

concerns that do not meet the SBA/DOT size standards (EPA's 8% and 10% statutes), Disabled Americans (EPA's 10% statute), private and voluntary organizations controlled by individuals who are socially and economically disadvantaged (EPA's 10% statute), entities which are certified under criteria which are inconsistent with EPA's DBE Program criteria (EPA's 8% and 10% statutes) and any entity claiming that it is owned or controlled by socially and economically disadvantaged individuals under EPA's 8% statute. SBA and DOT currently do not certify the first three categories and, as to the fifth category, requires a showing of ownership and control. Accordingly, these categories of individuals or groups may initially come to EPA for MBE or WBE certification if that individual or group is also unable to obtain MBE or WBE certification from an Indian Tribal, State, or local Government or an independent private organization in accordance with EPA's 8% or 10% statute as applicable. Finally, in implementing its own certification program, the Agency may use EPA Private Certifiers to assist the Agency in its certification determinations.

EPA has had a longstanding policy of requiring U.S. citizenship for eligibility as an MBE or WBE. See "EPA Guidance for Utilization of S/M/WBE in Procurement under Assistance Agreements" dated 05/22/86. This policy was continued in the Agency's 1997 Guidance. Currently, the Agency's regulatory definition of an MBE requires U.S. citizenship for a minority group member. See 40 CFR 35.6015(a)(26)(iii). EPA believes that its requirement for U.S. citizenship is consistent with SBA's 8(a) Business Development Program regulations at 13 CFR 124.101, and its Small Disadvantaged Business Programs regulations at 13 CFR 124.1002(d). While the Agency recognizes that DOT allows lawfully admitted permanent residents to qualify for certification under its DBE Program (49 CFR 26.67), the Agency believes that given its close association with SBA requirements, it is appropriate for U.S. citizenship to be a requirement for certification by EPA as well. In addition, at this time, EPA lacks data regarding how many additional entities EPA would have to certify if the Agency were to change its longstanding policy on this issue and the possible resource implications of such a policy change; the Agency believes that changing its policy on this issue could result in a substantial increase to the number of entities EPA would have to certify.

EPA welcomes public comment on these proposed changes, especially from large businesses and members of the DBE community since they are most likely to be directly affected if these proposed changes become part of the final rule. In addition, because EPA continues to explore opportunities to standardize DBE certification with other Federal agencies, the Agency encourages specific comments on the requirement for U.S. citizenship under this program, and the resource implications for the Agency if it were to change its policy of requiring U.S. citizenship for certification by EPA.

*Section 33.205 How Does an Entity Become Certified by EPA?*

This section describes the EPA certification application process, including procedures regarding the filing of an application, application processing, EPA's ownership and/or control determination, EPA's disadvantaged determination and evaluation standards.

*Section 33.206 Is There a List of Certified MBEs and WBEs?*

This provision provides two ways someone can obtain a list of certified MBEs and WBEs under EPA's DBE Program, via internet or mail.

*Section 33.207 Can an Entity Reapply to EPA for MBE or WBE Certification?*

This section describes how long an entity must wait before reapplying to EPA for MBE or WBE certification.

*Section 33.208 How Long Does an MBE or WBE Certification From EPA Last?*

This provision states that MBE or WBE certifications from EPA generally last for three years.

*Section 33.209 Can EPA Re-Evaluate the MBE or WBE Status of an Entity After EPA Certifies It To Be an MBE or WBE?*

This section explains procedures for removal of an entity from the EPA list of certified MBEs and WBEs. Credible information calling into question an entity's eligibility as an MBE or WBE may come from any source.

*Section 33.210 Does an Entity Certified as an MBE or WBE by EPA Need To Keep EPA Informed of Any Changes Which May Affect the Entity's Certification?*

This provision requires an annual affidavit from EPA certified MBEs or WBEs affirming that no changes in circumstance have occurred that affect the entity's status as an MBE or WBE.

In addition to this annual affidavit, MBEs and WBEs certified by EPA are under a constant requirement throughout the year to keep EPA informed of any changes in circumstance which might affect that entity's status as an MBE or WBE.

*Section 33.211 What Is an EPA Private Certifier?*

This provision generally describes the role of an EPA Private Certifier. In all cases, EPA shall make the determination as to whether a particular entity should be certified as an MBE or WBE. EPA Private Certifiers are used by EPA merely to assist in the Agency's certification determination.

*Section 33.212 Can an EPA Private Certifier Charge a Fee to an Entity To Process the Entity's Application for MBE or WBE Certification?*

A reasonable fee, not contingent on whether the entity is eventually certified as an MBE or WBE by EPA, may be charged with the permission of the Agency.

*Section 33.213 How Does an Organization or Business Concern Become an EPA Private Certifier?*

This provision establishes the means by which an organization or business concern may become an EPA Private Certifier. In addition, this provision describes some of the requirements an organization or business concern must meet in order to be an EPA Private Certifier.

*Section 33.214 How Long May an Organization or Business Concern Be an EPA Private Certifier?*

The length of time an organization or business concern may be an EPA Private Certifier will be negotiated between EPA and that organization or business concern.

*Section 33.215 Is There a List of EPA Private Certifiers?*

This provision provides two ways someone can obtain a list of EPA Private Certifiers under EPA's DBE Program, via internet or mail.

*Section 33.216 What Is the Process for Appealing or Challenging an EPA MBE or WBE Certification Determination?*

This section describes the way in which an entity who has been denied MBE or WBE certification by EPA or a third party who disagrees with EPA's decision to certify an entity as an MBE or WBE can submit an appeal or challenge to the Agency. Included in these procedures are filing deadlines, appeal or challenge content