

WAC 326-20-080 Factors considered in determining control. (1)

General rules.

(a) One or more socially and economically disadvantaged owners of the firm must control it.

(b) Control determinations must consider all pertinent facts, viewed together and in context.

(c) A firm must have operations in the business for which it seeks certification at the time it applies.

The office does not certify plans or intentions, or issue contingent or conditional certifications.

(2) Socially and economically disadvantaged owner as final decision maker. A socially and economically disadvantaged owner must be the ultimate decision maker in fact, regardless of operational, policy, or delegation arrangements.

(a) Governance. Governance provisions may not require that any socially and economically disadvantaged owner obtain concurrence or consent from a nonsocially and economically disadvantaged owner to transact business on behalf of the firm.

(i) Highest officer position. A socially and economically disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(ii) Board of directors. A socially and economically disadvantaged owner must have present control of the firm's board of directors, or other governing body, through the number of eligible votes.

(A) Quorum requirements. Provisions for the establishment of a quorum must not block the socially and economically disadvantaged owner from calling a meeting to vote and transact business on behalf of the firm.

(B) Shareholder actions. A socially and economically disadvantaged owner's authority to change the firm's composition via shareholder action does not prove control within the meaning of this section.

(iii) Partnerships. In a partnership, at least one socially and economically disadvantaged owner must serve as a general partner, with control over all partnership decisions.

(iv) Exception. Bylaws or other governing provisions that require nonsocially and economically disadvantaged owner consent for extraordinary actions generally do not contravene the control rules of this section. Nonexclusive examples are a sale of the company or substantially all of its assets, mergers, and a sudden, wholesale change of type of business.

(b) Expertise. At least one socially and economically disadvantaged owner must have an overall understanding of the business and its essential operations sufficient to make sound managerial decisions not primarily of an administrative nature. These requirements vary with type of business, degree of technological complexity, and scale.

(c) Socially and economically disadvantaged owner decisions. To distinguish control, the firm must show that the socially and economically disadvantaged owner has authority, critically analyzes information, and uses that analysis to make independent decisions. The firm must also demonstrate that the eligible owner makes the business decisions not primarily of an administrative nature.

(d) Delegation. A socially and economically disadvantaged owner may delegate administrative activities or operational oversight to a non-SED individual as long as at least one socially and economically disadvantaged owner retains unilateral power to fire the delegate(s), and the chain of command is evident to all participants in the company and to all persons and entities with whom the firm conducts business.

(i) No non-SED participant may have power equal to or greater than that of a socially and economically disadvantaged owner, considering all the circumstances. Aggregate magnitude and significance govern; a numerical tally does not.

(ii) Non-SED participants may not make nonroutine purchases or disbursements, enter into substantial contracts, or make decisions that affect company viability without the socially and economically disadvantaged owner's consent.

(iii) Written provisions or policies that specify the terms under which non-SED participants may sign or act on the socially and economically disadvantaged owner's behalf with respect to recurring matters generally do not violate this paragraph, as long as they are consistent with the socially and economically disadvantaged owner having ultimate responsibility for the action.

(e) Franchise and license agreements. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the certifier should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, if the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

[Statutory Authority: RCW 34.05.353 (1)(b). WSR 25-01-023, s 326-20-080, filed 12/6/24, effective 1/6/25. Statutory Authority: RCW 39.19.030 and 39.19.120. WSR 19-13-014, § 326-20-080, filed 6/7/19, effective 7/8/19; WSR 04-08-093, § 326-20-080, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 39.19.030(7). WSR 92-11-007, § 326-20-080, filed 5/11/92, effective 6/11/92. Statutory Authority: Chapter 39.19 RCW. WSR 88-12-060 (Order 88-5), § 326-20-080, filed 5/31/88; WSR 87-18-030 (Order 87-6), § 326-20-080, filed 8/27/87. Statutory Authority: 1983 c 120 § 3(7). WSR 83-22-045 (Order 83-3), § 326-20-080, filed 10/28/83.]