

40 CFR Part 35

Grant programs—environmental protection. Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 40

Research and Demonstration Grants—Projects involving construction.

Dated: July 9, 2003.

Linda J. Fisher,
Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 30—[AMENDED]

1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*; 15 U.S.C. 2601 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 241, 242(b), 243, 246, 300f, 300j–1, 300j–2, 300j–3; 1857 *et seq.*; 6901 *et seq.*; 7401 *et seq.*; OMB circular A–110 (64 FR 54926, October 8, 1999).

§ 30.44 [Amended]

2. Section 30.44 is amended by removing and reserving paragraph (b).

PART 31—[AMENDED]

3. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; 42 U.S.C. 6901 *et seq.*; 42 U.S.C. 300f *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 9601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1401 *et seq.*

§ 31.36 [Amended]

4. Section 31.36 is amended by removing and reserving paragraph (e).
5. Part 33 is added as follows:

PART 33—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

Subpart A—General Provisions

Sec.

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- 33.206 Is there a list of certified MBEs and WBEs?
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- 33.209 Can EPA re-evaluate the MBE or WBE status of an entity after EPA certifies it to be an MBE or WBE?
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- 33.212 Can an EPA Private Certifier charge a fee to an entity to process the entity's application for MBE or WBE certification?
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- 33.404 When must a recipient negotiate fair share objectives with EPA?
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- 33.407 How long do MBE and WBE fair share objectives remain in effect?
- 33.408 May a recipient use race and/or gender conscious measures as part of this program?
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- 33.410 Can a recipient be penalized for failing to meet its fair share objectives?
- 33.411 Who may be exempted from this subpart?
- 33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

Subpart E—Recordkeeping and Reporting

- 33.501 What are the recordkeeping requirements of this part?
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- 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

Appendix to Part 33—Term and Condition

Authority: 42 U.S.C. 7601 note, 42 U.S.C. 4370d, 15 U.S.C. 637 note, 42 U.S.C. 9605(f); E.O. 11625, 36 FR 19967, 3 CFR, 1971 Comp., p. 213; E.O. 12138, 49 FR 29637, 3 CFR, 1979 Comp., p. 393; E.O. 12432, 48 FR 32551, 3 CFR, 1983 Comp., p. 198.

Subpart A—General Provisions

§ 33.101 What are the objectives of this part?

The objectives of this part are:

- (a) To ensure nondiscrimination in the award of contracts under EPA financial assistance agreements;
- (b) To ensure that EPA's DBE Program is narrowly tailored in accordance with applicable law;
- (c) To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements; and
- (d) To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.

§ 33.102 When do the requirements of this part apply?

The requirements of this part apply to procurement under EPA financial assistance agreements performed entirely within the United States, whether by a recipient or its prime contractor, for construction, equipment, services and supplies.

§ 33.103 What do the terms in this part mean?

Terms not defined below shall have the meaning given to them in 40 CFR part 30, part 31 and part 35 as applicable. As used in this part:

Availability analysis means documentation of the availability of MBEs and WBEs in the relevant geographic market in relation to the total number of firms available in that area.

Award official means the EPA Regional or Headquarters official delegated the authority to execute financial assistance agreements on behalf of EPA.