

ARTICLE 3. MINORITY AND WOMEN'S BUSINESS ENTERPRISES

Rule 1. General Provisions

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

Authority: IC 4-13-16.5; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-5

Sec. 1. (a) It is the policy of the commission to ensure the following:

(1) That riverboat licensees and riverboat license applicants conduct all aspects of their operation in compliance with IC 4-33-14-5.

(2) That riverboat licensees and riverboat license applicants establish such internal procedures and controls and provide such reports as the commission finds are necessary to ensure that these policies are effective at all levels of the riverboat gambling operations.

(b) The department of administration, minority business development 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 may assist the commission in determining compliance with the Act and this article. (*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*)

68 IAC 3-1-2 Definitions applicable to article

Authority: IC 4-13-16.5; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14

Sec. 2. The following definitions apply throughout this article:

(1) "Broker" means an intermediary who negotiates contracts for goods and services.

(2) "Contract for goods or services, or both" means any consensual obligation, written or oral, executory or executed, between a riverboat 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).

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

(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 obligation imposed by a riverboat licensee as part of its contract with a contractor which requires the contractor to perform the contract through the utilization of minority or women's business enterprises for a specified minimum percentage of the value of the contract.

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

(A) A person with a contractual relationship with a contractor who requires the performance of activity that is directly traceable to fulfillment of the contractor's obligation to a riverboat 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 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)

68 IAC 3-1-3 List

Authority: IC 4-13-16.5; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14

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 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*)

Rule 2. Certification Process and Procedure

68 IAC 3-2-1 Certification

Authority: IC 4-13-16.5; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-4

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 IC 4-13-16.5, 25 IAC 2-20, the Act, and 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*)

68 IAC 3-2-2 Eligibility guidelines

Authority: IC 4-13-16.5; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-4

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

68 IAC 3-2-3 Hearings

Authority: IC 4-13-16.5; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-21.5-3-7; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14

Sec. 3. A person who has been denied certification as a minority or women's business enterprise may request a hearing under IC 4-21.5-3-7 following the procedures established in 68 IAC 3-5. (*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*)

Rule 3. Compliance

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

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-4; IC 4-33-14-5

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Sec. 1. (a) With the exception of 25 IAC 2-20-4(a)(5), when a riverboat 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 shall be utilized by the commission to determine whether or not a portion of the contract or transaction value shall be counted toward the goals established in IC 4-33-14-5. The commission may request that the department of administration, minority business development assist the commission in determining that the riverboat licensee or riverboat license applicant complies with IC 4-33-14 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*)

68 IAC 3-3-2 Effect of certification

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-5

Sec. 2. (a) Except as provided in subsection (c), a certification issued under this article may be relied upon by a riverboat 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 licensee's goals determined under IC 4-33-14-5.

(b) A riverboat licensee or riverboat license applicant shall advise the executive director, in writing, if it becomes aware 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 the Act, this rule, IC 4-13-16.5, or 25 IAC 2-20-3.

(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 is without economic substance.

(c) A riverboat licensee or riverboat license applicant may not rely upon a certification issued under the Act and this article for purposes of attaining the goals established in IC 4-33-14-5 if the riverboat 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*)

68 IAC 3-3-3 Goals

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33-14-5

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 be counted toward the attainment of the statutory goal 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. (*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*)

68 IAC 3-3-4 Good faith effort

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-5

Sec. 4. A riverboat 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 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)

68 IAC 3-3-5 Goal achievement

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14

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

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

(2) Contracting with 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 licensee or riverboat license applicant for the purpose of determining attainment of the statutory goal.

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

(b) A riverboat licensee or riverboat license applicant may not attain more than seventy percent (70%) of each of its statutory goals through the use of participation plans.

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

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

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-5

Sec. 6. (a) Annually on January 31, for expenditures made during the previous calendar year, each riverboat licensee or riverboat license applicant shall file a report with the commission concerning performance of its continuing obligation to meet the 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. This report shall contain the following information:

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

(2) The total number and value of all contracts or transactions awarded to 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 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) The total number and value of contracts or transactions awarded to noncertified minority and women's business enterprises for which the riverboat 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. Credit shall only be given for noncertified minority and women's business enterprises that have applied for certification as a minority or women's business enterprise under this rule.

(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 other information deemed necessary by the executive director to ensure compliance with the Act and this title.

(b) The executive director may require a riverboat licensee or riverboat license applicant to present a written or oral report to the commission concerning performance of its continuing obligation to achieve the 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*)

68 IAC 3-3-7 Compliance monitoring and certification

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-4

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

68 IAC 3-3-8 Failure to attain goals

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-5

Sec. 8. (a) A riverboat licensee or riverboat license applicant may be considered as having failed to meet IC 4-33-14 if 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) The riverboat licensee or riverboat license applicant has failed to make a good faith effort to achieve the goals established by IC 4-33-14-5.

(3) The riverboat licensee or riverboat license applicant fails to improve its efforts toward attainment of the goals after becoming aware that it will fail to attain its goals on an annual basis.

(4) The riverboat licensee or riverboat license applicant fails to prepare and file accurate reports as required by this rule.

(5) The riverboat licensee or riverboat license applicant fails to meet any other provision of IC 4-33-14 or this rule.

(b) A riverboat licensee or riverboat license applicant is responsible for the failure of a contractor to comply with the provisions of a participation plan.

(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*)

68 IAC 3-3-9 Corrective action plan

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14

Sec. 9. (a) Within thirty (30) days after a riverboat licensee or riverboat license applicant determines that it will not attain the statutory goal, the riverboat 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 goal, 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:

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(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 to select work proposed to be performed by minority and women's business enterprises in order to increase the likelihood of achieving the statutory goal.

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

(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.

(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) The riverboat 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 licensee or riverboat license applicant believes possible, and the time frame for achieving the statutory goal.

(2) The plan devised by the riverboat 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 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 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)

68 IAC 3-3-10 Required corrective action plan

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3; IC 4-33-14-10

Affected: IC 4-13-16.5; IC 4-33-4; IC 4-33-6; IC 4-33-9; IC 4-33-14-5

Sec. 10. (a) Whenever the commission determines, at a meeting held under 68 IAC 1-2-5, that a riverboat licensee or riverboat

license applicant has failed to demonstrate that it has met its obligations under IC 4-33-14 and this rule, it shall immediately advise the riverboat licensee or riverboat license applicant of that determination. Within ninety (90) days following the determination, the riverboat licensee shall demonstrate its compliance with the statutory goals or a good faith effort to attain the statutory goals or the commission 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. (*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*)

Rule 4. Challenges of the Designation of a Certified Minority or Women's Business Enterprise

68 IAC 3-4-1 General provisions

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3-1; IC 4-33

Sec. 1. (a) A person may challenge the certification issued to a minority or women's business enterprise.

(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) The department of administration, minority business development, shall review challenges to certifications and 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*)

68 IAC 3-4-2 Requirements of a challenge

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 2. (a) The challenge to a certification must meet the following requirements:

(1) Be in writing.

(2) State the name, business address, and business telephone number of the challenging party.

(3) Indicate that the challenging party is certified as a minority business enterprise or a women's business enterprise, or both, under 68 IAC 3-2, or is seeking certification.

(4) Identify the minority business enterprise or women's business enterprise, or both, whose certification the challenging party is challenging.

(5) State in detail the facts upon which the challenging party relies in making the challenge.

(6) Indicate whether the minority business enterprise or women's business enterprise, or both, whose certification is being challenged supplies goods or services, or both, to a riverboat licensee or a riverboat license applicant, and specify the goods or services, or both, provided.

(7) Indicate the riverboat licensee or the riverboat license applicant to whom the challenged minority or women's business enterprise supplies goods or services, or both.

(8) Be signed, verified, and dated by the challenging party. Such verification shall be notarized and shall include a certification stating "Under the penalty of perjury, the undersigned has examined the challenge and to the best of my knowledge and belief, it is true, complete, and correct."

(b) The challenge to a certification must be served on the challenged party. The challenging party must attach a certificate of service to the challenge. The certificate of service shall indicate that the challenge has been served on the challenged party, the deputy commissioner, and the chief counsel for the commission. (*Indiana Gaming Commission; 68 IAC 3-4-2; filed Dec 3, 1997,*

3:30 p.m.: 21 IR 1257; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261)

68 IAC 3-4-3 Review by deputy commissioner

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 3. (a) The deputy commissioner shall review all challenges to certifications. The deputy commissioner may determine one (1) of the following:

(1) The challenge does not contain sufficient documentation to warrant further investigation into whether the challenged enterprise fails to meet the requirements to be certified as a minority business enterprise or a women's business enterprise, or both.

(2) The challenge contains sufficient documentation to warrant further investigation into whether the challenged enterprise fails to meet the requirements to be certified as a minority business enterprise or a women's business enterprise, or both, and that an investigation should be conducted.

(b) The deputy commissioner shall, in writing, notify the following parties of the deputy commissioner's determination:

(1) The challenged party.

(2) The challenging party.

(3) The chief counsel for the commission.

(c) If the deputy commissioner has determined that the challenge does not contain sufficient documentation to warrant further investigation into whether the challenged enterprise fails to meet the certification requirements and has advised the commission of this determination, the commission shall discuss the matter at a meeting held under 68 IAC 1-2-5. The commission shall notify the challenging party and the challenged enterprise of the decision of the commission. If the commission determines that the challenge contains sufficient documentation to warrant further investigation, the commission shall refer the matter back to the deputy commissioner for investigation. (*Indiana Gaming Commission; 68 IAC 3-4-3; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1257; errata filed Dec 23, 1997, 10:00 a.m.: 21 IR 1768; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

68 IAC 3-4-4 Investigation of challenge

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3-1; IC 4-33

Sec. 4. (a) If the deputy commissioner determines that the challenge contains sufficient documentation to warrant further investigation into whether the challenged enterprise fails to meet the certification requirements, the deputy commissioner shall notify the following parties in writing:

(1) The challenged enterprise.

(2) The challenging party.

(3) The chief counsel for the commission.

(b) The notice sent to the challenged enterprise shall meet the following requirements:

(1) Identify the challenging party.

(2) Summarize the grounds for the challenge to the certification.

(3) Advise the challenged enterprise that the enterprise has thirty (30) days to respond, in writing, to the challenge. The response shall contain facts and supporting documentation that show the challenged enterprise does meet the requirements to be certified as a minority business enterprise or a women's business enterprise, or both.

(c) The deputy commissioner may require the challenged enterprise to submit additional information to determine whether the challenged enterprise meets certification requirements.

(d) Failure of a challenged enterprise to respond to a challenge or to submit additional information as required by the deputy commissioner may be grounds to determine that the challenged enterprise does not meet the certification requirements.

(e) The deputy commissioner shall, after the investigation, make a determination that the challenged enterprise does or does not meet the requirements of the Act, this title, and 25 IAC to be certified as a minority business enterprise or women's business enterprise, or both. The determination of the deputy commissioner shall be served on the following parties in accordance with IC 4-21.5-3-1:

- (1) The challenged enterprise.
- (2) The challenging party.
- (3) The chief counsel for the commission.
- (4) Riverboat licensees and riverboat license applicants.

(f) The commission shall review the information submitted by the deputy director and discuss the matter at a meeting held under 68 IAC 1-2-5. The commission shall either adopt or reject the deputy commissioner's findings regarding certification. (*Indiana Gaming Commission; 68 IAC 3-4-4; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1257; errata filed Mar 11, 1998, 3:45 p.m.: 21 IR 2989; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

68 IAC 3-4-5 Request for a hearing

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-21.5-3-7; IC 4-21.5-3-8; IC 4-33-14-4

Sec. 5. (a) If the commission upholds the deputy commissioner's recommendation to terminate a challenge under section 3(b) of this rule, the challenging party may request a hearing on the termination under IC 4-21.5-3-7 in accordance with the procedures established in 68 IAC 3-5.

(b) If the commission upholds the deputy commissioner's recommendation that the challenged enterprise does meet the requirements of the Act, this title, and 25 IAC, the challenging party may request a hearing regarding the decision under IC 4-21.5-3-7 in accordance with the procedures established in 68 IAC 3-5.

(c) If the challenging party does not request a hearing, the determination of the commission shall become the final order of the commission.

(d) If the commission upholds the deputy commissioner's recommendation that the challenged enterprise does not meet the requirements of the Act, this title, and 25 IAC, the commission shall advise the challenged party, in writing, of this determination. The challenged enterprise shall be served with a complaint in accordance with IC 4-21.5-3-8. The challenged party's certification will remain in effect until after a decision is reached pursuant to 68 IAC 3-5. (*Indiana Gaming Commission; 68 IAC 3-4-5; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1258; errata filed Dec 23, 1997, 10:00 a.m.: 21 IR 1768; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

68 IAC 3-4-6 Status of challenged enterprise during investigation and hearing process

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-33-14-5

Sec. 6. (a) Except as provided in subsection (b), expenditures made by a riverboat licensee or a riverboat license applicant with a challenged enterprise may be counted toward the goals established in IC 4-33-14-5 during the pendency of an investigation or hearing, or both.

(b) A riverboat licensee or riverboat license applicant may not rely upon expenditures made with a challenged enterprise if the riverboat licensee or riverboat license applicant has the knowledge set forth in 68 IAC 3-3-2(b), and upon which the challenge to the certification is based. (*Indiana Gaming Commission; 68 IAC 3-4-6; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1258; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

Rule 5. Certification; Hearings on Denials and Challenges

68 IAC 3-5-1 General provisions

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3
Affected: IC 4-21.5-3; IC 4-33

Sec. 1. (a) This rule applies to the following situations:

- (1) A person whose application for certification as a minority or women's business enterprise has been denied under this article may request a hearing on the denial in accordance with this rule.
- (2) A complaint has been issued to a challenged enterprise concerning the possible revocation of its certification.

(3) A person whose challenge to the certification of a minority or women's business enterprise has been denied may request a hearing on the denial of the challenge in accordance with this rule.

(b) As used in this rule, "petitioner" means the person whose application for certification as a minority or women's business enterprise has been denied, or whose challenge to the certification of a minority or women's business enterprise has been denied.

(c) The petitioner or the challenged enterprise shall submit an original and two (2) copies of any request, pleading, or other written document submitted to the commission or the administrative law judge, or both.

(d) The petitioner or the challenged enterprise must attach a certificate of service to each pleading. The certificate of service shall indicate that the pleading has been served on each attorney or party of record.

(e) An action involving a denial of a certification or challenge to a certification under this rule shall also comply with IC 4-21.5-3. (*Indiana Gaming Commission; 68 IAC 3-5-1; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1258; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

68 IAC 3-5-2 Requests for hearings

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33

Sec. 2. Requests for hearing shall comply with 68 IAC 7-1-2. Requests for hearings must be submitted within fifteen (15) days after service of notice of denial of the certification or the challenge to a certification in accordance with IC 4-21.5-3. (*Indiana Gaming Commission; 68 IAC 3-5-2; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1259; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

68 IAC 3-5-3 Procedural issues

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5; IC 4-33

Sec. 3. (a) Appearances and service shall comply with 68 IAC 7-1-3.

(b) Discovery shall be handled in accordance with 68 IAC 7-1-4.

(c) Subpoenas shall be handled in accordance with 68 IAC 7-1-5.

(d) Prehearing conferences shall be handled in accordance with 68 IAC 7-1-6.

(e) Motions for summary judgment and other appropriate motions shall be handled in accordance with 68 IAC 7-1-7.

(f) Depositions shall be handled in accordance with 68 IAC 7-1-8.

(g) Continuances shall be handled in accordance with 68 IAC 7-1-9.

(h) Evidence shall be handled in accordance with 68 IAC 7-1-11.

(i) Matters concerning ex parte communication shall be handled in accordance with 68 IAC 7-1-12.

(j) Matters concerning sanctions and penalties shall be handled in accordance with 68 IAC 7-1-13.

(k) Transmittal of the record and recommendation to the commission shall be handled in accordance with 68 IAC 7-1-14. (*Indiana Gaming Commission; 68 IAC 3-5-3; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1259; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

68 IAC 3-5-4 Proceedings

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5; IC 4-33

Sec. 4. (a) The burden of proof shall at all times be on the petitioner in either of the following situations:

(1) The petitioner is appealing the denial of an application for certification under 68 IAC 3-2.

(2) The petitioner is appealing the denial of a challenge to a minority or women's business enterprise certification under 68 IAC 3-4.

The petitioner shall have the affirmative responsibility of establishing by a preponderance of the evidence that the application for certification should not have been denied or that the challenge to a certification should not have been denied.

(b) The burden of proof shall at all times be on the commission if the commission has filed a complaint indicating the

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commission seeks to revoke a challenged enterprise's certification. The commission shall have the affirmative responsibility of establishing by a preponderance of the evidence that the challenged enterprise does not meet the requirements of the Act, this title, and 25 IAC for certification as a minority or women's business enterprise.

(c) Any testimony shall be given under oath or affirmation. The administrative law judge shall be authorized to administer oaths.

(d) Both parties may present an opening statement on the merits. The party who bears the burden of proof proceeds first. The party not bearing the burden of proof may not reserve opening statement for a later time. The administrative law judge may determine the length of time each party is permitted for the presentation of an opening statement.

(e) The party bearing the burden of proof shall then present its case-in-chief.

(f) Upon the conclusion of the case-in-chief presented by the party bearing the burden of proof, the other party may move for a directed finding. The administrative law judge may hear arguments on the motion or may grant, deny, or reserve any decision thereon, with or without argument.

(g) If no motion for directed finding is made, or if such motion is denied or decision reserved thereon, the party not bearing the burden of proof may present its case.

(h) Each party may conduct cross-examination of adverse witnesses.

(i) Upon conclusion of the case of the party not bearing the burden of proof, the party bearing the burden of proof may present evidence in rebuttal.

(j) The administrative law judge may ask questions of the witnesses and may request or allow additional evidence at any time, including additional rebuttal evidence.

(k) Both parties may present closing argument. The party bearing the burden of proof proceeds first, and, thereafter, the opposing party. The party bearing the burden of proof may present rebuttal argument. The administrative law judge may determine the length of time each party is permitted for the presentation of closing argument.

(l) The administrative law judge may require or allow the parties to submit posthearing briefs, proposed findings of fact, and conclusions of law within ten (10) days of the conclusion of the hearing or within such other time period the administrative law judge might order. (*Indiana Gaming Commission; 68 IAC 3-5-4; filed Dec 3, 1997, 3:30 p.m.: 21 IR 1259; errata filed Mar 11, 1998, 3:45 p.m.: 21 IR 2989; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261*)

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