

## **SECTION I: PART A OF THE SUPPORTING STATEMENT**

### **1. IDENTIFICATION OF THE INFORMATION COLLECTION**

#### 1(a) Title and Number of the Information Collection

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

#### 1(b) Short Characterization

EPA is revising its Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) Program and renaming it as EPA's Disadvantaged Business Enterprise (DBE) Program. EPA is deleting existing MBE and WBE specific provisions in 40 CFR Part 30 (Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations), Part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 35 (State and Local Assistance), and Part 40 (Research and Demonstration Grants) and is consolidating and adding to these provisions in a new Part 33. Part 33 is intended to harmonize EPA's statutory DBE procurement goal requirements 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 rule reflects EPA efforts to ensure that the compelling government interest of remedying past and current racial discrimination through the use of agency wide DBE procurement goals at EPA is served by a narrowly tailored program.

Reporting and recordkeeping requirements for EPA's existing MBE and WBE specific provisions in 40 CFR Parts 30 and 31 are covered by existing ICR control number 2090-0025, with an expiration date of October 31, 2009. That ICR encompasses EPA's MBE/WBE Reporting Form for MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements for all EPA financial assistance programs, Form 5700-52A. That ICR is not superseded by this ICR and will remain in effect.

MBE/WBE reporting and recordkeeping requirements for EPA's Clean Water State Revolving Fund (CWSRF) Program codified in 40 CFR 35.3145(d) and (e) are covered by ICR control number 2040-0118, with an expiration date of June 30, 2008; MBE and WBE reporting and recordkeeping requirements for EPA's Drinking Water State Revolving Fund (DWSRF) Program, codified in 40 CFR 35.3575(d) are covered by ICR control number 2040-0185, with an expiration date of February 28, 2010; MBE/WBE reporting and recordkeeping requirements for EPA's Superfund Program regulations are covered by ICR control number 2050-0179, with an expiration date of December 31, 2009. Those ICRs are not superseded by this ICR and will remain in effect.

Under the new DBE rule EPA is requiring an entity to be certified in order to be considered an MBE or WBE under EPA's DBE Program for its financial assistance programs. EPA is requiring an MBE/WBE to first try to become certified by a federal agency (e.g., the Small Business Administration (SBA), or the Department of Transportation (DOT)), or by a State,

locality, Indian Tribe or independent private organization so long as their applicable criteria match those under Section 8(a)(5) and (6) of the Small Business Act and applicable implementing regulations. EPA will only certify firms that cannot get certified by one of these entities. Accordingly, EPA, working through Contractors (“EPA Private Certifiers”), may certify some MBE and WBE contractors. To qualify as an MBE or WBE under EPA’s programs an entity must establish that it is owned and/or controlled by socially and economically disadvantaged individuals who are of good character and are citizens of the United States.

EPA currently recognizes an entity which is certified as socially and economically disadvantaged by the SBA, certified as an MBE by a State or Federal Agency or self-certifies that it is an independent business concern owned and controlled by a minority group member(s) as an MBE. See, e.g., 40 CFR 35.6015(a)(26). EPA currently does not require WBEs to be certified.

This information collection involves the information which will need to be submitted in order for a respondent to be certified by EPA. It also includes related information.

EPA estimates that information collection for MBE/WBEs will involve 6,731 respondents at a cost of \$1300 each or a total of \$8,750,300 over a three year period.

This ICR examines the respondent reporting and recordkeeping requirements and associated hour and cost burden of the rule for the certification and related requirements. Increases in burden for existing ICRs resulting from the rule that are not certification-related (e.g. reporting and recordkeeping) will be addressed in renewals for the existing ICRs.

## **2. NEED/AUTHORITY FOR THE COLLECTION**

### (2)(a) Need/Authority for this Collection

This ICR is for the purpose of ensuring that EPA’s statutory DBE procurement goal requirements are implemented in harmony with the United States Supreme Court’s decision in Adarand Constructors, Inc. v. Peña, 115 S. Ct. 2097 (1995).

EPA’s legal authorities for its DBE Program are:

Public Law 102-389, a 1993 appropriations act (42 U.S.C. §4370d) (EPA’s 8% statute), which provides in pertinent part:

“The Administrator of the Environmental Protection Agency shall, hereafter, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. § 637 (a) (5) and(6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to

include women...”

Public Law 101-549, Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. §7601 note) (EPA’s 10% statute), which provides in pertinent part:

“In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments which use funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of the total Federal funding for such research will be made available to disadvantaged business concerns.”

### **3. NON DUPLICATION, CONSULTATIONS, AND OTHER COLLECTION CRITERIA**

#### **3(a) Non Duplication**

All of the information collected pursuant to this ICR is specific to the associated rulemaking. To the extent MBEs and/or WBEs are certified by another Federal agency, there is no duplication of effort involved for them to become certified under this rulemaking since they are not required to obtain EPA certification under those circumstances.

#### **3(b) Consultations**

Over the course of the development of the rule EPA has met with key constituency groups to discuss the likely direction the rule was heading. These include discussions at the EPA/State/Tribal Annual conference held in Albuquerque, New Mexico on February 2-4, 1999 attended by 99 representatives from States, local governments and Indian Tribes. In addition, EPA representatives have discussed the likely direction the rule was heading at a number of external meetings and conferences over the course of the past two years. These include discussions with the National Minority Supplier Development Council, the National Environmental Justice Action Committee, the Minority Business Development Agency, the National Black Chamber of Commerce, and at the National Women’s Small Business Summit and the Business Women’s National Leadership Summit.

On June 19, 2000, EPA issued a staff draft of a rulemaking proposal for this rule. A copy was posted on EPA’s Office of Small and Disadvantaged Business Utilization (OSDBU)’s website at <http://www.epa.gov/osdbu> and EPA requested public comments. EPA representatives met with 163 representatives from States, local governments, Indian Tribes and affected businesses at the EPA/State/Tribal Annual conference held in Albuquerque, New Mexico the week of June 27-30, 2000, to discuss the staff draft. EPA sent out letters to key constituency groups, including the National Governors Association, the U.S. Conference of Mayors, the National League of Cities, the National Conference of State Legislatures, the Council of State Governments, the International City/County Management Association, the National Association of Counties, County Executives of America, the National Association of Towns and Townships and the Associated General Contractors of America.

Subsequently, EPA held public meetings in Philadelphia, Pennsylvania on November 9,

2000 (encompassing Regions 1 and 2), Chicago, Illinois on December 4, 2000 (encompassing Regions 5 and 7), Dallas, Texas on January 23, 2001, San Francisco, California on February 13, 2001, Atlanta, Georgia on March 6, 2001, Boston, Massachusetts on April 10, 2001, Denver, Colorado on April 22, 2001, and Seattle, Washington on May 22, 2001 to discuss the staff draft rulemaking proposal.

In addition, as part of its ongoing consultation with tribes, EPA representatives held meetings with Tribal Officials/Representatives in Boston, Massachusetts on April 11, 2001 and in Seattle, Washington on May 23, 2001 to discuss the draft rulemaking proposal, and met with Tribal Officials/Representatives to discuss an earlier version of this proposed rule in Ocean Shores, Washington during the week of January 28, 2002. During the comment period for the staff draft EPA received a total of 41 written comments. EPA has considered these comments as well as those received at the June, 2000 Albuquerque conference and has made changes to the staff draft preamble and rule in response to a number of them, including adding the requirement for certification of women's business enterprises.

On July 24, 2003, the rule was published in the Federal Register as a proposed rulemaking, with a 180-day comment period. During the comment period EPA conducted 17 public hearings and Tribal meetings across the country to solicit comments on the proposed rule. The comment period, public hearings, and Tribal meetings generated public comments that resulted in some of the changes reflected in the final rule.

### 3(c) Effects of Less Frequent Collection

This rule would not impose any additional reporting and recordkeeping requirements on MBE/WBE achievements that are not already covered by existing ICR 2030-0020 which covers "MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements," EPA Form 5700-52A. This rule actually reduces the reporting requirements covered by existing ICR 2030-0020, by reducing the current reporting frequency from quarterly to semi-annually. To the extent that the burden will decrease, EPA will adjust the burden hours when its existing Grants, Cooperative Agreements and Interagency Agreements ICR 2030-0020 is renewed as well as when the other ICRs which encompass MBE/WBE reporting and recordkeeping are renewed. The certification information collection activities are activity based. No lower frequency of filing an affidavit regarding an entity's status under section 33.210(a) is possible.

The requirement under section 33.302(e) for a recipient to provide EPA Form 6100-2 - DBE Program Subcontractor Participation Form to all DBE subcontractors giving them the opportunity to describe the work they received from the prime contractor, how much the DBE subcontractor was paid, and any other concerns the DBE Subcontractor might have, is activity based.

The requirement under section 33.302(f) for a recipient to require its prime contractor to have any anticipated DBE subcontractors complete EPA Form 6100-3 - DBE Subcontractor Performance Form is activity based.

The requirement under section 33.302(g) for a recipient to require its prime contractor to complete and submit EPA Form 6100-4 - DBE Program Subcontractor Utilization Form as part of

the prime contractor's bid or proposal package is activity based.

The requirement under section 33.501 for a recipient to create and maintain a bidders list is activity based.

#### 3(d) General Guidelines

This rulemaking is consistent with OMB's General Guidelines.

#### 3(e) Confidentiality

Information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information will be safeguarded from disclosure to unauthorized persons, consistent with applicable Federal, State and local law. EPA has regulations concerning confidential business information. See 40 CFR Part 2 Subpart B.

#### 3(f) Sensitive Questions

The requirements do not involve information of a sensitive nature.

### 4. THE RESPONDENTS AND THE INFORMATION REQUESTED

#### 4(a) Respondents/NAICS Codes

The respondents to this collection, are basically entities in the fields of construction, equipment, services and supplies, who may need to become certified MBEs or WBEs in order for their participation in EPA funded financial assistance agreements to be counted towards EPA's 8% and 10% MBE/WBE statutory goals. The respondents include:

<u>Category of respondents</u>	<u>NAICS Code</u>
Architectural, engineering and other related services	5413
Architectural services (designing and planning the development of land)	541320
Remediation services and other waste management services	56291
Hazardous waste treatment and disposal	562211
Testing laboratories	541380
Wastewater remediation	562211

Construction equipment (wholesale)	421810
Construction engineering services	541330
Computer peripheral equipment	421430
Computer systems design programming services	541511
Computer systems design services	541512
Highway and street construction (Includes roadwork)	234110
All other heavy construction	234990
Water sewer and pipeline construction	234910
Water treatment equipment (wholesale)	421850
Environmental consulting	541620
Management consulting services	541618
Soil testing	562910
Water, supply and irrigation systems (water filtration)	221310
Sewage treatment facilities	221320
Hazardous waste treatment and disposal	562211
Long distance trucking of waste	56211
Office supplies	453210
Office machinery and equipment rental or leasing	532420

#### 4(b) Information Requested

##### (i) Data Items, Including Recordkeeping Requirements

Information requested as a result of this rulemaking relate to the certification requirements, to the forms which are required if there are DBE subcontractors involved in a procurement under sections 33.302(e), (f) and (g), and to the requirement for a recipient to create and maintain a bidders list under section 33.501. Under Subpart B of the Rule, section 33.204, an entity may become certified under EPA's 8% and 10% statutes under the procedures set forth in 33.205. Federal certifications by the Small Business Administration (SBA), under its 8(a) Business Development Program (13 CFR 124, Subpart A) or its Small Disadvantaged Business (SDB) Program (13 CFR 124, Subpart B) and by the Department of Transportation (DOT), under its program for Participation by Disadvantaged Business Enterprises in DOT Programs, 49 CFR Parts 23 and 26, are acceptable for EPA certification requirements for eligible U.S. citizens. Certifications by State, local, or Indian Tribal Governments or independent private organizations in accordance with EPA's 8% or 10% statute as applicable are also acceptable for EPA certification requirements. Again, U.S. citizenship is required for certification eligibility under EPA's DBE program.

EPA anticipates that the following types of entities will have to be certified by EPA: 1. disabled American-owned firms under EPA's 10% statute; 2. private and voluntary organizations controlled by individuals who are socially and economically disadvantaged under EPA's 10% statute; 3. women-owned businesses under EPA's 8% and 10% statutes who cannot get certified under DOT or SBA size criteria (EPA does not have size criteria) or by a State Government, Indian Tribal Government or independent private organization consistent with EPA's 8% or 10% statute as applicable; 4. DBE owned or controlled businesses under EPA's 8% statute (note-SBA and DOT require a DBE to be owned and controlled by socially and economically disadvantaged individuals. (as does EPA's 10% statute)); and 5. Entities which are certified under criteria which are inconsistent with EPA's DBE program criteria. It is important to note that to qualify as an MBE or WBE under EPA programs an entity must establish that it is owned and/or controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States.

An entity may apply directly to EPA, or through an EPA Private Certifier, to be certified as an MBE or WBE. EPA's Regional Offices will provide further information and required application forms to any entity interested in becoming certified by EPA.

##### (ii) Respondent Activities

In order to reduce burden hours, EPA is using separate "EPA DBE Certification Application" forms depending on the entity seeking to be certified (EPA Form 6100-1a for sole proprietorships, EPA Form 6100-1b for limited liability companies, EPA Form 6100-1c for partnerships, EPA Form 6100-1d for corporations, EPA Form 6100-1e for Alaska Native Corporations (ANCs), EPA Form 6100-1f for Tribally owned concerns, EPA Form 6100-1g for private and voluntary organizations owned by individuals who are socially and economically disadvantaged, EPA Form 6100-1h for concerns owned by Native Hawaiian organizations, and

EPA Form 6100-1i for concerns owned by community development corporations). This approach is consistent with the approach taken by SBA in its SDB certification program. The information will be used to evaluate the MBE and/or WBE status of applicants.

EPA Form 6100-2 - DBE Program Subcontractor Participation Form, under section 33.302(e), gives a subcontractor the opportunity to describe the work the subcontractor received from the prime contractor, how much the subcontractor was paid and other concerns the subcontractor might have, for example reasons why the subcontractor believes it was terminated by the prime contractor. The information will be used to evaluate whether prime contractors have tried to game the system by using “bait and switch” tactics in representing they would use MBE/WBE subcontractors without actually doing so; the information will also be used to determine whether any changes in EPA oversight are needed.

EPA Form 6100-3 - DBE Subcontractor Performance Form, under section 33.302(f), and EPA Form 6100-4 - DBE Program Subcontractor Utilization Form under section 33.302(g), are intended to prevent any “bait and switch” tactics at the subcontract level by prime contractors which may circumvent the spirit of the DBE Program.

The requirement for a recipient to create and maintain a bidders list under Section 33.501, which would be new, is intended to assist recipients in implementing the good faith efforts; such a list also could be used by a recipient in establishing its MBE/WBE fair share objectives. This requirement would apply to all recipients, including recipients under the Clean Water State Revolving Fund, the Drinking Water State Revolving Fund and the Brownfields Cleanup Revolving Loan Fund. There is an exemption from this requirement for recipients receiving \$250,000 for any single assistance agreement or more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year.

## **5. THE INFORMATION COLLECTED-AGENCY ACTIVITIES, COLLECTION, METHODOLOGY, AND INFORMATION MANAGEMENT**

The following section discusses how EPA or an EPA Private Certifier will collect and manage the information received from respondents.

### **5(a) Agency Activities**

EPA will review certification applications to determine whether an entity is owned and/or controlled by one or more individuals claiming disadvantaged status. EPA or an EPA Private Certifier will advise each applicant, within 15 days, whenever practicable, after receipt of an application, whether the application is complete and suitable for evaluation, and if not, what additional information or clarification is required, in accordance with Section 33.205(b). EPA will make its certification decision within 30 days of receipt of a complete application package, whenever practicable, in accordance with Section 33.205(b).

EPA will maintain a list of certified MBEs and WBEs as well as a list of approved EPA



Private Certifiers on EPA's Home Page on the Internet in accordance with Sections 33.205(d) and 33.206, and 33.215, respectively. Interested persons will also be able to obtain copies of these lists from EPA OSDBU.

EPA will safeguard confidential business information in accordance with 40 CFR Part 2, Subpart B, "Confidentiality of Business Information."

#### 5(b) Collection Methodology and Management

EPA will use the forms being submitted to OMB to evaluate MBE/WBE certifications. Similar forms, consisting of separate forms for corporations, partnerships, limited liability corporations, sole proprietorships, Alaska Native Corporation (ANC) owned concerns, and Tribally owned concerns, have already been approved by OMB, ICR control Number 3245-0317, for SBA's SDB certification program. EPA is submitting a separate form for private and voluntary organizations owned by individuals who are socially and economically disadvantaged because they are a separately designated group under EPA's 10% statute whose structure as organizations is different from the other types of entities being certified. EPA is also submitting separate forms for concerns owned by Native Hawaiian Organizations and Community Development Corporation-owned concerns because these entities may be certified under SBA's 8(a) Business Development Program. EPA's 8% statute is tied to Section 8(a)(5) and (6) of the Small Business Act. These EPA forms are patterned along the lines of the other EPA certification forms being submitted. EPA will store the data in OSDBU's office space. This collection of information does not involve the use of automated, electronic, mechanical or other forms of technological collection which permits electronic submission of responses.

#### 5(c) Small Entity Flexibility

EPA's DBE Program is aimed at providing contracting opportunities for small businesses owned and/or controlled by socially and economically disadvantaged individuals, among others (e.g., historically black colleges and universities) (HBCUs). With the exemptions from the fair share negotiations process, and from the bidders list requirement for any single assistance agreement or more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, EPA believes that the effect of the rule on small entities, including small government jurisdictions, would be minimal. Additionally, under this rulemaking, small entity recipients would be able to use State Agency negotiated MBE/WBE goals if such recipients solicit bids/offers from a substantially similar geographic market as that State Agency. Accordingly, EPA believes that the economic impact of this rule, if enacted, on small entities should be minimal.

In EPA's view, this rule would not affect the total funds or business opportunities available to small businesses that seek to work under EPA financial assistance programs. To the extent that the provisions in this rulemaking (e.g., with respect to changes in the methods used to set goals) lead to different goals than those under EPA's current program policy, some firms may gain and others may lose business.

EPA is unaware of any data which would enable the Agency at this time to measure the

distributive effects of the rulemaking on various types of small entities.

5(d) Collection Schedule

Once certified by EPA, an entity will generally remain on EPA's list of certified MBEs and WBEs for a period of three years from the date of its certification. To remain on EPA's list after three years, an entity would have to submit a new application and receive a new certification.

## 6. ESTIMATING THE BURDEN AND COST OF THE COLLECTION

### 6(a) Estimating Respondent Burden for Affected MBEs/WBEs

Table 6-1 presents the estimated respondent burden and costs for the information collection activities associated with this rule.

A conservative (high cost) scenario estimate is presented for the number of respondents as well as their burdens and costs. Each of EPA's 12 grant-making offices (10 regions, headquarters, and Cincinnati) reported on their 5700-52A forms, "MBE/WBE Utilization under Federal Grants, Cooperative Agreements, and Interagency Agreements", the number of MBEs/WBEs utilized in procurement under these agreements. The total number of tribal MBEs/WBEs is unknown since fewer than 10% of tribes submitted reports. In the absence of more complete information, this analysis assumes that the total number of tribal MBEs/WBEs is equal to the total number of MBEs/WBEs reported by all grant and loan recipients. The number of MBEs/WBEs needing to be certified under affected tribal programs is likely to be smaller than the 3,208 reported by grant and loan recipients. Likewise, information on the number of affected MBEs/WBEs in the five Insular areas is not available. The analysis assumes the number of affected MBEs/WBEs for each Insular area is equal to the average number of affected MBEs/WBEs per State, which is 63 MBEs/WBEs.

As seen in Table 6-1, the total number of affected MBEs/WBEs expected to incur costs to certify is 6,731 in the first year of the program. This is believed to be a conservative number, because many of these same MBEs/WBEs will already be certified, *e.g.*, by Small Business Administration (SBA) or Department of Transportation (DOT) programs, and would therefore not be required to incur additional expenses to be certified under this rule. In addition, it is expected that a substantial number of MBEs/WBEs participate in more than one procurement issued under the variety of related government grant and loan programs. In these cases, the MBEs/WBEs would not be required to incur the same costs to be recertified, since they would have already met the requirements under a separate procurement. Therefore, for purposes of calculating the total costs for the three-year period covered by the ICR, we assume that the first year cost is a suitable estimate for the total cost to MBEs/WBEs required to certify over the three year-period of the ICR. The average annual burden and costs are estimated by spreading the first year cost over the three-year period of the ICR, yielding a total annual average burden of 56,092 hours and \$2,916,767 in costs.

The burden hours and costs of filling out MBE/WBE certification forms for this rule are also likely to be lower than these estimates because the numbers are derived from information provided by the DOT's ICR estimates for certification in its analysis of burden hours (25 hours per certification) and costs (\$1,300 per certification) under 49 CFR Part 26. EPA's certification forms are more similar to the SBA's Small Disadvantaged Business (SDB) Certification Application Forms (OMB control number 3245-0317). The SBA forms were expected to take three hours to complete. Also, a certified MBE/WBE would have to file an annual affidavit affirming that no changes in circumstances had occurred which would have affected the entity's status as an MBE or WBE. It is estimated that this would take about 30 minutes to complete. Therefore, allowing for the three hours for the EPA certification application forms, and the half-hour to complete the annual affidavit, the total time that might be required to complete the information collection activities associated with this rule will be considerably less than the 25 hours necessary to complete the DOT

certification requirements. Nevertheless, in order to provide a conservative estimate of the burden in the ICR of the rule, the analysis uses the 25 hour and \$1,300 cost estimate derived from the DOT analysis.

Activities	Total Estimated Burden and Cost for Three Year Period ICR is Effective			Average Annual Estimated Burden and Cost		
	Number of Affected MBE & WBE entities	Number of Hours	Dollars	Number of Affected MBE/WBE entities	Number of Hours	Dollars
MBE & WBEs under grant & loan programs	3208	80,200 (25*3208)	\$4,170,000 (3208*\$1,300)	1,069	26,733	\$1,390,133
MBE & WBE under Tribal funded programs	3208 (same as State total; ~ 6 per tribal govt.)	80,200 (25*3208)	\$4,170,400 (3208*\$1,300)	1,069	26,733	\$1,390,133
MBE & WBE under Insular funded Programs	315 (5*63)	7,875 (25*315)	\$409,500 (315*\$1,300)	105	2,625	\$136,500
<b>Total Labor Burden and Costs for MBE &amp; WBE</b>	<b>6,731</b>	<b>168,275</b>	<b>\$8,750,300</b>	<b>2,244</b>	<b>56,092</b>	<b>\$2,916,767</b>
Average Annual Labor Burden and Cost per MBE & WBE					25 hours	\$1,300

#### Key Assumptions:

- All affected MBEs/WBEs have not already been certified by another eligible institution [likely to result in an overestimate of burden and cost].
- No additional MBEs/WBEs seek certification within the effective three year period for the ICR [likely to result in an underestimate of burden and cost].
- Number of burden hours to complete certification forms (25 hours) is significantly greater than the estimate developed for SBA form (3 hours) [likely to result in an overestimate of burden and cost].

#### 6(b) Estimating all Grant Recipient Burden and Costs and Loan Recipient Burden and Costs

The Agency has used a conservative set of assumptions to calculate the costs to all EPA grant and loan recipients that will have to perform an availability analysis to meet the requirements of the rule. To estimate the number of affected recipients, the Agency used information assembled for the total number of grant and loan recipients receiving \$250,000 or more from EPA over recent representative years. We used data from Fiscal Year 1999 for affected governments and non-governmental entities receiving grants, and Fiscal Year 2000 for affected governmental and non-governmental entities receiving loans. Using burden and cost data provided on sample availability analyses prepared by State government agencies, we estimated the median cost of an availability analysis used to comply with the rule would require 265 burden hours at a cost of \$5,300 (using an average labor cost of \$20 per hour).

Table 6-2 provides the burden and cost estimates for affected grant and loan recipients. Because each availability analysis can be used for up to three years, we assume that States, Tribes and Insular governments will develop their availability analyses once over the three-year period of the ICR. Hence, there are no affected recipients in years two and three. For non-governmental grant recipients affected by this rule, we believe 325 will need to prepare an availability analysis in the first year. However, we expect that in the second and third years only half as many will need to prepare one.

We expect the number of loan recipients needing to prepare an availability analysis in the first year (822) to remain at that level in years two and three, for a combined total of 2,466 and \$13,069,000 over the three year period of the ICR.

The total labor burden and cost estimates for preparing an availability analysis for grant and loan recipients are 825,475 hours and \$16,509,500 over the three year period of the ICR.

In addition to the availability analysis, recipients will have other paperwork requirements under the final rule. EPA is requiring three additional forms to be used in the program, each of

which is expected to take approximately 15 minutes to complete. These include:

- 1) DBE Program Subcontractor Participation Form,
- 2) DBE Program Subcontractor Performance Form, and
- 3) DBE Program Subcontractor Utilization Form.

In addition, a recipient would have to review the existing list of HUBZone contractors maintained by the SBA and attempt to solicit such companies as part of the recipient's good faith efforts. It is estimated that this process will take 30 minutes to complete. A recipient would also be required to create and maintain a bidders list. This requirement would take about 15 minutes to complete. Recordkeeping requirements of the rule would take another approximately 30 minutes. Therefore approximately two hours would be required to complete these information collection activities. We conservatively estimate that the additional two hours would be necessary for each grant and loan recipient each year of the ICR. The annual average burden and cost of the rule are estimated to be 202,548 hours and \$4,050,967 as a consequence of the rule.

Activities	Total Estimated Burden and Cost for Three Year Period ICR is Effective				Average Annual Burden and Cost		
		Number of Affected Recipients	Number of Hours	Dollars	Number of Affected Recipients	Number of Hours	Dollars
†Grants Recipients: States, Tribes, & Insular govt	Year 1	161	42,665 (265*161)	\$853,300	54	14,222	\$284,433
	Years 2+3	0	0	0			
	<b>Sub-Total</b>	<b>161</b>	<b>42,665</b>	<b>\$853,300</b>			
Grants Recipients: Non-Government	Year 1	325	86,125 (265*325)	\$1,722,500	163	43,107	\$862,133
	Years 2+3	163	43,195 (265*163)	\$863,900			
	<b>Sub-Total</b>	<b>488</b>	<b>129,320</b>	<b>\$2,586,400</b>			
Loan Recipients:	Year 1	822	217,830 (265*822)	\$4,356,600			

SRF- drinking & wastewater; Brownfields	Years 2+3	1644	435,660 (265*164 4)	\$8,713,200			
	<b>Sub- Total</b>	<b>2466</b>	<b>653,490</b>	<b>\$13,069,800</b>	822	217,830	4,356,600
All recipients-- other activities	Years 1-3	2293	13,758 (2293*2hr s*3yrs)	275,160	764	4,586	91,720
<b>Total Labor Burden and Cost for Grant and Loan Recipients</b>	Year 1	1308	346,620	\$6,932,400			
	Years 2+3	1807	478,855	\$9,577,100			
	<b>Total</b>	<b>3115</b>	<b>825,475</b>	<b>\$16,509,500</b>	<b>1,038</b>	<b>275,158</b>	<b>\$5,503,167</b>
Average Annual Labor Burden and Cost per Availability Analysis						265 hours	\$5,250

† Scenario if all affected Governments bear these burdens and costs in the same (i.e., first) year.

#### Key Assumptions:

- Some percent of government entities will already have a suitable availability analysis [likely to result in an overestimate of burden and cost].
- Some percent of non-governmental entities will use States' availability analyses [likely to result in an overestimate of burden and cost].
- The number of new non-governmental grant recipients and all loan recipients seeking aid in the second and third years is assumed to be the same as in the first year.

#### 6(c) Estimating Agency Burden and Cost

An estimate of the annual EPA burden and costs associated with the rule is provided in Table 6-3. We have developed an estimate of the number and type of staff necessary to administer the

monitoring and reporting requirements in the rule. Legal, database management and administrative support staff will be required to administer the program at EPA. The total estimated cost of all labor, benefits and overhead for the Agency is 42,432 hours and \$1,884,320 for the three-year period the ICR is in effect. The average annual burden is 14,144 hours and the cost is \$631,440. We assume there will be additional costs to develop, administer and maintain a computer-based system for MBE/WBE certifications, and data from grant and loan recipient information (including costs of availability analyses). The total fixed cost of the computer system and computer workstations is estimated to be \$170,000. A maintenance and service contract to support the computer system is estimated to cost \$30,000 per year, giving a total of \$260,000. Assuming the average life of the fixed costs is equal to the three year period the ICR is in effect, we spread the fixed costs over the three years to provide an average annual cost of approximately \$60,000. Combined with the annual maintenance costs of \$30,000 yields a total average annual cost for equipment, supplies and maintenance of approximately \$90,000.

Activities	Total Estimated Burden and Cost for Three Year Period ICR is Effective		Average Annual Burden and Cost	
	Number of Hours	Dollars	Hours	Dollars
Staff; wages and benefits; and overhead	42,432	\$1,624,320	2,080 (1 Program Analyst)	\$78,000
			3,744 (1.8 Attorneys)	\$118,800
			2,080 (1 Data Entry Clerk)	\$29,000
			6,240 (3 SEE L-III Support)	\$75,000
			+ benefits (0.6* wages)	\$180,480
			+ overhead (0.2*staff cost)	\$60,160
			<b>Total</b>	<b>14,144</b>
Equipment, Supplies and Maintenance	0	\$260,000	0	\$90,000
<b>Total Labor Burden and Cost for Agency</b>	<b>42,432</b>	<b>\$1,884,320</b>	<b>14,144</b>	<b>\$631,440</b>

**Key Assumptions:**

- Total number of EPA employees and SEE program enrollees required is constant over time.
- Lifetime of fixed capital investment is three years for computer and set-up costs.



- No extra enforcement costs estimated.

#### 6(d) Total Burden and Costs

Table 6-4 summarizes the total estimated annual burden and cost of the rule. We estimate that the rule will require 331,250 hours and cost \$8,419,933, estimated annually, with all costs attributed to labor hours required to meet the requirements of the rule, since there are no start-up/operation and maintenance costs. We estimate the average annual labor burden for an availability analysis to be 265 hours and the wage rate to be \$20 an hour based on Virginia's estimated wage rate for preparing an availability analysis. Over the first three years of the rule, the total number of labor burden is estimated to be 993,750 hours with total costs of \$25,259,800. The first year of the program is expected to have higher costs than subsequent years because new certifications need to be developed and issued, and new availability analyses must be prepared by grant and loan recipients. Since the certifications and availability analyses both are designed to have a three-year useful life, they can be reused by these institutions without having to incur new costs to participate in the grant and loan programs covered under the rule. Because of the many other conservative assumptions used to generate the information underlying the analysis, we believe that these total burden and cost estimates will be higher than those which will be actually incurred as a result of the rule.



Table 6-4. Total Labor Burden and Costs for DBE Program						
Respondents	Total Estimated Burden and Cost for Three Year Period ICR is Effective			Average Annual Burden and Cost		
	Number of Respondents	Total Burden Hours	Total Cost	Number of Respondents	Total Burden Hours	Total Cost
MBE/WBE	6,731	168,275	\$8,750,000	2,244	56,092	\$2,916,767
Grant and Loan Recipients	3,115	825,475	\$16,509,500	1,038	275,158	\$5,503,167
<b>TOTAL</b>	9,846	993,750	\$25,259,800	3,282	331,250	\$8,419,933
<b>Agency Costs</b>						
EPA	1	42,432	\$1,894,320	1	14,144	\$631,440

#### 6(e) Sensitivity Analysis for Estimate of Burden and Costs

There are a number of assumptions the analysis was required to make in order to fill several missing pieces of information. Higher cost estimates may occur if additional hours are needed by the States and other recipients to perform an availability analysis. Higher costs may also occur if an availability analysis is developed under contract and a higher wage rate is needed.

Applying these higher average costs for an availability analysis to all entities required to file an availability analysis under the rule, the resulting change in the total burden and costs of the rule are summarized in Table 6-5. For this sensitivity analysis we are using a higher burden hour (1140 hours) and wage rate of \$52 an hour (based on DOT's estimated wage rate for private labor used in preparing an availability analysis). These estimates resulted in a cost of \$59,280 for each availability analysis (1140 hours \* \$52 an hour) which represents the upper end of the central range of cost estimates supplied by the States.

Under these highly conservative sets of assumptions, the average annual cost of the rule will be \$64,469,167 and require 1,239,792 labor hours. The total cost over the three-year life of the ICR is estimated to be \$193,407,500 and require about 3,719,375 labor hours.

<p><b>Table 6-5. Sensitivity Analysis for Total Labor Burden and Costs for DBE Program (High Unit Cost Estimate for Availability Analysis)</b></p>
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Respondents	Total Estimated Burden and Cost for Three Year Period ICR is Effective			Average Annual Burden and Cost		
	Number of Respondents	Total Burden Hours	Total Cost	Number of Respondents	Total Burden Hours	Total Cost
MBE/WBE	6731	168,275	\$8,750,300	2,244	56,092	\$2,916,767
Grant and Loan Recipients	3,115	3,551,100	\$184,657,200	1038	1,183,700	\$61,552,400
<b>TOTAL</b>	9,846	3,719,375	\$193,407,500	3,282	1,239,792	\$64,469,167
<b>Agency Costs</b>						
Agency	1	42,432	\$2,218,083	1	14,144	\$739,361

According to the Paperwork Reduction Act, “burden” means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed in 40 CFR Part 9.

Send comments on the Agency’s need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Certification Form to this address.