

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30, 31, 33, 35, and 40

[Docket ID NO. OA-2002-0001; FRL-7528-1]

RIN 2020-AA39

Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to revise its Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) Program and rename it as EPA's Disadvantaged Business Enterprise (DBE) Program. EPA is proposing to delete existing MBE and WBE specific provisions in regulations for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, State and Local Assistance, and Research and Demonstration Grants and is proposing to consolidate and add to these provisions in a new regulation. The new regulation is intended to harmonize EPA's statutory DBE procurement objectives with the United States Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097 (1995). In *Adarand*, the Supreme Court extended strict judicial scrutiny to federal programs that use racial or ethnic criteria as a basis for decision making. This proposed rule reflects EPA's efforts to ensure that the compelling government interest of remedying past and current racial discrimination through the use of agency-wide DBE procurement objectives at EPA is served by a narrowly-tailored program. If you are a recipient of an EPA financial assistance agreement or an entity receiving an identified loan under a financial assistance agreement capitalizing a revolving loan fund, this proposed rule may affect you.

DATES: *Comments:* You must send comments electronically, by mail or through hand delivery/courier on or before January 20, 2004.

ADDRESSES: Send your comments (in triplicate, if possible) to: Office of Environmental Information Docket Environmental Protection Agency, Mailcode 28221T, 1200 Pennsylvania

Ave., NW., Washington, DC 20460, Attention Docket ID No. OA 2002-0001. Please use a font no smaller than 12pt. Comments may also be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in I.B. of the **SUPPLEMENTARY INFORMATION** section.

Public hearings: EPA will hold public hearings on this proposed rule. If you wish to speak, contact the person(s) named under the section entitled "For Further Information Contact." Verbatim transcripts of the hearings will be available for reading and copying at the official public docket for this action under Docket ID NO. OA-2002-0001. See Supplementary Information I.A.1.

FOR FURTHER INFORMATION CONTACT: Mark Gordon, Attorney Advisor at (202) 564-5951, Kimberly Patrick, Attorney Advisor at (202) 564-5386, or David Sutton, Deputy Director at (202) 564-4444, OSDBU, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OA-2002-0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1742, and the telephone number for the Office of Environmental Information is (202) 566-1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment

system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.A.1 above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA