TITLE 68 INDIANA GAMING COMMISSION

Final Rule
LSA Document #08-75(F)

DIGEST

Amends 68 IAC 3-1-1, 68 IAC 3-1-2, 68 IAC 3-1-3, 68 IAC 3-2-1, 68 IAC 3-2-2, 68 IAC 3-2-3, 68 IAC 3-3-1, 68 IAC 3-3-2, 68 IAC 3-3-3, 68 IAC 3-3-4, 68 IAC 3-3-5, 68 IAC 3-3-6, 68 IAC 3-3-7, 68 IAC 3-3-8, 68 IAC 3-3-9, 68 IAC 3-3-10, and 68 IAC 3-4-1 and adds 68 IAC 3-3-11 governing all aspects of the regulation, oversight, and enforcement of minority and women owned business enterprise utilization standards, to update reporting requirements for regulated entities concerning the purchase of goods and services from minority and women owned business enterprises, replace references to "riverboat licensees and riverboat license applicants" with "casino licensee", and include in that term gambling game licensees under IC 4-35. Makes numerous technical changes. Repeals 68 IAC 3-4-2, 68 IAC 3-4-3, 68 IAC 3-4-4, 68 IAC 3-4-5, 68 IAC 3-4-6, and 68 IAC 3-5. Effective 30 days after filing with the Publisher.

68 IAC 3-1-1; 68 IAC 3-1-2; 68 IAC 3-1-3; 68 IAC 3-2-1; 68 IAC 3-2-2; 68 IAC 3-2-3; 68 IAC 3-3-1; 68 IAC 3-3-2; 68 IAC 3-3-3; 68 IAC 3-3-4; 68 IAC 3-3-5; 68 IAC 3-3-6; 68 IAC 3-3-7; 68 IAC 3-3-8; 68 IAC 3-3-9; 68 IAC 3-3-10; 68 IAC 3-3-11; 68 IAC 3-4-1; 68 IAC 3-4-2; 68 IAC 3-4-3; 68 IAC 3-4-4; 68 IAC 3-4-5; 68 IAC 3-4-6; 68 IAC 3-5

SECTION 1. 68 IAC 3-1-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-1-1 Statement of policy; general provisions

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33-14-5; IC 4-35-11

Sec. 1. (a) It is the policy of the commission to ensure the following:
(1) That ~~riverboat~~ **casino** licensees ~~and riverboat license applicants~~ conduct all aspects of their operation in compliance with IC 4-33-14-5 **and IC 4-35-11.**
(2) That ~~riverboat~~ **casino** licensees: ~~and riverboat license applicants~~
(A) establish ~~such~~ internal procedures and controls; and
(B) provide ~~such~~ reports;
as the commission finds are necessary to ensure ~~that these policies are effective at all levels of the riverboat gambling operations.~~ **such compliance.**

(b) The department of administration, minority business development:
(1) shall perform certifications and compile a list of certified enterprises for the commission in accordance with ~~section 3 of~~ this rule; ~~The department of administration, minority business development~~ **and**
(2) may assist the commission in determining compliance with the ~~Act~~ **Acts** and this article.

(c) This rule is applicable to all nonexempt goods or services purchased by or for the benefit or use of a casino licensee.

(Indiana Gaming Commission; 68 IAC 3-1-1; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2248; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 2. 68 IAC 3-1-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-1-2 Definitions applicable to article

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33-14-5; IC 4-35-11-6

Sec. 2. The following definitions apply throughout this article:
(1) "Broker" means **a business entity serving as** an intermediary who negotiates contracts ~~for goods and~~

~~services~~ **of purchase and sale, without assuming any risk of loss.**

(2) "Casino licensee" means any riverboat licensee, operating agent, or gambling game licensee under IC 4-35.

~~(2)~~ **(3)** "Contract for goods or services, or both" means any consensual obligation, written or oral, executory or executed, between a ~~riverboat~~ **casino** licensee ~~or a riverboat license applicant~~ and another party related to the acquisition of, by lease, purchase, or other form, any goods or services. As used in this subdivision, "goods and services" does not include those items excluded from the term under IC 4-33-14-5(a) **or IC 4-35-11-6(a).**

~~(3)~~ **(4)** "Contracting representative" means a contractor or a subcontractor whose participation in the substance of the contract is equivalent to less than twenty percent (20%) of the value of the contract.

~~(4)~~ **(5)** "Contractor" means a person, other than a ~~riverboat~~ **casino** licensee, ~~or a riverboat license applicant,~~ who is a party to a contract for goods or services with a ~~riverboat~~ **casino** licensee. ~~or a riverboat license applicant.~~

~~(5) "Minority" has the meaning set forth in IC 4-33-14-2.~~

~~(6) "Minority business enterprise" has the meaning set forth in IC 4-33-14-3.~~

(6) "Established goals" means the annual goals adopted from time to time by the commission resulting from a statistical analysis of utilization study conducted under IC 4-33-14-5(b) and IC 4-35-11-6(b).

(7) "Owned and controlled" means having all of the following:

(A) Ownership of at least fifty-one percent (51%) of the enterprise, including corporate stock of a corporation.

(B) Control over the management and active in the day-to-day operations of the business.

(C) An interest in the capital, assets, and profits and losses of the business proportionate to the percentage of ownership.

(8) "Participation plan" means ~~a contractual~~ **an** obligation imposed by a ~~riverboat~~ **casino** licensee as part of its ~~contract~~ **purchase** with a ~~contractor which requires the contractor to perform the contract through the utilization of~~ **vendor utilizing certified** minority or women's business enterprises for a specified minimum percentage of the value of the ~~contract.~~ **purchase.**

(9) "Subcontractor" means ~~one (1) of the following:~~

~~(A)~~ a person with a contractual relationship with a:

(A) contractor who requires the performance of activity that is directly traceable to fulfillment of the contractor's obligation to a ~~riverboat~~ **casino** licensee; or ~~riverboat license applicant.~~

(B) ~~A person with a contractual relationship with a~~ subcontractor that calls for performance of activity that is directly traceable through second tier subcontractors to fulfillment of a contractual obligation with a ~~riverboat~~ **casino** licensee. ~~or a riverboat license applicant.~~

The term does not include a person who subcontracts a significant portion of the activity to the contractor, a higher tier subcontractor, an affiliate of the contractor, or an affiliate of a higher tier subcontractor.

~~(10) "Women's business enterprise" has the meaning set forth in IC 4-33-14-4.~~

(Indiana Gaming Commission; 68 IAC 3-1-2; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2248; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 3. 68 IAC 3-1-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-1-3 List

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 3. The department of administration, minority business development shall compile a list of the minority and women's business enterprises that are certified under this rule. ~~The commission shall review the list annually to determine that the business enterprises continue to remain eligible for certification with the advice and assistance of the department of administration, minority business development.~~ The list shall be made available to all ~~riverboat~~ **casino** licensees. ~~and riverboat license applicants.~~

(Indiana Gaming Commission; 68 IAC 3-1-3; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2249; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 4. 68 IAC 3-2-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-2-1 Certification

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 1. (a) The department of administration, minority business development shall certify that an enterprise is a minority business enterprise or a women's business enterprise, or both.

(b) To be certified, a minority or women's business enterprise must comply with all of the requirements of the department of administration, minority business development under:
(1) IC 4-13-16.5; ~~25 IAC 2-20~~
(2) 25 IAC 5;
(3) the ~~Act~~ **Acts;** and
(4) this title.

~~(c) When the procedures set forth in 25 IAC 2-20 are applicable to the commission under this rule, the term MBE as used in 25 IAC 2-20 shall incorporate a women's business enterprise as defined in IC 4-33-14-4.~~

(Indiana Gaming Commission; 68 IAC 3-2-1; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2249; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 5. 68 IAC 3-2-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-2-2 Eligibility guidelines

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 2. ~~(a)~~ The guidelines for determining eligibility set forth in ~~25 IAC 2-20-3~~ **25 IAC 5** shall be utilized by department of administration, minority business development to determine eligibility for the ~~Act~~ **Acts** and this title.

~~(b) When the guidelines set forth in 25 IAC 2-10 are applicable to the commission under this rule, the term MBE as used in 25 IAC 2-20-3 shall incorporate a women's business enterprise as defined in IC 4-33-14-4.~~

(Indiana Gaming Commission; 68 IAC 3-2-2; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2249; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 6. 68 IAC 3-2-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-2-3 Hearings

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 3. A person who has been denied certification as a minority or women's business enterprise may ~~request~~ **petition the department of administration to conduct** a hearing ~~under IC 4-21.5-3-7~~ following the procedures established in ~~68 IAC 3-5.~~ **25 IAC 5.**

(Indiana Gaming Commission; 68 IAC 3-2-3; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2249; filed Jan 30, 1998, 11:00 a.m.: 21 IR 2061; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 7. 68 IAC 3-3-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-1 Procedures for subcontractors and participation plans

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10

Affected: IC 4-13-16.5; IC 4-33-14; IC 4-35-11

Sec. 1. ~~(a)~~ With the exception of ~~25 IAC 2-20-4(a)(5),~~ **25 IAC 5-6-4(a)(1)(E),** when a ~~riverboat~~ **casino** licensee ~~or a riverboat license applicant~~ enters into a ~~contract or~~ transaction for goods or services that utilizes a subcontractor or a participation plan, the procedure set forth in ~~25 IAC 2-20-4~~ **25 IAC 5-6-4** shall be utilized by the commission to determine whether or not a portion of the ~~contract or transaction~~ **purchase** value shall be counted toward the ~~goals~~ established ~~in IC 4-33-14-5.~~ **goals.** The commission may request that the department of administration, minority business development assist the commission in determining that the ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ complies with IC 4-33-14, **IC 4-35-11,** and this title.

~~(b) When the term MBE is used in 25 IAC 2-20-4, it shall incorporate a women's business enterprise as defined in IC 4-33-14-4.~~

(Indiana Gaming Commission; 68 IAC 3-3-1; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3035; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 8. 68 IAC 3-3-2 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-2 Effect of certification

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 2. (a) Except as provided in subsection (c), a certification issued under this ~~article~~ **title** may be relied upon by a ~~riverboat~~ **casino** licensee ~~or a riverboat license applicant~~ to establish the eligibility of the certified enterprise to be considered as a minority or women's business enterprise for the purpose of attaining the ~~riverboat~~ **casino** licensee's **established** goals. ~~determined under IC 4-33-14-5.~~

(b) A ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ shall advise the executive director, in writing, if it ~~becomes aware~~ **has reason to believe** that one (1) or more of the following situations exist:
(1) That a certified minority or women's business enterprise is not qualified as such under:
(A) the ~~Act~~ **Acts;**
(B) this rule;
(C) IC 4-13-16.5; or
~~25 IAC 2-20-3.~~ **(D) 25 IAC 5.**
(2) That the minority or women's business enterprise submitted false or misleading information to support its application for certification.
(3) That the participation of the certified minority or women's business enterprise in any transaction **with the casino licensee** is without economic substance.

(c) A ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ may not rely upon a certification issued under the ~~Act~~ **Acts** and this ~~article~~ **title** for purposes of attaining the ~~goals~~ established ~~in IC 4-33-14-5~~ **goals** if the ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ has the knowledge set forth in subsection (b).

(Indiana Gaming Commission; 68 IAC 3-3-2; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3035; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 9. 68 IAC 3-3-3 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-3 Dual certified enterprises

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33-14; IC 4-35-11

Sec. 3. ~~(a) The goals established by a riverboat licensee or riverboat license applicant shall not be less than those established in IC 4-33-14-5.~~

~~(b) For purposes of this rule,~~ Expenditures with business enterprises that qualify as both a minority business enterprise and a women's business enterprise may, **at the election of the casino licensee,** be **divided between and** counted toward the attainment of the ~~statutory goal~~ **established goals** for either minority business enterprises or women's business enterprises. ~~at the election made by the riverboat licensee or riverboat license applicant, but not both.~~ **Any expenditure, or portion thereof, that is counted toward the attainment of one (1) established goal may not also be counted toward the attainment of another established goal.**

(Indiana Gaming Commission; 68 IAC 3-3-3; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3036; filed Jun 9, 2000, 9:52 a.m.: 23 IR 2703; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 10. 68 IAC 3-3-4 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-4 Purpose

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 4. A ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ shall endeavor in good faith throughout the term of its certificate of suitability or license to attain ~~minority and women's business enterprise participation~~ **the** established ~~in IC 4-33-14-5. If the commission determines that a riverboat licensee or riverboat license applicant is not making a good faith effort to attain the~~ goals. ~~established under IC 4-33-14-5, the commission may initiate a disciplinary action under 68 IAC 13.~~

(Indiana Gaming Commission; 68 IAC 3-3-4; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3036; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 11. 68 IAC 3-3-5 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-5 Goal achievement

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 5. (a) A ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ may attain its **established** goals of expending a certain minimum percentage of the value of its ~~contracts~~ **purchases** for goods and services by one (1) of the following:

(1) ~~Contracting or transacting~~ **Purchasing** directly ~~with~~ **from** minority and women's business enterprises. The value of the ~~contract or transaction~~ **purchase** shall be considered for the purpose of determining attainment of the ~~statutory~~ **established** goal.

(2) ~~Contracting with~~ **Purchasing from** a nonminority or nonwomen's business enterprise under terms and conditions that establish a participation plan. If a participation plan is established, the value of the ~~contractor's~~ expenditures with minority or women's business enterprises, directly or through the use of participation plans, shall be attributed to the ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ for the purpose of determining attainment of the ~~statutory~~ **established** goal.

(3) ~~Contracting or transacting~~ **Purchasing** directly ~~with~~ **from** minority and women's business enterprises that are brokers or contracting representatives, in which case **only** the amount of the fees retained by the minority or women's business enterprise shall be considered for the purpose of attaining the ~~statutory~~ **established** goal.

(b) A ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ may not attain more than seventy percent (70%) of each of its ~~statutory~~ **established** goals through the use of participation plans. **For purposes of this rule, and upon request by a casino licensee, all expenditures made by a construction project manager on behalf of, or as an agent of, the casino licensee, which are directly related to a construction project, shall be attributed to the casino licensee and not to a participation plan.**

(c) A ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ may not attain more than fifty percent (50%) of each of its ~~statutory~~ **established** goals through contracting with minority or women's business enterprises who are brokers or contracting representatives.

(d) Credit towards attainment of the established goals may be given for purchases from a certified minority or women's business enterprise whose certification is revoked or expired only if the minority or women's business enterprise is recertified before the end of the quarter following the quarter in which certification expired or was revoked. If the minority or women's business enterprise is not recertified by the end of the quarter following the quarter in which the certification expired or was revoked, no expenditures made to that minority or women's business enterprise following the expiration or revocation shall be credited toward attainment of its established goals.

(e) Until January 1, 2010, credit toward attainment of the established goals may be given for purchases from an out-of-state minority or women's business enterprise whose Indiana certification has expired, provided the minority or women's business enterprise maintains certification in its home state.

(Indiana Gaming Commission; 68 IAC 3-3-5; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3036; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 12. 68 IAC 3-3-6 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-6 Reporting purchases with minority and women's business enterprises

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 6. (a) ~~Annually on January 31,~~ For expenditures made during the ~~previous~~ calendar year, each ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ shall file a report with the commission concerning performance of its continuing obligation to meet the **established** goals. ~~required by IC 4-33-14-5. The commission shall provide a copy of each report filed to the department of administration, minority business development.~~ **The report shall be filed with the commission quarterly, not later than January 31, April 30, July 31, and October 31 of each year.** This report shall contain the following information, **in the format proscribed** *[sic]* **by the commission, for each vendor:**

(1) The total ~~number and~~ value of all ~~contracts or transactions awarded~~ **purchases** for goods and services.

(2) The total ~~number and~~ value of ~~all contracts or transactions awarded to~~ **purchases from** certified minority and women's business enterprises. ~~and a schedule of anticipated disbursements, by calendar quarter, for these contracts or transactions.~~

(3) The total ~~number and~~ value of all ~~contracts awarded that contain~~ **purchases from a certified minority or women's business enterprises made as a result of** a participation plan. ~~and a schedule of anticipated disbursements, by calendar quarter, for these participation plans.~~

~~(4) The total number and value of all subcontracts to be awarded to minority and women's business enterprises under contracts containing a participation plan and a schedule of anticipated disbursements, by calendar quarter, for these subcontracts.~~

~~(5) A schedule showing actual disbursements to minority and women's business enterprises during each quarter of the year and indicating any deviation from the anticipated disbursement schedule previously reported to the commission.~~

~~(6) A schedule showing actual disbursements to minority and women's business enterprises by contractors under the provisions of a participation plan during each quarter of the year and indicating any deviation from the anticipated disbursement schedule previously reported to the commission.~~

~~(7)~~ **(4)** The total ~~number and~~ value of ~~contracts or transactions awarded to~~ **purchases from** noncertified minority and women's business enterprises for which the ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ wishes to claim credit toward attainment of ~~its statutory goal and for each such noncertified minority and women's business enterprise a description of the scope and thoroughness of the investigation conducted to determine that the enterprise qualifies as a minority and women's business enterprise under this rule.~~ **the established goals.** Credit shall only be given for ~~noncertified minority and women's business enterprises that have applied for~~ **purchases made during the time an application for** certification ~~as a minority or women's business enterprise under this rule.~~ **is pending. If an applicant for certification is denied, no credit will be given for expenditures made with that enterprise.**

~~(8) An identification of each contract or transaction awarded to a minority and women's business enterprise.~~
~~(9) An identification of each contract in which the contractor has not complied, or is not reasonably expected to comply, with the provisions of the participation plan.~~
~~(10) A comprehensive description of all efforts made by the riverboat licensee or riverboat license applicant to monitor and enforce the provisions of the participation plan.~~
~~(11) Such~~ **(5)** Other information deemed necessary by the executive director to ensure compliance with the ~~Act~~ **Acts** and this title.

(b) The executive director may require a ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ to present a written or oral report to the commission concerning performance of its continuing obligation to achieve the **established** goals. ~~required by IC 4-33-14-5 at any time.~~

(Indiana Gaming Commission; 68 IAC 3-3-6; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3036; filed Dec 2, 2001, 12:35 p.m.: 25 IR 1065; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 13. 68 IAC 3-3-7 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-7 Compliance monitoring and certification

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33-14; IC 4-35-11

Sec. 7. ~~(a)~~ Each ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ shall comply with the monitoring and certification requirements established by ~~25 IAC 2-20-5.~~ **25 IAC 5.** The commission may request that the department of administration, minority business development assist the commission in determining that the ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ complies with IC 4-33-14, **IC 4-35-11,** and this title. The commission shall be responsible for enforcing the ~~Act~~ **Acts** and this title.

~~(b) When the term MBE is used in 25 IAC 2-20-5, it shall incorporate a women's business enterprise as defined in IC 4-33-14-4.~~

(Indiana Gaming Commission; 68 IAC 3-3-7; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 14. 68 IAC 3-3-8 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-8 Failure to attain goals

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33-14; IC 4-35-11

Sec. 8. (a) A ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ may be considered as having failed to ~~meet~~ **satisfy** IC 4-33-14 **or IC 4-35-11** if **any** one (1) of the following occurs:
~~(1) The riverboat licensee or riverboat license applicant has failed to meet the goals established in IC 4-33-14-5.~~
~~(2)~~ **(1)** The ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ has failed to make a good faith effort to achieve the **established** goals. ~~established by IC 4-33-14-5.~~
~~(3)~~ **(2)** The ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ fails to improve its efforts toward attainment of the **established** goals after becoming aware that it will fail to attain ~~its~~ **the established** goals on an annual basis.
~~(4)~~ **(3)** The ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ fails to prepare and file accurate **or timely** reports as required by this rule.
~~(5)~~ **(4)** The ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ fails to meet any other provision of IC 4-33-14, **IC 4-35-11,** or this rule.

(b) A ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ is responsible for the failure of a contractor to

comply with the provisions of a participation plan. **However, if:**

(1) a contractor has misrepresented to a casino licensee information concerning the percentage of minority business or women's business obtained or to be obtained as part of the contract; and

(2) the casino licensee has no reason to know that such information is false;

the casino licensee shall not be responsible for the failure of same contractor. The percentage of minority business or women's business to be acquired via such participation contract shall be included in the calculation of the casino licensee's minority or women's business utilization until the time that the contractor's misrepresentation is or should have been discovered or made known to the casino licensee. If at any time the commission determines that the licensee failed to make a reasonable effort, on at least an annual basis, to verify a contractor's participation plan expenditures, the commission will presume that any misrepresentation by the contractor should have been previously discovered by the casino licensee.

~~(c) A disciplinary action under 68 IAC 13 may be initiated against a riverboat licensee or riverboat license applicant that is found to have violated any applicable state or federal discrimination law.~~

(Indiana Gaming Commission; 68 IAC 3-3-8; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 15. 68 IAC 3-3-9 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-9 Required notification

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 9. (a) Within thirty (30) days after a ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ determines that it will not attain ~~the statutory~~ **an established** goal, **or that it will not reach utilization consistent with capacity as determined by the most recent disparity study conducted under IC 4-33-14-5(b) or IC 4-35-11-6(b),** the ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ shall submit a report to the commission that includes a detailed description of ~~the status of~~ its efforts to attain the ~~statutory~~ **established** goal **or capacity,** including, but not limited to, the following:

(1) Documentation of direct contact or negotiations with minority and women's business enterprises for specific contracting or transacting opportunities. The actions taken shall be reported in a manner that will include the following items:

(A) A detailed statement of the efforts made to negotiate with minority and women's business enterprises, including the following:

(i) The names, business addresses, and business telephone numbers of the minority and women's business enterprises contacted.

(ii) A detailed statement of the reason why prospective agreements were not reached.

(B) A detailed statement of the efforts, ~~made~~ **if any,** to ~~select work proposed to be performed by minority and women's business enterprises in order~~ **be undertaken by the licensee that may reasonably be expected** to increase the likelihood of achieving the ~~statutory~~ **established** goal.

(2) Documentation of any advertising performed in the search for prospective minority and women's business enterprises for the contract **or transaction.**

(3) Documentation of any notifications provided to minority business assistance agencies for the purpose of locating prospective minority and women's business enterprises for the contract **or transaction.**

(4) Documentation of efforts taken to research other possible areas of participation.

(5) Documentation regarding the contractor's policies or programs as they pertain to the utilization of minority and women's business enterprises. This documentation should also provide an explanation of the methods used to carry out those policies or programs.

(6) Documentation relevant to any other efforts made to assist minority and women's business enterprises in overcoming any traditional barriers of participation in the industry affected by the contract or transaction.

~~(b) When considering the riverboat licensee's or riverboat license applicant's good faith effort to attain the statutory goals, the executive director or commission may consider the following factors:~~

~~(1) The methods utilized to achieve the statutory goal.~~

~~(2) The time allowed for a meaningful response to its solicitations.~~

~~(3) Statements received from minority and women's business enterprises that have been listed as having been~~

~~contacted by the riverboat licensee, riverboat license applicant, or contractor.~~
~~(4) The availability of certified minority and women's business enterprises to provide the riverboat licensee or riverboat license applicant with needed goods and services.~~
~~(5) Any other factor the executive director or commission deems pertinent to a determination of the good faith effort. The executive director may consult with the department of administration, minority business development regarding a riverboat licensee's or riverboat license applicant's good faith effort.~~

~~(c)~~ **(b)** The ~~riverboat~~ **casino** licensee and contractor shall maintain adequate records of all relevant data with respect to the utilization and attempted utilization of minority and women's business enterprises and shall provide full access to these records to the executive director or commission upon request to inspect them. The commission shall make the records required by this article available to the department of administration, minority business development upon the direction of the executive director. The records shall include, but not be limited to, the following information:

(1) The degree of achievement of the goals the ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ believes possible, and the time frame for achieving the ~~statutory goal.~~ **established goals.**
(2) The plan devised by the ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ regarding the utilization of minority and women's business enterprises.
(3) The resources being devoted toward attainment of the ~~statutory~~ **established** goal and any changes in that level during the past year.
(4) Any problems encountered by contractors in complying with the provisions of a participation plan, the ~~riverboat~~ **casino** licensee's ~~or riverboat license applicant's~~ reaction to these problems, and the efforts made to anticipate the problems and adjust the efforts accordingly.
~~(5) A plan to improve its efforts and to better enable itself to attain the statutory goals.~~

(Indiana Gaming Commission; 68 IAC 3-3-9; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 16. 68 IAC 3-3-10 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-3-10 Good faith effort

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 10. (a) Whenever the ~~commission~~ **executive director** determines ~~at a meeting held under 68 IAC 1-2-5,~~ that a ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ has failed to demonstrate that it has met ~~its obligations under IC 4-33-14 and this rule, it~~ **an established goal, the executive director** shall immediately advise the ~~riverboat~~ **casino** licensee ~~or riverboat license applicant~~ of that determination. Within ninety (90) days following the determination, the ~~riverboat~~ **casino** licensee shall demonstrate its compliance with the ~~statutory~~ **established** goals or a good faith effort to attain the ~~statutory~~ **established** goals, or the ~~commission~~ **executive director** may initiate a disciplinary action under 68 IAC 13.

~~(b) In the event that the riverboat licensee or riverboat license applicant:~~
~~(1) fails to make a good faith effort to attain goals established under IC 4-33-14-5; and~~
~~(2) fails to achieve compliance within ninety (90) days following notice of the determination of noncompliance; the commission may initiate a disciplinary action under 68 IAC 13.~~

(b) When determining whether the casino licensee has made a good faith effort to attain any or all of the established goals, the following factors may be considered:
(1) The methods and efforts utilized in an effort to achieve the established goals.
(2) The time allowed for a meaningful response to solicitations.
(3) Statements received from minority and women's business enterprises that have been listed as having been contacted by the casino licensee or contractor.
(4) The availability of certified minority and women's business enterprises to satisfactorily provide the casino licensee with needed goods and services at a competitive price.
(5) Any other factor the executive director or commission deems pertinent to a determination of the good faith effort. The executive director may consult with the department of administration, minority business development regarding a casino licensee's good faith effort.

(Indiana Gaming Commission; 68 IAC 3-3-10; filed Jul 3, 1996, 5:00 p.m.: 19 IR 3038; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 17. 68 IAC 3-3-11 IS ADDED TO READ AS FOLLOWS:

68 IAC 3-3-11 Deviations from provisions

Authority: IC 4-33-4; IC 4-33-14-10; IC 4-35-4; IC 4-35-11-10
Affected: IC 4-13-16.5; IC 4-33; IC 4-35

Sec. 11. The executive director or the commission may approve deviations from the provisions of this article upon written request if the executive director or the commission determines that the:
(1) requirement or procedure is impractical or burdensome; and
(2) alternative means of satisfying the requirement or procedure:
(A) fulfills the purpose of the article;
(B) is in the best interest of the public and gaming in Indiana; and
(C) does not violate IC 4-33 or IC 4-35.

(Indiana Gaming Commission; 68 IAC 3-3-11; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 18. 68 IAC 3-4-1 IS AMENDED TO READ AS FOLLOWS:

68 IAC 3-4-1 General provisions

Authority: IC 4-33-4; IC 4-35-4
Affected: IC 4-13-16.5; IC 4-21.5-3-1; IC 4-33; IC 4-35

Sec. 1. (a) A person may challenge the certification issued to a minority or women's business enterprise **as outlined in IC 4-21.5-3 and 25 IAC 5.**

~~(b) As used in this rule, "deputy commissioner" means the deputy director of the department of administration, minority business development.~~

~~(c) The challenge must be submitted to the following in accordance with IC 4-21.5-3-1:~~
~~(1) The deputy commissioner, 402 West Washington Street, W474, Indianapolis, Indiana 46204.~~
~~(2) Chief counsel for the commission at the commission's office in Indianapolis, Indiana.~~
~~(3) The challenged party.~~

~~(d)~~ **(b)** The department of administration, minority business development, shall:
(1) review challenges to certifications; and
(2) make recommendations regarding these challenges to the commission.

(Indiana Gaming Commission; 68 IAC 3-4-1; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1256; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Oct 1, 2008, 4:17 p.m.: 20081029-IR-068080075FRA)

SECTION 19. THE FOLLOWING ARE REPEALED: 68 IAC 3-4-2; 68 IAC 3-4-3; 68 IAC 3-4-4; 68 IAC 3-4-5; 68 IAC 3-4-6; 68 IAC 3-5.

LSA Document #08-75(F)
Notice of Intent: 20080213-IR-068080075NIA
Proposed Rule: 20080402-IR-068080075PRA
Hearing Held: July 30, 2008
Approved by Attorney General: September 16, 2008
Approved by Governor: October 1, 2008
Filed with Publisher: October 1, 2008, 4:17 p.m.
Documents Incorporated by Reference: None Received by Publisher

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Posted: 10/29/2008 by Legislative Services Agency
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