§ 33.406 May a recipient designate a
lead agency for fair share objective
negotiation purposes?

If an Indian Tribal, State or local
Government has more than one agency
that receives EPA financial assistance,
the agencies within that Government
can designate a lead agency to nego-
tiate MBE and WBE fair share objec-
tives with EPA to be used by each of
the agencies. Each agency must other-
wise negotiate with EPA separately its
own MBE and WBE fair share objec-
tives.

§ 33.407 How long do MBE and WBE
fair share objectives remain in ef-
fact?

Once MBE and WBE fair share objec-
tives have been negotiated, they will
remain in effect for three fiscal years
unless there are significant changes to
the data supporting the fair share ob-
jectives. The fact that a disparity
study utilized in negotiating fair share
objectives has become more than ten
years old during the three-year period
does not by itself constitute a signifi-
cant change requiring renegotiation.

§ 33.408 May a recipient use race and/
or gender conscious measures as
part of this program?

(a) Should the good faith efforts de-
scribed in subpart C of this part or
other race and/or gender neutral mea-
sures prove to be inadequate to achieve
an established fair share objective,
race and/or gender conscious action
(e.g., apply the subcontracting sugges-
tion in §33.301(c) to MBEs and WBEs) is
available to a recipient and its prime contractor to more closely achieve the
fair share objectives, subject to §33.409. Under no circumstances are race and/or
gender conscious actions required by EPA.
(b) Any use of race and/or gender conscious efforts must not result in the se-
lection of an unqualified MBE or WBE.

§ 33.409 May a recipient use quotas as part of this program?
A recipient is not permitted to use quotas in procurements under EPA’s 8% or 10% statute.

§ 33.410 Can a recipient be penalized for failing to meet its fair share ob-
jectives?
A recipient cannot be penalized, or
viewed by EPA as being in noncompliance with this subpart, solely because its MBE or WBE participation does not meet its applicable fair share objective. However, EPA may take remedial action under §33.105 for a recipient’s fail-
ure to comply with other provisions of this part, including, but not limited to, the good faith efforts requirements de-
scribed in subpart C of this part.

§ 33.411 Who may be exempted from this subpart?
(a) General. A recipient of an EPA fin-
cancial assistance agreement in the amount of $250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of $250,000 or less in any one fiscal year, is not required to apply the fair share objective requirements of this subpart. This ex-
emption is limited to the fair share objective requirements of this subpart.

(b) Clean Water State Revolving Fund (CWSRF) Program, Drinking Water State Revolving Fund (DWSRF) Program, and Brownfields Cleanup Revolving Loan Fund (BCRLF) Program Identified Loan Recipients. A recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the fair share objective requirements of this subpart to an entity receiving an identified loan in an amount of $250,000 or less or to an entity receiving more than one identified loan with a combined total of $250,000 or less in any one fiscal year. This exemption is limited to the fair
share objective requirements of this subpart.

(c) Tribal and Intertribal Consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR part 35, sub-
part B, Tribal and Intertribal consortia recipients of PPG eligible grants are not required to apply the fair share objec-
tive requirements of this subpart to those grants. This exemption is limited to the fair share objective requirements of this subpart.

(d) Technical Assistance Grant (TAG) Program Recipients. A recipient of a TAG is not required to apply the fair share objective requirements of this subpart to that grant. This exemption is limited to the fair share objective require-
ments of this subpart.

§ 33.412 Must an Insular Area or In-
dian Tribal Government recipient negotiate fair share objectives?
The requirements in this subpart regarding the negotiation of fair share objectives will not apply to an Insular Area or Indian Tribal Government recipi-
ent until three calendar years after the effective date of this part. Furthemore, in accordance with §33.411(c), tribal and intertribal consortia recipi-
ents of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B are not required to apply the fair share objective requirements of this subpart to such grants.

Subpart E—Recordkeeping and Reporting

§ 33.501 What are the recordkeeping requirements of this part?
(a) A recipient, including those re-
cipients exempted under §33.411 from the requirement to apply the fair share objectives, must maintain all records documenting its compliance with the requirements of this part, including documentaiton of its, and its prime contractors’, good faith efforts and data relied upon in formulating its fair share objectives. Such records must be retained in accordance with applicable record retention requirements for the recipient’s financial assistance agreement.