§ 33.502 What are the reporting requirements of this part?

MBE and WBE participation must be reported by all recipients, including those recipients exempted under §33.411 from the requirement to apply the fair share objectives, on EPA Form 5700–52A. Recipients of Continuing Environmental Program Grants under 40 CFR part 35, subpart A; recipients of Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B; General Assistance Program (GAP) grants for tribal governments and intertribal consortia; and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements capitalizing revolving loan funds, will report on MBE and WBE participation on an annual basis. All other financial assistance agreement recipients, including recipients of financial assistance agreements capitalizing revolving loan programs, must require entities receiving identified loans to submit their MBE and WBE participation reports on a semiannual basis to the financial assistance agreement recipient, rather than to EPA.

§ 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

(a) General. Only certified MBEs and WBEs are to be counted towards MBE/WBE participation. Amounts of MBE and WBE participation are calculated as a percentage of total financial assistance agreement project procurement costs, which include the match portion of the project costs, if any. For recipients of financial assistance agreements that capitalize revolving loan programs, the total amount is the total procurement dollars in the amount of identified loans equal to the capitalization grant amount.

(b) Ineligible project costs. If all project costs attributable to MBE and WBE
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participation are not eligible for funding under the EPA financial assistance agreement, the recipient may choose to report the percentage of MBE and WBE participation based on the total eligible and non-eligible costs of the project.

(c) Joint ventures. For joint ventures, MBE and WBE participation consists of the portion of the dollar amount of the joint venture attributable to the MBE or WBE. If an MBE's or WBE's risk of loss, control or management responsibilities is not commensurate with its share of the profit, the Agency may direct an adjustment in the percentage of MBE or WBE participation.

(d) Central Purchasing or Procurement Centers. A recipient must report MBE and WBE participation from its central purchasing or procurement centers.

(e) Brokers. A recipient may not count expenditures to a MBE or WBE that acts merely as a broker or passive conduit of funds, without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices.

(1) Presumption. If 50% or more of the total dollar amount of a MBE or WBE's prime contract is subcontracted to a non-DBE, the MBE or WBE prime contractor will be presumed to be a broker, and no MBE or WBE participation may be reported.

(2) Rebuttal. The MBE or WBE prime contractor may rebut this presumption by demonstrating that its actions are consistent with normal practices for prime contractors in its business and that it will actively perform, manage and supervise the work under the contract.

(f) MBE or WBE Truckers/Haulers. A recipient may count expenditures to an MBE or WBE trucker/hauler only if the MBE or WBE trucker/hauler is performing a commercially useful function. The following factors should be used in determining whether an MBE or WBE trucker/hauler is performing a commercially useful function:

(1) The MBE or WBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MBE or WBE objectives.

(2) The MBE or WBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

APPENDIX A TO PART 33—TERM AND CONDITION

Each procurement contract signed by an EPA financial assistance agreement recipient, including those for an identified loan under an EPA financial assistance agreement capitalizing a revolving loan fund, must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

PART 34—NEW RESTRICTIONS ON LOBBYING

Subpart A—General

Sec. 34.100 Conditions on use of funds.
34.105 Definitions.
34.110 Certification and disclosure.

Subpart B—Activities by Own Employees

34.200 Agency and legislative liaison.
34.205 Professional and technical services.
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Subpart C—Activities by Other Than Own Employees

34.300 Professional and technical services.

Subpart D—Penalties and Enforcement

34.400 Penalties.
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34.410 Enforcement.

Subpart E—Exemptions

34.500 Secretary of Defense.

Subpart F—Agency Reports

34.600 Semi-annual compilation.
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