

Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; *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).

(c) *Economically disadvantaged individual*. An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) and its implementing regulations (13 CFR 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). Under EPA's DBE Program, an individual claiming disadvantaged status must have an initial and continued personal net worth of less than \$750,000.

(d) *HBCU*. An HBCU automatically qualifies as an entity owned or controlled by socially and economically disadvantaged individuals.

(e) *Women*. Women are deemed to be socially and economically disadvantaged individuals. Ownership or control must be demonstrated pursuant to paragraph (a) of this section, which may be accomplished by certification under § 33.204.

### **§ 33.203 How does an entity qualify as an MBE or WBE under EPA's 10% statute?**

To 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.

(a) *Ownership and control*. An entity must be at least 51% owned by a socially and economically disadvantaged individual, or in the case of a publicly traded company, at least 51% of the stock must be owned by one or more socially and economically disadvantaged individuals, and the management and daily business operations of the business concern must be controlled by such individuals. (*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).

(b) *Socially disadvantaged individual*. A socially disadvantaged individual is a person who has been subjected to racial

or ethnic prejudice or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; *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).

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(d) *Presumptions*. In accordance with Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note, Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women and Disabled Americans are presumed to be socially and economically disadvantaged individuals. In addition, the following institutions are presumed to be entities owned and controlled by socially and economically disadvantaged individuals: HBCUs, Minority Institutions (including Tribal Colleges and Universities and Hispanic-Serving Institutions) and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

(e) *Individuals not members of designated groups*. Nothing in this section shall prohibit any member of a racial or ethnic group that is not designated as socially and economically disadvantaged under paragraph (d) of this section from establishing that they have been impeded in developing a business concern as a result of racial or ethnic discrimination.

(f) *Rebuttal of presumptions*. The presumptions established by paragraph (d) of this section may be rebutted in accordance with § 33.209 with respect to a particular entity if it is reasonably

established that the individual at issue is not experiencing impediments to developing such entity as a result of the individual's identification as a member of a specified group.

(g) *Joint ventures*. (1) A joint venture may be considered owned and controlled by socially and economically disadvantaged individuals, notwithstanding the size of such joint venture, if a party to the joint venture is an entity that is owned and controlled by a socially and economically disadvantaged individual.

(2) A person who is not an economically disadvantaged individual or an entity owned and controlled by a socially and economically disadvantaged individual, as a party to a joint venture, may not be a party to more than two awarded contracts in a fiscal year solely by reason of paragraph (g)(1) of this section.

### **§ 33.204 Where does an entity become certified under EPA's 8% and 10% statutes?**

(a) In order to participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity should first attempt to become certified by the following:

(1) The United States Small Business Administration (SBA), under its 8(a) Business Development Program (13 CFR part 124, subpart A) or its Small Disadvantaged Business (SDB) Program, (13 CFR part 124, subpart B);

(2) The United States Department of Transportation (DOT), under its regulations for Participation by Disadvantaged Business Enterprises in DOT Programs (49 CFR parts 23 and 26); or

(3) an Indian Tribal Government, State Government, local Government or independent private organization in accordance with EPA's 8% or 10% statute as applicable.

(4) Such certifications shall be considered acceptable for establishing MBE or WBE status, as appropriate, under EPA's DBE Program so long as the certification meets EPA's U.S. citizenship requirement under § 33.202 or § 33.203. An entity may only apply to EPA for MBE or WBE certification under the procedures set forth in § 33.205 if that entity first is unable to obtain MBE or WBE certification under paragraphs (a) (1) through (3) of this section.

(b) [Reserved].

### **§ 33.205 How does an entity become certified by EPA?**

(a) *Filing an application*. In accordance with § 33.204, an entity may apply to EPA's Office of Small and Disadvantaged Business Utilization (EPA OSDBU) for certification as an