

an MBE or WBE, and immediately remove the entity from the EPA OSDBU list of certified MBEs and WBEs.

(c) If EPA OSDBU finds that the entity continues to qualify as an MBE or WBE, the determination remains in effect for three years from the date of the decision under the same conditions as if the entity had been granted MBE or WBE certification under § 33.205.

§ 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?

(a) An entity certified as an MBE or WBE by EPA OSDBU must provide EPA OSDBU, every year on the anniversary of the date of its certification, an affidavit sworn to by the entity's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the entity's circumstances affecting its ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material changes in the information provided in its application form. Failure to comply may result in the loss of MBE or WBE certification under EPA's DBE Program.

(b) An entity certified as an MBE or WBE by EPA OSDBU must inform EPA OSDBU in writing of any change in circumstance affecting the MBE or WBE's ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material change in the information provided in its application form. The MBE or WBE must attach supporting documentation describing in detail the nature of such change. The notice from the MBE or WBE must take the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The MBE or WBE must provide the written notification within 30 calendar days of the occurrence of the change.

§ 33.211 What is an EPA Private Certifier?

An EPA Private Certifier is an organization or business concern assisting EPA OSDBU in its determination of whether an entity applying for MBE or WBE certification is owned and/or controlled by one or more individuals claiming disadvantaged status. EPA OSDBU may elect to arrange for one or more EPA Private Certifiers to perform certain functions in the certification process;

however the determination as to whether an entity will be certified as an MBE or WBE under this program shall only be made by EPA OSDBU. If EPA OSDBU elects to use EPA Private Certifiers to perform certain functions in the certification process, the provisions of §§ 33.212 through 33.214 will apply to those EPA Private Certifiers. EPA OSDBU may establish more detailed standards regarding qualifications, monitoring, procedures and use, if any, of EPA Private Certifiers in specific contracts or agreements between EPA and the EPA Private Certifiers.

§ 33.212 Can an EPA Private Certifier charge a fee to an entity to process the entity's application for MBE or WBE certification?

With EPA OSDBU's approval, an EPA Private Certifier may charge a reasonable fee to an entity in order to screen the entity's application for completeness. The fee must be for actual services rendered and must not be related to whether or not the entity is found to be owned and/or controlled by one or more individuals claiming disadvantaged status.

§ 33.213 How does an organization or business concern become an EPA Private Certifier?

(a) EPA may execute contracts or agreements with organizations or business concerns seeking to become EPA Private Certifiers. Any such contract or agreement will include provisions for the oversight, monitoring, and evaluation of all certification related activities by EPA.

(b) The organization or business concern must demonstrate a knowledge of EPA and SBA regulations regarding ownership and control, as well as business organizations and the legal principles affecting their ownership and control generally, including stock issuances, voting rights, convertibility of debt to equity, options, and powers and responsibilities of officers and directors, general and limited partners, and limited liability members.

(c) The organization or business concern must also, along with its principals, demonstrate good character. Good character does not exist for these purposes if the organization or concern or any of its principals:

(1) Is debarred or suspended under any Federal procurement or non-procurement debarment and suspension regulations; or

(2) Has been indicted or convicted for any criminal offense or suffered a civil judgment indicating a lack of business integrity.

(d) As a condition of approval, EPA may require that appropriate officers

and/or key employees of the organization or business concern attend a training session on EPA and SBA rules and requirements.

(e) An organization or business concern seeking to become an EPA Private Certifier must agree to provide access to EPA of its books and records when requested, including records pertaining to its certification related activities.

(f) EPA will include in any contract or agreement document authorizing an organization or business concern to act as an EPA Private Certifier appropriate conditions to prohibit conflicts of interests between the EPA Private Certifier and the entities for which it processes MBE or WBE certifications.

§ 33.214 How long may an organization or business concern be an EPA Private Certifier?

(a) EPA's contract or agreement with the EPA Private Certifier will specify how long the organization or business concern may be an EPA Private Certifier.

(b) EPA may terminate a contract or agreement with an organization or business concern which is an EPA Private Certifier for the convenience of the Government at any time, and may terminate the contract or agreement for default where appropriate. Specific grounds for termination for default include, but are not limited to:

(1) Charging improper, unreasonable or contingent fees in violation of § 33.212; or

(2) Engaging in prohibited business transactions with firms for which it processes MBE or WBE certification applications in violation of § 33.213(f).

§ 33.215 Is there a list of EPA Private Certifiers?

EPA OSDBU will maintain a list of approved EPA Private Certifiers on EPA OSDBU's Home Page on the Internet. Any interested person may also obtain a copy of the list from EPA's OSDBU. The list is available at: www.epa.gov/osdbu.

§ 33.216 What is the process for appealing or challenging an EPA MBE or WBE certification determination?

(a) An entity which has been denied MBE or WBE certification by EPA OSDBU under § 33.205 or § 33.209 may appeal that denial. A third party may challenge EPA OSDBU's determination to certify an entity as an MBE or WBE under § 33.205 or § 33.209.

(b) Appeals and challenges must be sent to the Director of OSDBU at Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 1230A, Washington, DC 20460.