



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

**[Docket No. FRA-2019-0004-N-8]**

### **Proposed Agency Information Collection Activities; Comment Request**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that FRA is forwarding the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the information collections and their expected burden. On February 22, 2019, FRA published a notice providing a 60-day period for public comment on the ICRs.

**DATES:** Interested persons are invited to submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit written comments on the ICRs to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: [oira\\_submissions@omb.eop.gov](mailto:oira_submissions@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590 (telephone: (202) 493-6292); or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New

Jersey Avenue, SE, Washington, DC 20590 (telephone: (202) 493-6132).

**SUPPLEMENTARY INFORMATION:** The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On February 22, 2019, FRA published a 60-day notice in the Federal Register soliciting comment on the ICRs for which it is now seeking OMB approval. See 84 FR 5805. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30-days' notice for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.10(b); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICRs regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to

minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Federal Railroad Administration Disadvantaged Business Enterprise (DBE) Disparity Study.

OMB Control Number: 2130-NEW.

Abstract: Congress mandated a disparity study evaluating participation by small and disadvantaged businesses in railroad contracts. This study will ensure that the requirements of the Disadvantaged Business Enterprise (DBE) program for federally funded projects administered by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA), under 49 CFR part 26, are executed properly. The purpose of this disparity study is to evaluate the market for the availability, utilization, and capability of small and disadvantaged businesses in publicly-funded railroad contracts. The data provided by the study will be used to inform FRA and DOT on the state of small and disadvantaged business contracting in the railroad industry and will be a component of FRA's Title VI compliance program.

Currently, FRA does not have statutory authority to administer a DBE program like those in place at FHWA, FTA, and the Federal Aviation Administration (FAA). DBE regulations applicable to FHWA, FTA, and FAA require State and local transportation agencies that receive DOT financial assistance to establish goals for the participation of DBEs. Each DOT-assisted State and local transportation agency is required to establish annual DBE goals, review the scope of anticipated, large prime

contracts, and establish contract-specific DBE subcontracting goals. Without statutory DBE authority, FRA can only encourage recipients of its Federal financial assistance to carry out their projects in accordance with DBE guidelines, in support of DBEs, Veteran-Owned Small Businesses, and Service Disabled Veteran-Owned Small Businesses. Despite the lack of a formal DBE program, FRA fully supports the objectives of DBE programs and all FRA's grantees are required to avoid discrimination in contracting.

In late 2015, Congress passed the "Fixing America's Surface Transportation Act" (FAST Act), Pub. L. 114-94. The FAST Act codified the requirement for FRA, as the Secretary of Transportation's (Secretary) delegate, to conduct "a nationwide disparity and availability study on the availability and use of small business concerns owned and controlled by socially and economically disadvantaged individuals and veteran-owned small businesses in publicly funded intercity rail passenger transportation projects." See FAST Act, sec. 11310, Small Business Participation Study. The legislation requires that: "Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a report containing the results of the study ... to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives." Id.

This study will include three surveys and a series of webinars with focus groups. In Survey #1, FRA will contact all FRA grant recipients to identify prime and sub-contractors, consultants, and vendors that received grant funds and the amount of those funds. This survey is necessary to determine the percentage of FRA grant funding and contracts received by DBEs.

Survey #2 will focus on DBE and non-DBE firms in the railroad industry. The survey will solicit information regarding experiences with discrimination, as well as experiences in bidding with the grantees and their prime contractors and consultants. This approach will ensure that the survey responses are accurate.

Because response rates to voluntary surveys tend to be low, FRA will develop an outreach campaign, use professionally designed surveys, incorporate cover letters signed by senior FRA officials, include multiple reminders, and enable a dedicated telephone line and email address for requesting replacement surveys and addressing other inquiries.

The study team will also collect information regarding discrimination and experiences with publicly funded railroad contracts through webinar focus groups comprised of DBE and non-DBE business owners, as well as procurement personnel at FRA and its grantees. These focus groups likewise will explore barriers to the full and fair participation of DBEs in FRA's market area and that of its grantees. The focus groups also will explore whether USDOT grant programs and policies adequately address these challenges. FRA expects these focus groups will reveal valuable information about the realities affecting DBE firms and will inform the agency how to develop its policy responses to those challenges.

In Survey #3, the study team will verify the DBE status of eligible firms. The comparison of DBEs' participation relative to their prevalence by industry and geography is crucial to developing sound, statistical evidence of potential discrimination. The study will cross-reference additional listings and directories of DBE firms to improve the accuracy of the classification of firms. FRA will take the additional step of validating

putative assignments using telephone surveys of a statistically random sample of businesses from its database.

Type of Request: Approval of a new collection of information.

Affected Public: Businesses.

Form(s): FRA F 6180.171; FRA F 6180.172; FRA F 6180.173; FRA F 6180.174.

Respondent Universe: 35,000 Grantees, Sub-Grantees, Prime Contractors, Sub-Contractors, DBEs, and Non-Disadvantaged Business Firms.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 7,750.

Total Estimated Annual Burden: 3,151 hours.

Total Estimated Dollar Cost: \$181,655.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501-3520.

**Brett A. Jortland,**

*Acting Chief Counsel.*

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