

socially and economically disadvantaged under EPA's 8% statute. An entity must still be certified by a third party as to ownership or control in order to be eligible to participate as a WBE contractor for an EPA recipient under the DBE Program.

EPA's 10% statute also adopts SBA's regulatory presumption regarding the socially disadvantaged status of the individuals listed above. However, EPA's 10% statute also presumes that Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women and Disabled Americans are socially and economically disadvantaged individuals. Furthermore, Congress provided in EPA's 10% statute that the following institutions are presumed to be entities owned and controlled by socially and economically disadvantaged individuals: HBCUs, colleges and universities having a student body in which 40% of the students are Hispanic, Minority Institutions and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged. EPA's 8% and 10% statutes may be distinguished by their provisions regarding ownership and control. EPA's 8% statute references entities owned *or* controlled by socially and economically disadvantaged individuals while EPA's 10% statute references entities owned *and* controlled by socially and economically disadvantaged individuals.

*Section 33.202 How Does an Entity Qualify as an MBE or WBE Under EPA's 8% Statute?*

An entity must establish that it is owned or controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. With one exception, definitions of "ownership," "control" and "socially and economically disadvantaged individuals" are the same as under the Small Business Act and its implementing regulations at 13 CFR 124.105, 124.106, 124.103 and 124.104. (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Generally, these regulations provide that ownership must be real, substantial and continuing, going beyond pro forma ownership of the business concern as reflected in ownership documents. Owners must share in the risks and profits of the business concern commensurate with their ownership interests. Control is demonstrated in most cases by the power to direct or

cause the direction of the management and policies of the business concern and to make day-to-day as well as long-term decisions on matters of management, policy and operations. The one exception from the regulation regarding economic disadvantage worth noting is the exclusion of individuals with a net worth greater than or equal to \$250,000 from initial eligibility and individuals with a net worth greater than or equal to \$750,000 from continued eligibility. Similar to DOT, EPA is proposing to make \$750,000 the cut off point for both initial and continued eligibility under the DBE Program.

HBCUs do not need to go through the certification process contained in Subpart B of this Rule since EPA's 8% statute automatically deems an HBCU to be owned or controlled by socially and economically disadvantaged individuals. While women are also deemed to be socially and economically disadvantaged under EPA's 8% statute, entities must still evidence ownership or control in accordance with paragraph (a) of this section, which may be accomplished by certification, pursuant to § 33.204.

*Section 33.203 How Does an Entity Qualify as an MBE or WBE Under EPA's 10% Statute?*

An entity must establish that it is owned and controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. Again with the same notable exception discussed above regarding the \$750,000 personal net worth threshold, definitions of "ownership," "control" and "socially and economically disadvantaged individuals" are the same as under the Small Business Act and its implementing regulations at 13 CFR 124.105, 124.106, 124.103 and 124.104. (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

With one exception, the provisions contained within subparagraphs (d)–(g) of this section are derived from EPA's 10% statute. EPA's 10% statute contains a presumption that colleges and universities having a student body in which 40% of the students are Hispanic should be considered entities owned and controlled by socially and economically disadvantaged individuals. In order to eliminate the burden of additional certification by such colleges and universities, EPA is proposing instead to apply the presumption to colleges and universities which have qualified as Hispanic-

Serving Institutions under the Department of Education regulations at 34 CFR Part 606 or as Minority Institutions as defined by § 33.103 of this proposed Rule. Among other things, Hispanic-Serving Institutions and Minority Institutions require a student body in which 50% of the students are Hispanic. Because EPA's 10% statute only requires the Agency to implement the statute's requirements to the "extent practicable," the Agency, for administrative reasons, may propose regulatory provisions which vary from the exact wording of the statute.

*Section 33.204 Where Does an Entity Become Certified Under EPA's 8% and 10% Statutes?*

This proposed rule discontinues acceptance of an individual's self-certification regarding his or her racial/ethnic status in order to ensure consistency with the approach taken by other Federal agencies. For example, SBA under its Small Disadvantaged Business Program no longer permits self-certification of social and economic disadvantaged status. Similarly, DOT does not allow self-certification under its DBE Program. EPA is also proposing to discontinue self-certification by WBEs.

In addition, EPA would require that an entity first attempt to become certified as an MBE or WBE by the SBA or DOT under their respective programs or by an Indian Tribal Government, State Government, local Government, or independent private organization consistent with EPA's 8% or 10% statute as applicable. An entity may only attempt to become certified by EPA as an MBE or WBE under the procedures described in § 33.205 if that entity is unable to obtain certification from the other certifying entities described above. However, as part of the certification process, EPA will make the determination as to whether an entity's current certification by DOT, an Indian Tribal Government, State Government, local Government, or independent private organization constitutes acceptable certification under EPA's 8% statute, EPA's 10% statute or both. Acceptance of certifications from these other certifying entities is EPA's attempt at easing the burden created by discontinuation of the self-certification option. EPA currently envisions five categories of individuals or groups who would qualify for MBE or WBE certification under EPA's DBE Program but would be unable to obtain MBE or WBE certification from SBA or DOT due to differences in those Agencies' respective programs. These categories are women-owned and minority-owned