

Loan Fund (BCRLF) Programs, recipients are not required to apply the fair share objective requirements to an entity receiving an identified loan in the amount of \$250,000 or less or to an entity receiving a combination of loans totaling in the amount of \$250,000 or less in any one fiscal year. These exemptions are designed to minimize administrative burdens on EPA recipients. Recipients exempted by this provision are not exempted from the other requirements of the rule. The Agency is requesting comment, including comments from Tribes, on whether the exemptions should apply to other requirements, specifically the good faith efforts and reporting requirements. Commenters are encouraged to submit relevant burden and/or cost information in support of their comments to extend the exemption to other requirements of this Rule, including the good faith efforts and reporting requirements.

EPA is proposing to exempt Tribal and tribal consortia recipients from applying the fair share objective requirements to eligible program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B, due to the nature of these program grants and the unique nature of eligible recipients.

Finally, a recipient of a Technical Assistance Grant (TAG) would not be required to apply the fair share objective requirements of this Subpart to that grant. This provision would not, however, exempt such recipients from any other requirements of this Part.

*Section 33.412 Is There a Special Rule for an Insular Area or Indian Tribal Government Recipient?*

Currently, Insular Area and Indian Tribal Government recipients are not required to negotiate fair share objectives with EPA. For the most part, EPA is proposing to treat Insular Area and Indian Tribal Government recipients the same as other recipients with regard to the fair share objective negotiation requirements. For example, the fair share objectives of another recipient may be used so long as the relevant geographic market is the same or substantially similar.

The impact of this change on Indian Tribal Government recipients would be minimized by the general exemption described in § 33.411(a). The impact is further minimized in the case of tribes and tribal consortia by the exemption for eligible program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B, described in § 33.411(c). As with other recipients, fair share

objectives would remain in effect for three years.

EPA is proposing to phase-in the MBE and WBE fair share objective negotiation process for Insular Area and Indian Tribal Government recipients over three years in order for such recipients to adjust to this change in policy. The Agency will develop guidance on what specific factors should be taken into account in determining the phase-in period for these recipients. In the interim, such recipients must still comply with all other requirements of this Rule.

**Subpart E—Recordkeeping and Reporting**

*Section 33.501 What Are the Recordkeeping Requirements of This Part?*

A recipient is required to maintain the records documenting its compliance with the requirements of this Part, including documentation of its and its prime contractor's good faith efforts and data relied upon in formulating its fair share objectives. A recipient must also comply with the applicable retention and access requirements for its financial assistance agreement, *e.g.*, 40 CFR 30.53 (for institutions of higher education, hospitals and other non-profit organizations); 40 CFR 31.42 (for Indian Tribal, State and local Government recipients); and 40 CFR 35.6705, 35.6710 (for Superfund Response Action Cooperative Agreements). In addition, a recipient of a Continuing Environmental Program Grant (*e.g.*, a State) or other annual grant would be required to create and maintain a bidders list. Such a list must only be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. (See *e.g.*, 40 CFR 33.303). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. Such a list must only be kept until the project period for the identified loan has ended. Recipients are required to comply with these recordkeeping requirements, even if they are exempted by § 33.411 from applying the fair share objective requirements. The Agency is requesting comments on whether the

exemption should be extended to the recordkeeping requirements.

Commenters are encouraged to submit relevant burden and/or cost information in support of their comment to extend the exemption to the recordkeeping requirements.

*Section 33.502 What Are the Reporting Requirements of This Part?*

The effectiveness of EPA's DBE Program may be measured through its reporting requirements. These reports measure EPA's progress in achieving the national objectives established by EPA's 8% and 10% statutes.

All financial assistance agreement recipients must report on a quarterly basis except for recipients of continuing environmental program grants, and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance awards under 40 CFR Part 30, who report on an annual basis. Examples of continuing environmental program grants include those specified in 40 CFR Part 35, Subpart A, as well as Performance Partnership Grants (PPGs) and GAP Grants for Indian Tribal governments and intertribal consortia. Recipients of grants capitalizing CWSRF or DWSRF Programs have historically reported MBE/WBE participation quarterly, and will continue to do so under this rule. Recipients of financial assistance agreements that capitalize revolving loan programs must require entities receiving identified loans to submit their MBE and WBE participation reports on a quarterly basis to the financial assistance agreement recipient, rather than to EPA. Private and non-profit organization loan recipients are not required to maintain a certified procurement system (*e.g.*, see 40 CFR 35.6055(a)).

In the past, EPA has presumed that all financial assistance award funds to Indian Tribal Government and Insular Area recipients have benefitted MBEs. Accordingly, despite the reporting requirements contained in 40 CFR Part 31, as a matter of policy, EPA has not uniformly required Indian Tribal Government and Insular Area recipients to report their degree of MBE or WBE utilization. In this proposed Subpart, Indian Tribal Government and Insular Area recipients are treated the same as other recipients with regard to recordkeeping and reporting requirements. All such recipients would therefore be required to retain records and report on actual MBE and WBE utilization.

The reporting requirements are applicable to all recipients, even those exempted from applying the fair share