a loan, so that while the PNW as defined by the program must be below the rule's cap, the amount available to use as collateral might be higher than the cap due to how PNW is calculated for the programs.

This analysis describes DOT's method of adjustment to raise the PNW limit from \$1.32 to \$2.047 million, a higher amount than proposed in the NPRM (section 1 below); the omission of retirement accounts from the calculation in order to ease burden on firms applying for DBE and ACDBE certification (section 2); and the method for adjusting the PNW cap in the future to allow the programs to adjust the PNW cap in a timely and responsive manner to avoid the delay and the administrative burden of a formal rulemaking (section 3).

## I. Method of Adjustment

As part of this rulemaking, DOT conducted original analysis to establish an appropriate PNW cap. DOT recognizes that the determination of economic disadvantage is a comparative exercise, not an absolute determination made in isolation.<sup>102</sup> In this analysis, the determination of an economically disadvantaged business is based on comparing the business owner to other business owners, since the wealth of a business owner is likely higher than the wealth of the general population. Further, this analysis focuses on the wealth of business owners who are not presumed to be socially and economically disadvantaged: White, non-Hispanic men. To make this comparison, this analysis uses data from the 2019 Survey of Consumer Finances (SCF) to analyze the distribution of PNW among business owners to determine where a new PNW cap should be set.<sup>103</sup>

In the SCF, the race and ethnic group for a household is based on the identification of the original respondent to the survey. The employment status and other demographic descriptors are based on the reference person for the family. In the SCF, if a couple is economically dominant in the primary economic unit (PEU), then the reference person is the male in an opposite-sex couple or the older person in a same-sex couple. If a single individual is economically dominant, that person is the reference person. The SCF data allows for identification of the following race and ethnic group categorizations: White, Non-Hispanic; Black, Non-Hispanic, Hispanic, and Other which includes individuals identifying as Asian, American Indian, Alaska Native, Native Hawaiian, Pacific Islander, other race, and all respondents reporting more than one racial identification.<sup>104</sup>

Table B.1 shows that the mean net worth of White, Non-Hispanic households is roughly 6 to 7 times higher than for Black, Non-Hispanic and Hispanic households. Even at the highest wealth levels, the

---

<sup>102</sup> As explained in the 1983 Final Rule, “[when] considering the economic disadvantage of firms and owners, it is important for recipients to understand that they are making a comparative judgment about relative disadvantage. Obviously, someone who is destitute is not likely to be in any position to own a business. The test is not absolute deprivation, but rather disadvantage compared to business owners who are not socially disadvantaged individuals and firms owned by such individuals”.

<sup>103</sup> The Survey of Consumer Finances (SCF) is a cross-sectional survey of primary economic units (PEU) in the United States conducted every three years from 1983 to 2019. The PEU consists of the economically dominant individual or couple and all individuals in the household that are financially dependent on the individual or couple. The SCF is sponsored by the Federal Reserve Board of Governors and the U.S. Department of the Treasury. The survey includes information on demographics, income, assets, and debts, among other topics. The SCF presents five replicates of each record as a method of approximating missing values in the data. Thus, the number of records in the public dataset is 28,885, five times more than the number of households that responded to the survey (5,777). <https://www.federalreserve.gov/econres/scfindex.htm>

<sup>104</sup> “Codebook for 2019 Survey of Consumer Finances” *Board of Governors of the Federal Reserve System*, accessed at <https://www.federalreserve.gov/econres/files/codebk2019.txt>

disparity exists: the wealth of the top 10 percent of White households exceeds the wealth of the top 10 percent of Black, Non-Hispanic and Hispanic households by a factor of 5.

**Table B.1: Total Net Worth of the Household by Race and Ethnic Group in 2019 (2019 dollars)**

<b>Race &amp; Ethnicity</b>	<b>Total Number of Households</b>	<b>Mean</b>	<b>Median</b>	<b>90th Percentile</b>
<i>ALL</i>	5,777	\$746,821	\$121,774	\$1,219,499
White, Non-Hispanic	3,980	\$980,549	\$188,985	\$1,610,000
Black, Non-Hispanic	679	\$142,330	\$24,100	\$324,901
Hispanic	490	\$165,541	\$36,031	\$333,500
Other	627	\$656,603	\$74,500	\$1,164,100

*Source: 2019 SCF*

PNW as currently calculated by the programs allows the firm owner to omit the value of their primary residence and the value of the business for which the owner is applying for certification. In addition, the PNW definition includes only the assets of the firm owner, meaning that only half the value of any assets held jointly by the owner and their spouse (community property) are included in the calculation of PNW. Finally, the applicants are instructed to only report the current value of any retirement accounts, after any early withdrawal penalties and applicable taxes are subtracted. During stakeholder engagement events and compliance reviews, DOT received many comments that the calculations required to compute the applicable taxes and penalties on retirement accounts is highly burdensome to applicants and certifiers. Those calculations require a great deal of information including what portion of the account is the initial contributions versus subsequent capital gains or interest earned, applicable state and federal income tax rates, and applicable state and federal capital gains tax rates.

In response to those comments, DOT simplified the treatment of retirement accounts in calculating PNW. In addition, DOT updated the PNW cap because 12 years have passed since it was last updated. The primary amendment involves excluding the full balance of the retirement accounts when calculating PNW. This change was paired with increasing the PNW cap to \$1.60 million. One alternative that DOT considered was to calculate an applicant's PNW using the current balance of the retirement accounts with no adjustments made for early withdrawal penalties or taxes.

This analysis creates a proxy measure for PNW. Using the 2019 SCF data, the proxy measure, shown below in Equation 1, calculates PNW using measures of: (1) total household net worth, (2) home equity (value in primary residence minus any home secured debt), (3) active business equity (equity the individual owns in a business they actively manage), and (4) current balance of retirement accounts.<sup>105</sup> The calculation is performed separately for single individuals versus couples in order to account for adjustments for community property made in the definition of PNW for the programs. By definition, when calculating an individual's PNW, only 50 percent of any jointly held assets between a couple (community property) are considered. Equation 2 shows the calculation for the proxy measure for PNW under the alternative proposal which would include the full amount of the retirement account balances in the calculation of PNW. In the SCF, net worth is reported using the current balance of any retirement accounts with no adjustments made for early withdrawal penalties or taxes.

<sup>105</sup> The SCF data does not allow a distinction between all of an applicant's active businesses and the sole business the applicant might choose to certify as a DBE or ACDBE. Therefore, the PNW proxy measure used here removes the total value of all active businesses. As a result, this proxy measure for PNW could be under-estimating an applicant's true PNW.

*Equation 1. Personal Net Worth Calculation Under Primary Proposal*

If single, PNW = Net Worth - Home Equity - Active Business Equity - Retirement Accounts  
If married or living with partner, PNW = (Net Worth - Home Equity - Active Business Equity - Retirement Accounts) / 2

*Equation 2. Personal Net Worth Calculation Under Alternative Proposal*

If single, PNW = Net Worth - Home Equity - Active Business Equity  
If married or living with partner, PNW = (Net Worth - Home Equity - Active Business Equity) / 2

In addition, the analysis includes only White, Non-Hispanic households with male reference persons identified as owning a business and who indicated they were self-employed or in a partnership as their occupational status. The focus is on self-employed business owners because the intent is to identify a comparison group for business owners who are likely to participate in the programs. Table B.2 shows the percentile distribution related to the estimated PNW calculation from the 2019 SCF for the primary proposal.

**Table B.2: Percentile Distribution of the Personal Net Worth for Male, White, Non-Hispanic, Self-Employed, Business Owners, as Calculated under the Primary Proposal (2019 dollars)**

Percentile	PNW As Calculated Under Primary Proposal
10 <sup>th</sup>	- \$50
20 <sup>th</sup>	\$11,610
30 <sup>th</sup>	\$24,050
40 <sup>th</sup>	\$48,300
50 <sup>th</sup>	\$77,875
60 <sup>th</sup>	\$157,500
70 <sup>th</sup>	\$265,000
80 <sup>th</sup>	\$558,950
90 <sup>th</sup>	\$1,601,500
95 <sup>th</sup>	\$3,757,750

*Source: 2019 SCF*

The prior rule excluded primary home and business equity from the PNW calculation. The NPRM proposed setting the PNW cap at the 90<sup>th</sup> percentile of the group of male, White, Non-Hispanic, self-employed business owners, i.e., \$1.60 million and excluding all retirement accounts. Determining the threshold whereby an individual is considered to have accumulated wealth too substantial to need the program's assistance is somewhat of a judgement exercise. Nonetheless, using the 90<sup>th</sup> percentile to identify a high level of wealth or income is a common convention.<sup>106</sup> Choosing a substantially lower threshold, such as the 80<sup>th</sup> percentile, would result in a cap that is lower than the current cap and would

<sup>106</sup> See Bricker, Goodman, Moore and Volz. "Wealth and Income Concentration in the SCF: 1989-2019" in *FEDS Notes*, September 28, 2020, <https://www.federalreserve.gov/econres/notes/feds-notes/wealth-and-income-concentration-in-the-scf-20200928.htm>; Credit Suisse, "World Wealth Report 2020," p. 29 <https://worldwealthreport.com/resources/world-wealth-report-2020/>; and Kochar and Cilluffo, "Income Inequality in the U.S. Is Rising Most Rapidly Among Asians," Pew Research Center, July 12, 2018, <https://www.pewresearch.org/social-trends/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians/>.

remove businesses that are currently participating in the programs, which would be an undesirable outcome. Choosing a substantially higher threshold would risk the possibility that the program would no longer be narrowly tailored.

Data from the 2019 SCF suggested that between 88.7 and 90.8 percent of self-employed business owners who are presumed to be socially and economically disadvantaged (i.e., individuals who are women, Hispanic, or non-White) have PNW lower than the current \$1.32 PNW cap in the rule before the revision.<sup>107</sup> Under a cap of \$1.60 million, 92.6 percent of that group would fall under the cap (i.e., be eligible to participate in the DBE program), an increase of 2.0 to 4.4 percent.

#### Alternative Adjustment Considered But Not Adopted

The Department considered adjusting the net worth standard using the consumer price index or the GDP deflator. We chose the above method because we observed that household wealth, especially the household wealth of the most wealthy households, has historically exhibited different dynamics than the inflation or GDP. This is illustrated in Table 4 of the NPRM preamble. The PNW of the 90<sup>th</sup> percentile as measure by the SCF grew by a factor of 5.14 from 1992 to 2019. In contrast, the CPI grew by only a factor of 1.82 during that time period. The GDP deflator grew at an even slower rate during that time period.<sup>108</sup>

If DOT were to adjust the threshold using CPI, relatively more and more potential DBEs would be excluded from the program since household wealth of top households has tended to increase faster than CPI. Note that recently the US experienced a period of historically high inflation accompanied by a few stock market downturns. Thus, in the past few years, that historic relationship where net worth household wealth has grown faster than inflation or GDP may have been reversed. However, DOT considers that situation to be relatively anomalous. And in any event, pegging future changes to actual measures of household wealth, as implemented by this final rule, will avoid needing to make any assumptions between household wealth and inflation or GDP growth.

Further using a simple inflation or GDP deflator adjustment would not account for the other major change the PNW in this rulemaking, the removal of retirement accounts from the definition of PNW (addressed below). That acts to substantially reduce the PNW applicants must report which makes simple comparisons to the old PNW cap of \$1.32 million inappropriate.

#### Adoption of a Higher Cap Than NPRM Proposal

As noted above, the Department used data from the Survey of Consumer Finances (SCF), to reach the \$1.60 million proposal in the NPRM. This data was specifically analyzed for business owners by race and gender to reach the proposed \$1.60 million PNW threshold. The NPRM proposed to adjust that figure subsequently based on the growth in the Federal Reserve measure of total household net worth from

---

<sup>107</sup> The range on this estimate is the result of lack of information in the SCF on how to appropriately adjust the current balances of retirement accounts for early withdrawal penalties and taxes. The lower end of the estimated range (88.7 percent) assumes that the entire balance of retirement accounts is counted toward the PNW cap while the upper end (90.8 percent) assumes that no portion of retirement account balances are counted toward the PNW cap. DOT believes that the true value is likely closer to 88.7 percent than 90.8 percent because the deduction for early withdrawal penalties and taxes is likely to be less than 50 percent, but a more precise estimate is not possible with the available information.

<sup>108</sup> See Figure 1 for BLS Monthly Labor Review from March 2016:

<https://www.bls.gov/opub/mlr/2016/article/comparing-the-cpi-with-the-gdp-price-index-and-gdp-implicit-price-deflator.htm>.

“Financial Accounts of the United States: Balance Sheet of Households and Nonprofit Organizations Table Z.1” using 2019 as the base year.

The final rule adopts a higher number than that of the proposal, not only in response to comments suggesting an increase in the cap, but also because we have modified the methodology used to establish and later adjust the PNW cap. These modifications take into account the inflation that has affected the financial situation of all Americans not only since the publication of the NPRM, but more importantly since the 2019 data on which the NPRM’s calculations were based.

This data we published in the NPRM reflected a combination of households and nonprofit organizations when only households should be considered. Additionally, by using solely the growth in net worth we are not accounting for the normal population growth.

Consequently, for the purposes of the final rule, the Department has made two adjustments. The first adjustment is a change in the dataset to the “Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h)” effectively removing nonprofit organizations from the net worth calculation.

As shown in Table B.3, an adjustment using the table proposed in the NPRM, which included non-profit organization is only \$18,732 different than an adjustment using just household data only. Both methods saw an increase of average net worth (29% in the case of households and nonprofit organizations, and 31% using only the household values). The second adjustment, reflected in Table B.4 is to normalize household net worth by the number of households as calculated by the Census in 2022 ([Families and Households, Total Households \[TTLHH\].](#))

**Table B.3: Comparison of Adjusted PNW based on Financial Accounts of the United States for Households and Nonprofit Organizations versus Adjusted PNW based on Household Balance Sheet**

Current PNW Threshold Proposed in NPRM	<b>\$1,600,000</b>
<b>Financial Accounts of the United States: Balance Sheet of Households and Nonprofit Organizations”</b>	
Q1-Q4 Average Household & Nonprofit Organization NW of 2019	\$114,189,981
Q1-Q4 Average Household & Nonprofit Organization NW of 2022	\$147,448,729
Percent Change	29%
Adjusted PNW	\$2,066,013

**Financial Accounts of the United States: Balance Sheet of Households**

Q1-Q4 Average Household NW of 2019	\$106,722,704
Q1-Q4 Average Household NW of 2022	\$139,342,817
Percent Change	31%
Adjusted PNW	\$2,089,045
Difference between Analysis Household with Non-Profit and Household only	\$18,732

**Table B.4: Financial Accounts of the United States: Balance Sheet of Households; Normalized by Total Households**

Q1-Q4 Average Household NW of 2019	\$106,722,704
Total Households 2019	128,579
NW per HH 2019	830.02
Q1-Q4 Average Household NW of 2022	\$139,342,817
Total Households 2022	131,202
NW per HH 2022	1,062.05
Percent Change in Average Household NW between 2019 and 2022	30.6%
Percent Change in Total Households between 2019 and 2022	2.0%
Percent Change in NW per Household between 2019 and 2022	28.0%
<b>Adjusted PNW</b>	<b>\$2,047,280</b>

With these adjustments, and using 2022 data, we have set the PNW limit at \$2.047 million, rounded from \$2,047,280. This takes inflation into account. It also considers the fact that the population of business owners has greater net worth than the overall population. PNW is now, and always has been, a relative concept: how does the wealth of business owners in presumptively economically disadvantaged groups relate to that of business owners generally? With this in mind, we believe that this number effectively meets the objectives allowing businesses to grow; establishing a PNW limit based on current and relevant data; and ensuring that the program remains narrowly tailored by not creating eligibility criteria that are overbroad.

## II. Adoption of the Proposal to Reduce the Full Balance of Retirement Accounts

In addition to proposing a new cap, the NPRM also proposed several changes to the components of the PNW calculation. Retirement savings (e.g., IRAs, 401k accounts) would be fully excluded from the assets side of the ledger. This was proposed to simplify the calculation (i.e., because the current requirement that retirement accounts be included, less tax and interest penalties for early distribution, has been difficult to implement) and to avoid penalizing retirement saving, which are means for wealth building and financial security. The Department examined SBA's rationale which eliminated the counting of these assets for PNW in its 8(a) program. (See, 91 FR 27650, May 11, 2020). We came to the same conclusion that doing so serves a valuable public policy for incentivizing, not punishing owners who save for retirement, and potentially expands the pool of firms eligible.

Both proposals offer a PNW definition that is easier than the current definition for the applicant to compute and for the certifier to verify. Both proposals act to exclude business owners who are wealthier than the top 10 percent of self-employed business owners are not presumed to be socially and economically disadvantaged. The final rule provides more of an incentive for business owners in the programs to save for retirement and at the same time be able to leverage these funds as needed, presumably in the same way non-disadvantaged owners are able to do.

## III. Periodic Adjustments

The previous adjustment of the PNW cap in January 2011 used the CPI to reflect the increase in prices due to inflation. However, while household net worth is expected to grow in nominal dollars over time, simply due to inflation, it is also subject to additional influences. For instance, the financial crisis of 2008 significantly reduced household net worth but a CPI adjustment would not account for that change caused by financial crisis. In consecutive periods of sustained economic growth that raises the net worth of all business owners in real terms (after adjusting for inflation), an adjustment using only the CPI could maintain a PNW cap that remains too low over time.



One alternative that DOT considered was using an automatic PNW threshold adjustment based on changes in aggregate household net worth data published quarterly by the Federal Reserve.<sup>109</sup> Another alternative DOT considered was automatically adjusting the PNW threshold based on the 90<sup>th</sup> percentile of PNW for self-employed business owners using future editions of the SCF, which is conducted every three years. An advantage for using the Federal Reserve data is that the information is readily and frequently available whereas analysis of the SCF requires specialized statistical skills and the updates would be limited to a 3-year cycle.

Table B.5 compares the nominal growth rates inferred by the CPI, the Federal Reserve measure of total household net worth, and the historic information of the 90<sup>th</sup> percentile of PNW (calculated with exclusion of retirement accounts) for male, White, non-Hispanic, self-employed business owners from previous editions of the SCF. While the SCF data might be considered the most precise in terms of accurately representing the proposed cap based on the 90<sup>th</sup> percentile of self-employed business owners, the Federal Reserve data historically shows very similar dynamics and is more accessible by being easily computed and by being updated more frequently. The CPI does not adequately reflect the underlying dynamics of household net worth. Using the CPI to adjust the cap going forward would result in a cap that may block participation from an increasing number of firms over time since household wealth of top households has tended to increase faster than CPI.

**Table B.5: Growth of CPI, Federal Reserve Total Household Net Worth, and Personal Net Worth 90<sup>th</sup> Percentile of White, Non-Hispanic, Male, Self-Employed Business Owners from the SCF (Indexed to 1992)**

Year	CPI	Federal Reserve Total Household Net Worth	Personal Net Worth 90 <sup>th</sup> Percentile from SCF
1992	100.0	100.0	100.0
1995	108.6	118.2	105.8
1998	116.2	154.1	183.0
2001	126.2	184.4	237.1
2004	134.6	228.2	327.3
2007	147.8	287.7	411.5
2010	155.4	263.9	325.3
2013	166.0	319.4	535.3
2016	171.1	383.5	498.0
2019	182.2	467.4	514.2

Therefore, DOT expects to make future adjustments to the PNW cap using growth in Federal Reserve measure of total household net worth from the Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h), using 2019 as the base year. The second adjustment is to normalize household net worth by the number of households as calculated by the Census ([Families and Households, Total Households \[TTLHH\]](#).)

The PNW adjustment will be made using the following formula:

<sup>109</sup> Federal Reserve, *Financial Accounts of the United States: Balance Sheet of Households and Nonprofit Organizations Table Z.1*, accessible at [https://www.federalreserve.gov/releases/z1/dataviz/z1/balance\\_sheet/chart/](https://www.federalreserve.gov/releases/z1/dataviz/z1/balance_sheet/chart/)

Future Year PNW Cap = [\$1,600,000] \*

Q1-Q4 Average Household Net Worth of Future Year /  
Total Households of Future Year

Q1-Q4 Average Household Net worth of 2019 (\$106,722,704  
million / Total Households of 2019 (128,579)

### Summary

Based on the above analysis, the final rule simplifies the PNW calculation by excluding retirement accounts and changes the PNW cap for the programs from \$1.32 million using the current treatment of retirement accounts to \$2.047 million excluding retirement accounts. The final rule also allows DOT to periodically increase the PNW cap using growth in Federal Reserve measure of total household net worth from *Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h)*.

Note that the above analysis is broad-based in that it analyzes the distribution of PNW for all self-employed business owners and does not focus on the types of businesses that would be expected to be involved in programs. Unfortunately, the SCF does not contain sufficient detail on the industry of the business owners to permit a more focused analysis.

## Appendix C: Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 ((RFA) 5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. When an agency issues a rulemaking proposal, the RFA requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.”<sup>(22)</sup> Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Out of an abundance of caution, DOT prepared an initial regulatory flexibility analysis (IRFA) to accompany the NPRM, which noted no expected significant economic impact on a substantial number of small entities. Immediately below, DOT sets forth a final regulatory flexibility analysis (FRFA) of this final rule addressing the following questions: (1) Is there a need for the regulatory action? (2) what are the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues and a statement of any changes made in the proposed rule as a result of the comments; (3) What is DOT’s estimate of the number of small entities to which the rule will apply. (4) What is the projected reporting, record keeping and other compliance requirements of the rule? and (5), what are alternatives to the rule.

1. *Is there a need for the regulatory action?*

2.

In general, the rule modifications provide greater clarity and flexibility to DOT recipients and enhance firms’ ability to compete on a level playing field for DOT-assisted contract opportunities. The final rule also implements the IIJA, a statutory enactment, which directs the Secretary to establish uniform criteria for use by state governments in certifying whether a business qualifies as a small for purposes of the program; and to establish minimum requirements for reporting by state entities information concerning awards, commitments, and achievements of these firms and other information deemed necessary. The rule codifies changes to previous regulations concerning program eligibility, participation by DBEs and ACDBEs, and compliance by program participants. This action is needed to update program thresholds for inflation, to clarify several policies that DOT already has put in place, and to apply revised regulations to meet new scenarios the program faces.

3. *A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues and a statement of any changes made in the proposed rule as a result of the comments.*

The Department received widespread support for the proposed changes because they largely reduce burden, streamline, and update excessively prescriptive, outdated certification requirements, codify COVID-19 flexibilities that have proven successful, clarify unintended ambiguities, and facilitate the interstate certification process. The Department received positive responses to the multiple proposed amendments that would increase the quality and quantity of DBE/ACDBE firm opportunities as a result of increasing the personal net worth cap for DBE and ACDBE owners; adding a DBE performance plan requirement for design-build projects; expanding State DBE directories to allow firms to self-market and help prime contractors more easily connect with qualified DBE firms; and modernizing the counting and usage of material suppliers.

Some State agencies expressed concern about the burdens associated with expanding their DBE directories and the expanded reporting requirements. State agencies offered suggestions on ways to further reduce their burden associated with DBE/ACDBE certification. There were no alternatives to the RIA calculations offered, however, the Department here summarizes XX general comments on the burden estimates or data presented in the IRFA.

- One commenter stated that the parties affected by the rulemaking---recipients, contractors, and DBE firms will endure greater administrative burdens. In their view, parties effected may not have sufficient staff to meet the increased demand for data, and the “cost savings” indicated by the Regulatory Impact Analysis (RIA) are not likely to be borne out by parties other than US DOT, if the proposed rule changes are implemented. The commenter calculated that while the NPRM RIA states that the proposed change to the reporting requirements would cost recipients an annual \$12.1 million; if divided among 53 FHWA recipients, each recipient would incur an additional cost of \$228,301.88 to provide the required reporting contained in just one section of the program. For cost savings identified in the RIA, the commenter did not believe the efforts would reduce the burdens on recipients and that in their view, many recipients would have to make substantial organizational changes to their reporting structure or offices to accommodate any reduction in work in some areas, while re-training existing staff or hiring new staff to meet the greater demands in other areas. Hiring and training are time consuming and cost-intensive, as identified in many management reviews the commented pointed out.

Five state DOTs, which submitted joint comments, believed the increased reporting costs were underestimated and questioned whether cost savings would indeed occur. They noted that the cost savings items noted (e.g., virtual on-site visits and other flexibilities) should not be included in the calculation because those were already allowed through DOT guidance.

Although as noted above there will be added costs to data reporting requirements, we believe overall, recipients will see an overall net cost savings of \$58.70 million (Present Value (PV) 3%) and \$47.33 million (PV, 7%).

- A transit agency trade group commented on the proposal regarding credit allocated to material suppliers; noting the RIA mentioned that a cap on credit may have a distributional effect of taking work away from DBE suppliers.

As noted in the Final rule and this RIA, the Department changed the proposal to limit the limit to 40 percent the credit that can be obtained from dropped shipped goods, provided the DBE bears risk for loss or damage of such items. This is a change from a revision proposed in the NPRM, which suggested allowing prime contractor’s expenditures with DBE suppliers (manufacturers, regular dealers, distributors, and transaction facilitators) to count no more than 50 percent of the contract goal, with exceptions on a contract-by-contract basis with prior approval of the OA. The added definition of “distributor” may have a distributional effect of taking work away from this category of DBE suppliers and providing more opportunities to DBEs who perform other types of work.

- A consulting firm commented that the Department did not provide information on how FTA’s \$670,000 threshold was developed, viewing the figure as baseless. The commenter asked that the Department publish the RIA results, which we are doing here.
- A transit agency noted that the NPRM RIA did not include registration fees for conferences and trainings (See appendix A above). This is correctly noted; however, no changes were made because this would be too speculative, in part since conference fees vary so widely, many are free, and there is no requirement to attend.

- In regards to collecting bidders list information, a state DOT commented that its practice is to request all prime bidders to submit a list of all firms that they received quotes or proposals from. Collection of this data is done monthly and takes approximately 2-3 hours to complete. The state DOT estimated that the addition of inputting the data into a USDOT database would take approximately 20 minutes for each project that MoDOT awards (e.g., on a monthly basis, 15 – 40 projects are awarded, which would mean approximately 5 – 13 hours per month of data entry). This entry does not include time it would take to enter Local Program Agency (LPA) projects which are let by cities and counties during various times of the month. In the commenters view, this differed from the NPRM’s preamble estimate of 8 hours. The commenter’s estimate of 20 minutes per project includes aggregating the data received monthly and entering into a database for such a large IT contract or whether recipients would be required to subscribe or pay into the system, and how much that cost would be.

The Department did not make a change to its estimates based on this comment.

4. *What is DOT’s estimate of the number of small entities to which the rule will apply.*

Small entities to which the final rule will apply include: (1) firms applying to DOT’s programs, (2) existing ACDBEs and DBEs, and (3) some firms recently decertified from DOT’s programs<sup>110</sup> (approximately 200 ACDBE applicants and 4,175 DBE applicants per year). In the first year of analysis (2020), there are approximately 3,700 ACDBEs and 41,900 DBEs. Each year there is a net increase home state certification of 70 ACDBEs and 1,075 DBEs.<sup>111</sup> In the 2<sup>nd</sup> year of analysis there are 3,770 ACDBEs and 42,975 DBEs, in the 3<sup>rd</sup> year of analysis there are 3,840 ACDBEs and 44,050 DBEs, and in the 10<sup>th</sup> year of analysis there are 4,400 ACDBEs and 52,650 DBEs.

5. *What are the projected reporting, record keeping and other compliance requirements of the rule?*

The expansion of DOT’s data collection efforts would improve DOT’s ability to implement and evaluate the effectiveness of its programs. When developing the final rule, DOT considered the impact that the final rule would have on small entities, and chose amendments intended to alleviate burden on small entities while also providing additional opportunities for ACDBEs and DBEs. For example, the revision to the PNW cap makes it easier for SEDOs and certifying agencies to calculate PNW and would also enhance opportunities for SEDOs to participate in DOT’s programs.

DOT also anticipates other revisions will result in net benefits for small entities; specifically, DBEs and ACDBEs. For instance, we are adding clarifying instructions and terminology to assist applicants in filling out the application and adding entries to fields in UCP directories that will allow firms to describe their work more succinctly and in turn, help prime contractors find available firms. These time and cost benefits are described in the Paperwork Reduction Act supporting statements accompanying the July 21, 2022 and the supporting documentation submitted along with this final rule that summarizes the comments in these areas.

6. *What are the alternatives to this rule?*

The alternative to the final rule would be to keep DOT's processes and procedures as currently stated in the Code of Federal Regulations. However, because so much of this rule either modernizes practices and interpretations already in place or updates outdated provisions, the Department believes the revisions proposed are warranted. The alternative of doing nothing would negatively impact program operations generally and on DBEs, ACDBE, applicant firms, recipients, prime contractors and the Department's Operating Administrations in particular. Some of the clarifications in this rule, for instance in the certification context, already have been applied at the appeal level but are not widely known. This rule makes those clarifications and resets the program rules in an efficient and effective manner.

Consistent with the findings in the IRFA, and the lack of any comments received on it, the Department of Transportation hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.