

CHAPTER 53

EQUAL EMPLOYMENT AND BUSINESS OPPORTUNITY

Authority

N.J.S.A. 5:12-63, 69, 134, 135 and 184 through 190.

Source and Effective Date

R.1996 d.33, effective December 15, 1995.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

Executive Order No. 66(1978) Expiration Date

Chapter 53, Equal Employment and Business Opportunity, expires on December 15, 2000.

Chapter Historical Note

Chapter 53, Equal Employment Opportunity, became effective January 23, 1978, with Subchapter 1, General Provisions, adopted as R.1978 d.16. See: 9 N.J.R. 603(c), 10 N.J.R. 83(a). Chapter 53 was amended by R.1978 d.172, effective May 25, 1978. See: 10 N.J.R. 211(a), 10 N.J.R. 305(d).

Pursuant to Executive Order No. 66(1978), Chapter 53 was readopted as R.1983 d.162, effective May 4, 1983. See: 15 N.J.R. 433(a), 15 N.J.R. 932(c). Pursuant to Executive Order No. 66(1978), Chapter 53 was readopted as R.1988 d.234, effective April 28, 1988. See: 20 N.J.R. 640(a), 20 N.J.R. 1214(a). Chapter 53 was amended by R.1988 d.392, effective August 15, 1988. See: 19 N.J.R. 1638(b), 20 N.J.R. 2095(a). Subchapter 2, Set-Aside Goals for Casino Business with Minority and Women's Business Enterprises, was adopted as R.1989 d.167, effective March 20, 1989. See: 20 N.J.R. 2446(a), 21 N.J.R. 781(b).

Chapter 53 was amended by R.1989 d.168, effective March 20, 1989. See: 21 N.J.R. 18(b), 21 N.J.R. 781(a). Further amendments were made by R.1989 d.414, effective August 7, 1989. See: 21 N.J.R. 1507(a), 21 N.J.R. 2301(a). Further amendments were made by R.1989 d.528, effective October 16, 1989. See: 21 N.J.R. 1823(a), 21 N.J.R. 3314(c). Further amendments were made by R.1990 d.213, effective April 16, 1990. See: 22 N.J.R. 332(a), 22 N.J.R. 1272(a). Further amendments were made by R.1993 d.37, effective January 19, 1993. See: 24 N.J.R. 3695(a), 25 N.J.R. 348(b). Pursuant to Executive Order No. 66(1978), Chapter 53 was readopted as R.1993 d.221, effective April 26, 1993, with amendments effective May 17, 1993. See: 25 N.J.R. 684(b), 25 N.J.R. 2000(a).

Chapter 53, Equal Employment Opportunity, was repealed and Chapter 53, Equal Employment and Business Opportunity, was adopted as new rules by R.1993 d.406, effective August 16, 1993. See: 25 N.J.R. 1675(a), 25 N.J.R. 3843(b). Pursuant to Executive Order No. 66(1978), Chapter 53 was readopted as R.1996 d.33, effective December 15, 1995. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

19:53-1.1 Scope, policy and purpose

(a) It has long been the public policy of the State of New Jersey to promote equal employment and business opportunity by prohibiting discrimination and by encouraging businesses to achieve a balanced representation of employees at all levels of the work force and to contract with and purchase goods and services from all persons. Consistent with this public policy, the Act and the rules of the Commission empower the Commission to monitor and evaluate the good faith efforts of all licensees and applicants to achieve these goals.

(b) These rules are adopted in order to establish equal employment opportunity and equal business opportunity requirements for casino licensees and applicants, casino service industry enterprise licensees and applicants and construction contractors and subcontractors engaged in construction projects for casino licensees and applicants. These rules also establish affirmative action requirements for casino licensees and applicants, certain casino service industry enterprise licensees and applicants and construction contractors and subcontractors with regard to the employment of women, minorities and persons with disabilities. Finally, these rules establish affirmative action requirements for casino licensees with regard to the purchase of goods and services from certified minority and women business enterprises.

Amended by R.1995 d.310, effective June 19, 1995.
 See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

In (b), following "certified" in the last sentence, deleted "and provisionally certified".

Amended by R.1996 d.33, effective January 16, 1996.
 See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

In (b) added persons with disabilities.

19:53-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Adjusted gross disbursements" means gross disbursements minus allowable administrative costs and allowable direct labor costs as defined in N.J.A.C. 19:53-5.5.

"Affectional or sexual orientation" is defined in N.J.S.A. 10:5-5.

"Apprentice" means a worker who is classified by a union or other party acceptable to the Commission as having experience and skills used in a particular construction craft or occupation, but lacking the skills to be qualified as a journeyworker.

"A typical hereditary cellular or blood trait" is defined in N.J.S.A. 10:5-5.

"Bus" means any "autobus" as defined in N.J.S.A. 48:4-1; provided, however, that for purposes of this chapter such term shall include any autobus engaged in intrastate or interstate commerce.

"Certified MBE" or "certified WBE" means any business enterprise which has been certified by the Department of Commerce and Economic Development pursuant to N.J.A.C. 12A:11 as a minority business enterprise or a women business enterprise, respectively.

"Change in ownership or management" means any change in the ownership or management of a licensee or applicant which could enable an involuntary change in the existing policy of the licensee or applicant to occur, and shall include, without limitation, the sale of a controlling interest in the licensee or applicant or a holding company thereof, or the replacement of the chief executive officer of the licensee or applicant.

Amended by R.1993 d.538, effective November 1, 1993.

See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted a provision covering "provisionally certified" MBEs and WBEs.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-1.6 Powers of the Commission; effect of rules

(a) Nothing in this chapter shall be construed as limiting the powers of the Commission or the Division as granted by the Act.

(b) Nothing contained in this chapter shall be interpreted to supplant, diminish, limit or in any way affect the scope and application of the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. sec. 2000(e), the Americans With Disabilities Act of 1990, 42 USC 12101 et seq., or any other law regarding equal employment opportunity, equal business opportunity or affirmative action.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-1.7 Enforcement and compliance; role of the Division

Pursuant to section 76 of the Act, the Division shall assist the Commission in the enforcement of any applicable provisions of the Act and this chapter by prosecuting before the Commission proceedings for violation of the Act and this chapter and by providing the Commission with information necessary for proceedings involving enforcement of any of the applicable provisions of the Act and this chapter.

19:53-1.8 Severability

If any clause, sentence, subparagraph, paragraph, subsection, section, subchapter or other portion of these rules or the application thereof to any person or circumstance shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of these rules or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, subchapter, or other portion thereof directly involved in such holding or to the person or circumstance therein involved.

SUBCHAPTER 2. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CONTRACTORS, SUBCONTRACTORS AND CASINO LICENSEES AND APPLICANTS CONCERNING CONSTRUCTION

19:53-2.1 Equal employment and business opportunity obligations of casino licensees and applicants concerning construction

(a) Each casino licensee and applicant shall provide equal employment opportunity to all prospective and actual em-

ployees at all levels of the work force and equal business opportunity to all contractors or subcontractors employed in the construction, renovation or reconstruction of the casino hotel, casino, casino simulcasting facility or any related facility.

(b) No architectural plans or site plans of proposed construction, renovation or reconstruction of any structure or facility to be used as a casino hotel, casino, casino simulcasting facility or related facility shall be approved by the Commission, nor shall any contract or subcontract for such work be commenced, unless the casino licensee or applicant requires that, at a minimum, all contracts or subcontracts to be awarded in connection therewith shall contain appropriate provisions by which contractors or subcontractors or their assignees agree to afford:

1. Equal employment opportunity to all prospective employees and actual employees to be employed by the contractor or subcontractor; and

2. Equal business opportunity to all persons who wish to participate in the performance of the contract or subcontract.

(c) Prior to the commencement of any work by a contractor or subcontractor in connection with any construction, renovation or reconstruction of any structure to be used as a casino hotel, casino, casino simulcasting facility or related facility, each casino licensee or applicant shall require the construction contractor or subcontractor to include the mandatory contract language set forth in N.J.A.C. 19:53-2.7 in each contract or subcontract.

(d) No casino license shall issue to or be held by any person unless such person shall demonstrate to the Commission that, as of August 16, 1993, equal employment opportunity has been afforded, prior to the submission of architectural plans or site plans to the Commission, to all prospective employees and to all actual employees employed by a contractor or subcontractor in connection with the actual construction, renovation or reconstruction of any structure to be used as a casino hotel.

(e) A casino license applicant shall be required to designate an Equal Opportunity Officer in accordance with the provisions of N.J.A.C. 19:53-1.4 prior to the start of actual construction by the applicant or any affiliated entity of any structure or facility to be used as a casino hotel. The casino license applicant shall also be required to submit an EEBOP in accordance with the provisions of N.J.A.C. 19:53-6 prior to the start of actual construction of a casino hotel facility, the recruitment and employment of personnel necessary to undertake the business of the casino or hotel, or the filing of an application for casino licensure, whichever first occurs.

19:53-2.2 Obligation of casino licensee or applicant to monitor all construction activity

(a) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each

casino licensee or applicant shall be required to develop and implement a monitoring system which allows the casino licensee or applicant to oversee all construction activity performed for the licensee or applicant at the casino hotel, casino, casino simulcasting facility or any related facility.

(b) The monitoring system shall provide for systematic coordination between the equal opportunity officer, the relevant departments within the organization of the casino licensee or applicant which contract for construction work and the purchasing department. The monitoring system shall include, without limitation, procedures which:

1. Ensure that all contractors and subcontractors are notified of their obligation to submit a Project Labor Report pursuant to N.J.A.C. 19:53-2.8 and to confirm that such reports are in fact submitted by comparison of the contractors and subcontractors identified on these reports with those listed on the Project Status Report required pursuant to N.J.A.C. 19:53-2.4;
2. Require the evaluation of the information contained in the Project Labor Reports to ensure their complete, accurate and timely submission, and compliance by all contractors and subcontractors with their obligations under this subchapter;
3. Outline the steps to be used by the casino licensee or applicant to obtain compliance from contractors and subcontractors who fail to fulfill their obligations under this subchapter;
4. Ensure that the mandatory construction contract and subcontract language required by N.J.A.C. 19:53-2.7 is actually included in all construction contracts and subcontracts;
5. Provide notification to all contractors and subcontractors of the obligations of the casino licensee or applicant under the Act and this subchapter;
6. Encourage contractors and subcontractors to employ women, minorities and persons with disabilities at all levels of the work force;
7. Ensure the documentation of the activities and efforts of contractors and subcontractors to obtain minority and female participation in the construction work force as required by N.J.A.C. 19:53-2.8 and 2.9 when the construction work force of the contractor or subcontractor does not satisfy the women and minority employment goals established by N.J.A.C. 19:53-2.3;
8. Ensure that certified MBEs and WBEs are afforded equal opportunity to compete in the bidding for construction contracts and subcontracts; and
9. Track the participation of certified MBEs and WBEs in construction projects.

Amended by R.1995 d.310, effective June 19, 1995.
See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted provisions covering "provisionally certified" MBEs and WBEs.

Amended by R.1996 d.33, effective January 16, 1996.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-2.3 Women and minority employment goals for the construction work force of casino licensees and applicants

(a) Unless otherwise specified in an approved EEBOP pursuant to N.J.A.C. 19:53-6, the women and minority employment goals for the construction work force of a casino licensee or applicant and its individual contractors and subcontractors shall be five percent for women journeyworkers and apprentices and 14 percent for minority journeyworkers and apprentices. Compliance with these goals shall be evaluated based on actual hours of employment.

(b) Subject to the availability of comparable occupational data for Atlantic County concerning levels of employment of women and minorities in the skilled building or construction trades, the Commission may promulgate employment goals for women and minorities in individual skilled building or construction trades. If individual skill or trade goals are promulgated, each specific skill or trade goal shall be used by a casino licensee or applicant, contractor or subcontractor instead of the goals specified in (a) above.

Amended by R.1993 d.538, effective November 1, 1993.
See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).
Amended by R.1996 d.33, effective January 16, 1996.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-2.4 Reporting obligations of casino licensees and applicants concerning the construction work force

(a) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee or applicant shall be required to file each of the following monthly reports or submissions regarding its construction work force with the Commission and Division:

1. A Project Labor Report Summary, which shall include all required information contained on each Project Labor Report received by the casino licensee or applicant from contractors or subcontractors pursuant to N.J.A.C. 19:53-2.8 during the preceding month. The Summary shall be submitted in a format prescribed by the Commission and shall be filed by the 15th day of the month.
2. A Project Status Report, which shall describe all construction projects involving contractors or subcontractors which have started or are scheduled to start prior to the filing of the next Project Status Report and shall include: the name and project number for each project; a listing of all contractors and subcontractors working or scheduled to work on each project; the name of any certified MBE or WBE working or scheduled to work on each project, and the scheduled or actual start date and anticipated finish date of construction. The Project Status Report shall be submitted in a format prescribed by the Commission and shall be filed in accordance with a schedule proposed by the casino licensee or applicant and approved by the Commission.

3. Copies of all documentation prepared by contractors or subcontractors of activities and efforts to improve minority and female representation, required pursuant to N.J.A.C. 19:53-2.8 or 2.9, and submitted to the casino licensee or applicant during the preceding month. The documentation shall be submitted to the Commission and Division by the casino licensee or applicant by the 15th day of the month.

(b) Unless otherwise specified in the construction section of an approved EEBOP pursuant to N.J.A.C. 19:53-6, each casino licensee or applicant shall file an Annual Summary of Construction Activity with the Commission and Division at least four months prior to the scheduled date of the EEBOP assessment hearing, initial casino license hearing or casino license renewal hearing. The Annual Summary of Construction Activity shall include a summary of all construction projects started by the casino licensee or applicant during the four calendar quarters immediately preceding the filing deadline for the Annual Summary of Construction Activity. The summary shall, without limitation, describe:

1. The start and actual or anticipated finish date for each construction project;
2. The project number or numbers assigned to each construction project;
3. All contractors and subcontractors providing services on each construction project; and
4. The total dollar amount of construction expenditures made with certified MBE or WBE construction firms.

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted provisions covering "provisionally certified" MBEs and WBEs.

19:53-2.5 Special compliance obligations applicable to a casino license applicant building a casino hotel facility

(a) In addition to complying with all of the regulatory requirements of N.J.A.C. 19:53-2.2 which are applicable to a casino license applicant, any casino license applicant which is planning to build or substantially renovate a casino hotel facility prior to licensure shall comply with the requirements of this section and N.J.A.C. 19:53-2.6 in accordance with a schedule to be set by the Commission based on the projected opening date of the casino hotel facility and the hearing schedule of the Commission.

(b) The casino license applicant shall submit a draft affirmative action survey form and draft employment application to the New Jersey Division on Civil Rights (DCR) in accordance with N.J.A.C. 13:7 for review as to their consonance with the rules on pre-employment inquiries and procedures, revise both documents as guided by the review and comments of DCR, and file a copy of the final version of each document and the notice of DCR approval with the Commission.

(c) Notwithstanding the provisions of N.J.A.C. 19:53-4.1, the casino license applicant shall submit for approval by the Commission a description of all hiring criteria and procedures used to determine whether to hire an applicant for employment or to transfer, upgrade or promote an existing employee. Each casino license applicant shall submit the following in satisfaction of this requirement:

1. A narrative description of the process of screening, interviewing and hiring applicants, which shall include a delineation of the responsibilities of the equal opportunity officer, director of personnel and other principals in that process;

2. A description of any tests, interview procedures or other procedures which will be administered to applicants or employees;

3. A jobs compendium for any positions directly or indirectly related to the construction phase of the casino hotel facility including, without limitation, the equal opportunity officer, the personnel department and the purchasing department;

4. An in-house job posting procedure which shall be a clearly-defined and comprehensively-applied process through which employees may bid for intradepartmental or interdepartmental promotion or transfer;

5. A training summary which shall include information as to:

i. The race, gender and job title of those employees who underwent skill enrichment training prior to opening; and

ii. Any reasonable accommodations, specialized training or support programs provided for employees who were voluntarily self-identified as persons with disabilities;

6. A summary of the strategies and actual techniques used to hire women, minorities and persons with disabilities at all levels of the work force;

7. A completed recruitment questionnaire concerning the recruitment process as provided by the Commission;

8. Documentation of contacts with any recruitment sources such as referral agencies, colleges, executive search firms or organizations, and advertisements in media oriented to women, minorities and persons with disabilities;

9. An in-house complaint procedure for equal employment opportunity complaints to be addressed by the equal opportunity officer; and

10. An employee manual or handbook or other procedure designed to advise all employees of: the policy of the casino license applicant on equal employment opportunity; prohibitions against discrimination and sexual harassment; the name, office location and phone number of the equal opportunity officer; and instructions to contact the equal opportunity officer in the event of an allegation of discrimination or harassment.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-2.6 Special reporting obligations applicable to a casino license applicant building a casino hotel facility

(a) In addition to complying with all of the reporting requirements of N.J.A.C. 19:53-2.4 which are applicable to a casino license applicant, any casino license applicant which is planning to build or substantially renovate a casino hotel facility prior to licensure shall comply with the reporting requirements imposed by this section. These reports shall be filed with the Commission in accordance with a format to be prescribed by the Commission.

(b) An Applicant Flow Report shall identify by gender and race the number of persons who have applied for each job title of the casino license applicant. The Applicant Flow Report shall also indicate by job title the number of job applicants who were voluntarily self-identified as persons with a disability. The report shall include all persons who have applied for a position from the first day the casino license applicant began accepting applications through the date on which the report is prepared. The report shall be submitted in the following two formats:

1. The data shall be sorted by each of the 12 EEOC job categories and subclasses in descending order as defined in N.J.A.C. 19:53-1.3 and, within each job category or subclass, by job title in alphabetical order. Subtotals by EEOC job category or subclass and a total for all 12 EEOC job categories and subclasses shall also be provided.

2. The data shall be sorted by department in alphabetical order and, within each department, by job title in alphabetical order, with the EEOC job category or subclass of each job title indicated adjacent to it. Totals for each department shall also be provided.

(c) A Hired and Pending Report shall identify by gender, race and, to the extent known through voluntary self-identification, persons with disabilities, the number of employees who have been hired and the number of applicants to whom an offer to hire was made conditioned upon the opening of the casino hotel. The report shall be submitted in the two formats described in (b)1 and 2 above.

(d) An Employee Information Report shall identify by gender, race and, to the extent known through voluntary self-identification, persons with disabilities, the number of employees who are hired and on the payroll of the casino license applicant. After the filing of the initial Employee Information Report, the report shall be submitted by the 15th day of the month following the reporting period.

Amended by R.1996 d.33, effective January 16, 1996.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-2.7 Construction contracts and subcontracts; mandatory contract language

(a) Every contract or subcontract which concerns the construction of a casino hotel, casino, casino simulcasting facility or any related facility shall contain the following language concerning equal employment opportunity and equal business opportunity:

“During the performance of this contract (or subcontract), the contractor (or subcontractor) agrees that it will be bound by the equal employment and business opportunity requirements of the New Jersey Casino Control Act, N.J.S.A. 5:12-1 et seq., and the rules of the New Jersey Casino Control Commission, N.J.A.C. 19:53.

The contractor (or subcontractor) agrees that it will provide equal employment opportunity, as defined in N.J.A.C. 19:53-1.2, to all prospective and actual employees of the contractor (or subcontractor). The contractor (or subcontractor) agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth in detail the provisions of this equal employment opportunity clause.

The contractor (or subcontractor) agrees that it will include in all advertisements or solicitations for employees placed by or on behalf of the contractor (or subcontractor) a statement that it is an equal employment opportunity employer subject to regulation by the New Jersey Casino Control Commission.

The contractor (or subcontractor) agrees that it will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or representative of the contractor's (or subcontractor's) commitments under the Casino Control Act and the rules of the Casino Control Commission and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor (or subcontractor) agrees that it will provide equal business opportunity, as defined in N.J.A.C. 19:53-1.2, to all persons who wish to participate in the performance of the contract (or subcontract). The contractor (or subcontractor) agrees to post in conspicuous places at its place of business and on the project site notices setting forth in detail the provisions of this equal business opportunity clause.

The contractor (or subcontractor) agrees that a representative of the Casino Control Commission and the Division of Gaming Enforcement shall be entitled to attend all construction project meetings and, at reasonable times and in a reasonable manner, to enter the contractor's (or subcontractor's) business facility or facilities or construction project site for determining whether the contractor or subcontractor is complying with the Casino Control Act and the rules of the Commission. The contractor (or subcontractor) agrees that the Commission or the Division, in making such determinations, shall be entitled to inspect or copy any relevant books and records of the contractor (or subcontractor).”

(b) In lieu of the mandatory language required by (a) above, a contractor or subcontractor may include the following language in the contract or subcontract:

"The parties to this contract (or subcontract) agree to incorporate into this contract (or subcontract) the mandatory equal employment and business opportunity contract language contained in the rules of the New Jersey Casino Control Commission at N.J.A.C. 19:53-2.7, as amended or supplemented from time to time, and to comply fully with the terms, provisions and obligations of N.J.A.C. 19:53."

(c) In addition to the contract or subcontract language required by (a) or (b) above, every construction contractor or subcontractor shall also include the following language in every contract or subcontract which concerns the construction of a casino hotel, casino, casino simulcasting facility or any related facility:

"The contractor (or subcontractor) agrees to attempt in good faith to employ women and minority workers in each construction skill or trade consistent with the applicable employment goals established pursuant to N.J.A.C. 19:53-2.3 and to file in a complete, accurate and timely manner all reports and documentation required by the rules of the New Jersey Casino Control Commission."

19:53-2.8 Reporting obligations of construction contractors and subcontractors

(a) Unless otherwise specified in the construction section of an approved EEBOP of a casino licensee or applicant pursuant to N.J.A.C. 19:53-6, each contractor or subcontractor involved in the construction of a casino hotel, casino, casino simulcasting facility or any related facility for that casino licensee or applicant shall be required to file or maintain the following reports or records:

1. A Project Labor Report (PLR) shall be prepared on a weekly basis and shall describe the unionized work force used by the contractor or subcontractor on all construction projects of the casino licensee or applicant during the week. The PLR shall indicate the number of apprentices and journeyworkers employed by the contractor or subcontractor in each skilled building and construction trade and the number of hours each worker, listed by race and gender, was employed during the week. The PLR shall be completed on a form prescribed by the Commission and supplied to the contractor or subcontractor by the casino licensee or applicant. The PLR shall be submitted by the contractor or subcontractor to the equal opportunity officer of the casino licensee or applicant on a schedule established by the casino licensee or applicant which allows inclusion of all PLRs on its Project Labor Report Summary.

2. Documentation shall be maintained of all requests by the contractor or subcontractor to labor unions or other worker representatives to supply qualified women and minorities for employment at casino licensee or appli-

cant construction sites. Copies of this documentation shall be applied to the equal opportunity officer of the casino licensee or applicant.

Amended by R.1996 d.33, effective January 16, 1996.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-2.9 Quarterly assessment of good faith efforts of contractors and subcontractors to meet employment goals for women and minorities; referral to Division

(a) The Commission shall, on a quarterly basis, review and assess the monthly Project Labor Report Summaries submitted by casino licensees or applicants pursuant to N.J.A.C. 19:53-2.4 and any other available documentation concerning the efforts of contractors and subcontractors to meet the applicable employment goals for women and minorities established by N.J.A.C. 19:53-2.3.

(b) Any contractor or subcontractor which fails to meet the applicable employment goals for women and minorities during a calendar quarter, as measured by the hours of employment reported on the Project Labor Report Summaries of the contractor or subcontractor, shall be notified by the Commission that the contractor or subcontractor shall have two additional calendar quarters in which to comply with the goals or document its good faith efforts to do so.

(c) If a contractor or subcontractor which has been notified pursuant to (b) above fails, by the end of the six month compliance review period, to meet the employment goals for women and minorities or to submit documentation of its good faith efforts to meet the goals, the issue of compliance shall be referred to the Division for investigation as to whether a violation of the Act or these rules has occurred. If, upon the filing of a complaint by the Division against a contractor or subcontractor, the Commission finds that a violation has occurred, the contractor or subcontractor may be subject to any of the sanctions enumerated in N.J.S.A. 5:12-129 and N.J.A.C. 19:53-3.5.

19:53-2.10 Annual report on construction contractor and subcontractor work force of casino licensee or applicant; relation to annual EEBOP assessment

(a) The Commission shall, based on the information derived from the reports required by N.J.A.C. 19:53-2.4(a)1, supply each casino licensee or applicant with an annual construction contractor and subcontractor work force report for the casino licensee or applicant four months prior to the scheduled date of the EEBOP assessment hearing, initial casino license hearing or casino license renewal hearing of the casino licensee or applicant. The annual construction contractor and subcontractor work force report shall indicate, based on percentages derived from the hours of employment reported, the representation of apprentices and journeyworkers, listed by race and by gender, employed by

the contractors and subcontractors of the casino licensee or applicant in each building skill or construction trade as of the end of the calendar quarter immediately preceding the release date of the annual work force report. Each casino licensee or applicant shall have 30 days from the release date of the report to challenge the information contained therein.

(b) Each casino licensee or applicant whose annual construction contractor and subcontractor work force report does not demonstrate that the casino licensee or applicant achieved the applicable employment goals established by N.J.A.C. 19:53-2.3 for the period under assessment shall be required to document its efforts to implement and comply with the construction section of its EEBOP in accordance with the provisions of N.J.A.C. 19:53-6.

Amended by R.1996 d.33, effective January 16, 1996.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

SUBCHAPTER 3. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CASINO SERVICE INDUSTRY ENTERPRISES

19:53-3.1 Designation of equal opportunity officer by casino service industry enterprise licensee; responsibility of chief executive officer and equal employment officer

Each casino service industry enterprise licensee shall designate a principal member of its organization to serve as an equal opportunity officer. The chief executive officer shall be ultimately responsible for insuring that equal employment opportunity is afforded to all prospective and actual employees of the licensee, that equal business opportunity is afforded to all persons who do or would like to do business with the licensee, and that the licensee complies with or makes good faith efforts to comply with any affirmative action obligations imposed on the licensee by the Act and this chapter. The equal opportunity officer shall be directly responsible for the effective and continuing implementation of the equal opportunity and affirmative action obligations of the licensee.

19:53-3.2 Equal employment and business opportunity obligations of all casino service industry enterprise licensees and applicants

(a) Each casino service industry enterprise licensee and applicant shall provide equal employment opportunity to all prospective and actual employees at all levels of its work force.

(b) Each casino service industry enterprise licensee and applicant shall provide equal business opportunity to all persons who do or wish to do business with the licensee or applicant.

(c) The chief executive officer of each casino service industry enterprise licensee or applicant shall submit to the Commission an acknowledgement of the obligations imposed by this section and, if applicable, N.J.A.C. 19:53-3.3, with the application for initial casino service industry licensure, with each application for license renewal, and upon any change in the ownership or management of the casino service industry enterprise.

(d) Each casino service industry enterprise licensee or applicant shall be required to:

1. Post notices available to employees and applicants for employment of the equal employment opportunity obligations of the casino service industry enterprise licensee or applicant; and
2. Include a statement in all postings, advertisements or other solicitations for employment that it is an equal opportunity employer.

19:53-3.3 Affirmative action obligations of casino service industry enterprise licensees and applicants which have 50 or more employees in New Jersey

(a) Each casino service industry enterprise licensee and applicant which employs 50 or more employees in the State of New Jersey shall be required to undertake affirmative measures to ensure that women, minorities and persons with disabilities are recruited and employed at all levels of its work force and treated during employment without regard to their gender, minority status or disability. Such affirmative efforts shall, without limitation, address all employment practices including:

1. Employment, promotion, demotion or transfer;
2. Recruitment, recruitment advertising or posting;
3. Layoff or termination;
4. Rates of pay and other forms of compensation or benefits; and
5. Selection for training programs.

(b) Each casino service industry enterprise licensee and applicant governed by this section shall be required to:

1. Post all employment openings for response by qualified in-house employees or, when appropriate, advertise such openings in newspapers of general circulation and other media which reach a cross-section of the population in the area from which the work force will be drawn;
2. Send notices of employment openings to and solicit the referral of qualified candidates for employment from:

ii. Persons with disabilities in all positions covered by collective bargaining agreements by requesting in writing that the union or workers representative refer qualified candidates for employment who have voluntarily identified themselves as persons with a disability.

(c) If a casino licensee or applicant is below the applicable employment goal for women or minorities established by N.J.A.C. 19:53-4.4 for a position covered by a collective bargaining agreement, the casino licensee or applicant shall, without limitation:

1. Request in writing that the union or workers representative refer qualified female or minority candidates, as appropriate, for the position in question; and
2. If the union or workers representative is unable to refer an appropriate woman or minority candidate, the casino licensee or applicant shall advertise the position on the open market and document its efforts to hire a qualified female or minority candidate for the position. This documentation shall include, without limitation, statistics on applicant flow, details on referrals received, disposition of candidates interviewed, letters of request to the union or workers representative, and copies of postings and advertisements.

Amended by R.1996 d.33, effective January 16, 1996.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-4.4 Women and minority employment goals for the operations work force of casino licensees and applicants

Unless otherwise specified in an approved EEBOP pursuant to N.J.A.C. 19:53-6, the women and minority employment goals for the operations work force of a casino licensee or applicant, by EEOC job category, shall be as follows:

EEOC Job Category	Minority Goal (Percentage)	Female Goal (Percentage)
Officials and Managers	25	46
Professionals	25	46
Technicians	25	46
Salesworkers	25	46
Office and Clerical	25	46
Craftpersons	14	5
Operatives	25	30
Laborers	25	14
Serviceworkers	25	46

Amended by R.1993 d.538, effective November 1, 1993.
See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

19:53-4.5 Quarterly report on the affirmative action efforts of casino licensees concerning the operations work force

(a) Beginning with the first calendar quarter after the opening of its casino, each casino licensee shall be required to file a quarterly report with the Commission and the Division on its affirmative action efforts concerning its operations work force. The quarterly report shall be presented in a format approved by the Commission and shall be

filed by the fifteenth day of the month following the end of the quarter.

(b) The quarterly report shall provide data concerning the composition of the operations work force of the casino licensee and shall list by race and by gender the number of workers employed by the casino licensee in each EEOC job category and subclass.

(c) The quarterly report shall include the following information concerning new hires and promotions by the casino licensee in positions with a salary of \$35,000 or more:

1. The number of new hires and promotions by job title, race and gender; and
2. If the casino licensee is below the applicable women or minority employment goal established by N.J.A.C. 19:53-4.4 for a job category in which a position with a salary of \$35,000 or more is filled by someone other than a woman or minority, the casino licensee shall document its efforts to hire or promote a woman or minority to the position. Such documentation shall include a completed and signed Affirmative Action Impact Statement and copies of any posting, advertisement, and letters to search firms, unions, and other organizations which were prepared during the hiring or promotion process.

(d) The quarterly report shall also include:

1. A summary of new hires, promotions, involuntary and voluntary terminations and layoffs by EEOC job category;
2. A copy of all grievance reports related to equal employment opportunity or reasonable accommodation in employment filed with the casino licensee's equal opportunity officer, provided, however, that any such reports concerning reasonable accommodation in employment shall not include any personal identifying information; and
3. A report on the implementation of all upward mobility training programs and the status of participants.

Amended by R.1996 d.33, effective January 16, 1996.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-4.6 Annual report by casino licensee or applicant on the composition of its operations work force; relation to annual EEBOP assessment

(a) Each casino license applicant shall submit a statistical report on the composition of its operations work force at the time of filing its application for initial casino licensure. Thereafter, the applicant shall file the report four months prior to the scheduled date of its EEBOP assessment hearing or its initial casino license hearing.

(b) Each casino licensee which, pursuant to the provisions of N.J.A.C. 19:53-6.12, was not required to file a quarterly report for the last calendar quarter which ended at least

four months prior to the scheduled date of its EEBOP assessment hearing or casino license renewal hearing, shall submit a statistical report on the composition of its operations work force at least four months prior to the scheduled date of such hearing.

(c) The reports required by (a) and (b) above shall be submitted in a form prescribed by the Commission and shall indicate the number of employees by race and by gender working in each EEOC job category as of, except for the initial report submitted by a casino license applicant, the end of the calendar quarter immediately preceding the filing deadline for submission of the report.

(d) Each casino licensee or applicant whose annual operations work force composition report does not demonstrate that the casino licensee or applicant achieved the applicable employment goals established by N.J.A.C. 19:53-4.4 for the period under assessment shall be required to document its efforts to implement and comply with the operations work force section of its EEBOP in accordance with the provisions of N.J.A.C. 19:53-6.

Amended by R.1996 d.33, effective January 16, 1996.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

SUBCHAPTER 5. EQUAL BUSINESS OPPORTUNITY AND AFFIRMATIVE ACTION OBLIGATIONS OF CASINO LICENSEES AND APPLICANTS

19:53-5.1 Background and general purposes

(a) As described more fully in subsection 1b of the Act, N.J.S.A. 5:12-1b, the central underlying purpose of the Act is to channel the economic and social impact from the legalization of casino operations in Atlantic City into the rebuilding and growth of the economy of the local area. More specifically, the Act is designed to: generate resources that permit the redevelopment of blighted areas of Atlantic City, including stabilizing residential neighborhoods; create job opportunities for city residents and others in both casino hotels and casino-related service companies; and encourage the development of visitor, convention and tourism facilities in Atlantic City that will provide employment and business opportunities for local residents.

(b) The Act is further designed to permit and encourage as many businesses as possible to service the casino industry, both for the purpose of expanding investment and job opportunities in the area and in order to encourage competition and a plentiful supply of available goods and services to the industry, so as to insulate it from risks of economic instability and undue economic concentrations.

(c) At the time of enactment of the Act a significant portion of the population of Atlantic City was comprised of minorities, as defined in this chapter. In recognition of this fact, the Act provides specific guidelines and policies designed to assure that the aforementioned public policies would be administered so as to direct the attention and resources of the Commission to addressing the needs of the minority community. N.J.S.A. 5:12-134 and 135. The clear purpose of the Act is to guarantee the opportunity for all, without disadvantage by reason of race, gender or ethnicity, to participate fully in the economic and social benefits that are generated by the development of the casino industry. According to the most recent census data, a large majority of the residents of Atlantic City are minorities. Therefore, the premise of the statute remains a compelling reality, and any program designed to provide or improve opportunities for the residents of Atlantic City must of necessity address the need to prevent or eliminate any disadvantage incurred by reason of race or ethnicity.

(d) The Act makes clear that casino licensure is a revocable, and in many ways unique, privilege, and that such a license is held conditioned upon compliance with all regulations that are designed to further the purposes of the Act. Indeed, in recognition of this obligation, and in keeping with the manifest design of the Act, the casino licensees collectively entered into a voluntary agreement in 1981, under the terms of which they undertook to guarantee that 15 percent of their spending for goods and services would enure to the benefit of minority business enterprises. Notwithstanding the generalized good faith attempts by the casino industry over the years, this goal has not yet been realized, due largely, according to evidence presented to the Commission, to the many problems associated with new and developing minority enterprises, including, without limitation, racial discrimination; difficulties in attracting equity or other capital funds; inability to secure bonding or meet other job requirements as a result of insufficient ability to document prior satisfactory job completions; relative lack of experienced minority managerial personnel, and the existence of extensive commercial relationships of long standing which many casino licensees are reluctant to endanger.

(e) The comparative success of the casino industry in meeting employment goals for minorities and women suggests that a targeted program that establishes specific goals for business opportunities for minority and woman business enterprises, but affords significant flexibility to the casino licensees in determining new and innovative methods for assisting such enterprises to compete effectively, is an appropriate means to assure the realization of the purposes of the Act and the goals of the voluntary agreement of 1981, and the achievement of both the fact and the appearance of equal opportunity for all people.

1. Whether the enterprise is a viable ongoing business enterprise involved in the distribution of such goods or the provision of such services independent of any business conducted with casino licensees (indicative of supplier status);

2. The level of involvement of casino licensees in the purchasing decisions of the enterprise, such as whether:

i. The casino licensee specifies not only the goods or services to be purchased but also the terms of purchase or the supplier from which the goods or services should be purchased (indicative of commercial buyer status); or

ii. The enterprise has the authority to make purchasing decisions without the approval of the casino licensee (indicative of supplier status); and

3. The nature of the business relationship between the enterprise and the casino licensee, historically and currently, such as whether:

i. The casino licensee takes an active role in the management of the enterprise (indicative of commercial buyer status); or

ii. All business arrangements between the enterprise and the casino licensee are negotiated on an independent arm's length basis, for example, the enterprise bids to supply goods or services that are specified in advance by the casino licensee (indicative of supplier status).

(k) Notwithstanding any other provision of this chapter, including (e) and (i) above, in determining the good faith efforts of a casino licensee to meet its MBE and WBE participation goals, a casino licensee may claim credit for disbursements made to a commercial buyer for the purpose of purchasing goods or services from a supplier that is not a certified MBE or WBE provided that:

1. The casino licensee otherwise complies with all the provisions of this chapter by treating such supplier as if it were a certified MBE or WBE (for example, disbursements to the supplier shall be subject to the 70 percent limitation and proof requirements established in (e) above);

2. The commercial buyer is a certified or provisionally certified MBE or WBE and conducted business with a casino licensee as a certified MBE or WBE commercial buyer during calendar year 1994; and

3. The total amount of disbursement credit that may be claimed by a casino licensee pursuant to this subsection shall not exceed the following percentages of the total disbursement credit claimed by that casino licensee in calendar year 1994 for purchases made through that particular commercial buyer from suppliers that were not certified MBEs or WBEs:

i. For calendar year 1995, 80 percent;

ii. For calendar year 1996, 50 percent;

iii. For the period from January 1, 1997, through June 30, 1997, 10 percent; and

iv. After June 30, 1997, no disbursement credit may be claimed by a casino licensee pursuant to this subsection.

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted provisions governing provisionally certified MBEs and WBEs.

Amended by R.1995 d.373, effective July 17, 1995.

See: 27 N.J.R. 849(a), 27 N.J.R. 2707(b).

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-5.6 Valuation of casino licensee disbursements for bus business

(a) When determining the amount of gross disbursements or net disbursements made by a casino licensee during any period, the total dollar value of the bus business to be reported by the casino licensee during the period, for the purposes of this subchapter, shall be determined by totalling all direct and indirect payments made to bus owners or operators by the casino licensee during the period.

(b) The amount of bus business to be reported pursuant to this section shall be equal to the value of the direct or indirect compensation provided to the bus owner or operator by the casino licensee. Examples of compensated bus business which must be reported pursuant to this section shall include, without limitation, arrangements whereby:

1. The casino licensee directly charters and pays for the use of the bus;

2. The casino licensee indirectly pays for the use of the bus by reimbursing the user of the bus specifically for the cost of transportation;

3. The casino licensee reimburses a third party for providing the bus for the use of other persons; or

4. The casino licensee pays for the cost of advertising or other goods and services which directly benefit the owner or operator of the bus.

(c) The amount of bus business to be reported pursuant to this section shall not include arrangements whereby a casino licensee agrees to provide complimentary goods or services to the passengers of a bus owner or operator in exchange for the promise of the bus owner or operator to bring its passengers to the casino hotel facility of the casino licensee.

(d) When recording or reporting the dollar value of its bus business, a casino licensee may record or report monies spent with an enterprise that has been certified as both an MBE and a WBE only once.

19:53-5.7 Quarterly casino licensee disbursement reports

(a) Each casino licensee shall submit to the Commission and the Division, in a format prescribed by the Commission, a quarterly report on its purchases of goods and services, including bus business, which shall consist of the following information recorded in accordance with the requirements of N.J.A.C. 19:53-5.5:

1. The total dollar value of gross disbursements;
2. The total dollar value of allowable administrative costs, as defined in N.J.A.C. 19:53-5.5, deducted from gross disbursements;
3. The total dollar value of allowable direct labor costs, as defined in N.J.A.C. 19:53-5.5, deducted from gross disbursements;
4. The total dollar value of adjusted gross disbursements for goods and services made by the casino licensee during the quarter;
5. The total dollar value of net disbursements for goods and services made by the casino licensee during the quarter;
6. The name and vendor identification number of each certified MBE or WBE with whom the casino licensee did business during the quarter, and of each supplier with whom the casino licensee did business pursuant to the provisions of N.J.A.C. 19:53-5.5(k), as well as:
 - i. The certification status of the enterprise (MBE or WBE or uncertified supplier);
 - ii. The total dollars disbursed to the enterprise; and
 - iii. The total amount of dollars, if any, which were disbursed to the certified MBE or WBE by a contractor or commercial buyer pursuant to an agreement as described in N.J.A.C. 19:53-5.5(e) or to a supplier by a commercial buyer pursuant to an agreement authorized by N.J.A.C. 19:53-5.5(k);
7. The total dollar amount of permitted disbursements made to certified MBEs and WBEs during the quarter by either the casino licensee or its contractors and commercial buyers, listed by MBEs, WBEs and combined total, the total dollar amount of permitted disbursements made to suppliers by a commercial buyer during the quarter pursuant to agreements authorized by N.J.A.C. 19:53-5.5(k), and the percentage of the net disbursements reported pursuant to (a)5 above that each listed amount represents; and
8. The total dollar amount of permitted disbursements made during the quarter to certified MBEs and WBEs by contractors or commercial buyers pursuant to agreements as described in N.J.A.C. 19:53-5.5(e) or to suppliers pursuant to agreements authorized pursuant to N.J.A.C. 19:53-5.5(k).

(b) The quarterly reports required by this section shall be based on calendar quarters and shall be filed with the Commission and the Division by the last business day of the month following the expiration of the calendar quarter. The initial quarterly report of any casino licensee which receives its casino license on a date other than the beginning of the calendar quarter shall be based on the partial calendar quarter.

Amended by R.1995 d.310, effective June 19, 1995.
See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted provisions governing provisionally certified MBEs and WBEs.

Amended by R.1995 d.373, effective July 17, 1995.
See: 27 N.J.R. 849(a), 27 N.J.R. 2707(b).

19:53-5.8 Annual report by casino licensees on disbursements to WBEs and MBEs; relation to annual EEBOP assessment

(a) Each casino licensee shall file an annual MBE/WBE disbursement report with the Commission and Division at least four months prior to the scheduled date of its EEBOP assessment hearing or casino license renewal hearing. The annual MBE/WBE disbursement report shall contain a yearly summary of the information required by N.J.A.C. 19:53-5.7(a)1 through 5, 7 and 8 for the four calendar quarters immediately preceding the filing deadline for the annual MBE/WBE disbursement report.

(b) Each casino licensee whose annual MBE/WBE disbursement report does not demonstrate that the casino licensee achieved the applicable participation goals specified in N.J.A.C. 19:53-5.3 shall be required to document its good faith efforts to implement and comply with the business section of its EEBOP in accordance with the provisions of N.J.A.C. 19:53-6.

19:53-5.9 Required reporting adjustments for enterprises removed from the Commission MBE/WBE Directory

(a) A casino licensee shall be required to report separately in the MBE or WBE disbursement sections of its current quarterly disbursement report, required pursuant to N.J.A.C. 19:53-5.7, or its current annual disbursement report, required pursuant to N.J.A.C. 19:53-5.8, any disbursement made to a certified MBE or WBE which is removed from the Commission MBE/WBE Directory prior to the submission of the report to the Commission and the Division.

(b) In determining the good faith efforts of a casino licensee to implement and comply with the provisions of its approved EEBOP pursuant to N.J.A.C. 19:53-6.8, a casino licensee may receive credit for any disbursement made to an MBE or WBE which was certified at the time of the disbursement even if such enterprise is subsequently removed from the Commission MBE/WBE Directory unless the casino licensee knew or should have known at the time of the disbursement that the MBE or WBE did not qualify for certification.

ii. Develop special payment terms for certified MBEs and WBEs;

iii. Contribute to local or regional Minority Enterprise Small Business Investment Corporations (MES-ICs);

iv. Encourage joint ventures between certified MBEs and WBEs and majority-owned businesses or joint ventures with other certified MBEs and WBEs;

v. Provide technical assistance and mentoring; and

vi. Develop incentives for majority contractors to subcontract to certified MBEs and WBEs, and to retain and sustain certified MBEs and WBEs vendors through encouragement and development activities; and

6. Programs, consistent with N.J.A.C. 19:53-5.5, which require contractors to subcontract a portion of their contracts to certified MBEs and WBEs.

Amended by R.1995 d.310, effective June 19, 1995.
See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted provisions governing provisionally certified MBEs and WBEs.

19:53-6.6 Atlantic City small businesses

(a) In order to further the statutory goal of revitalizing Atlantic City as set forth in section 1 of the Act, each casino licensee and applicant shall be encouraged to include in its EEBOP strategies and objectives which are intended to foster the development of Atlantic City small businesses. For the purposes of this section, an "Atlantic City small business" shall be defined as a sole proprietorship, partnership or corporation:

1. Whose management owns at least 51 percent of the business and is responsible for its daily and long-term operation;
2. Which either has 50 or fewer full-time employees or is a firm with full-time employees at least 80 percent of whom are permanent residents of Atlantic City; and
3. Which has its principal place of business (the location where the majority of its employees are located or based) in Atlantic City.

(b) Casino licensees and applicants are encouraged to assist Atlantic City small businesses by using the same kinds of techniques described in N.J.A.C. 19:53-6.5 or any other means deemed appropriate by the licensee or applicant.

(c) Any enterprise which meets the requirements in (a) above may be certified by the Commission as an Atlantic City small business if it files an application and affidavit with the Commission, in a form provided by the Commission, attesting that it is a bona fide Atlantic City small business. The affidavit shall be accompanied by a written acknowledgement of the penalties which may be imposed on the enterprise and the persons associated therewith if the enterprise makes any material misrepresentation of fact in its

affidavit or application for certification. Any enterprise which misrepresents its status as an Atlantic City small business shall be subject to the same penalties set forth in N.J.A.C. 19:53-5.4(b).

(d) The Commission shall maintain a section in its directory of certified MBEs and WBEs which lists all certified Atlantic City small businesses. An enterprise may be certified as both an MBE or WBE and an Atlantic City small business.

Amended by R.1993 d.538, effective November 1, 1993.

See: 25 N.J.R. 3690(a), 25 N.J.R. 4929(b).

Amended by R.1995 d.310, effective June 19, 1995.

See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted a provision governing provisionally certified MBEs and WBEs.

19:53-6.7 EEBOP filing requirements; review and approval; revisions

(a) Any entity which is an applicant for or holds a casino license shall file its initial EEBOP with the Commission prior to the start of actual construction of a casino hotel facility, the recruitment and employment of personnel necessary to undertake the business of the casino or hotel, or the filing of an application for casino licensure, whichever first occurs.

(b) After initial approval by the Commission, a casino licensee or applicant shall not be required to resubmit all or any part of the EEBOP for review or approval unless:

1. The EEBOP is voluntarily revised by the licensee or applicant pursuant to (c) below;
2. The Commission directs that the EEBOP be revised as a result of an annual EEBOP assessment hearing pursuant to N.J.A.C. 19:53-6.8; or
3. The Commission directs that the EEBOP be revised as a result of a special review of the EEBOP ordered pursuant to N.J.A.C. 19:53-6.9.

(c) A casino licensee or applicant may request the approval of the Commission to revise its EEBOP at any time. No material modification of an EEBOP may be implemented by a casino licensee or applicant until it has been approved by the Commission. Any request to revise an EEBOP shall be submitted at least 60 days in advance of the requested effective date of the change and shall include, without limitation, the following:

1. A clear and concise summary of any revisions, deletions or additions; and
2. A detailed explanation of the changes being proposed and their anticipated effect on the compliance of the casino licensee or applicant with the requirements of the Act and this chapter, which explanation shall include supporting data or documentation when available.

Amended by R.1996 d.33, effective January 16, 1996.

See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-6.8 Annual EEBOP assessment hearing; statistical demonstration of compliance with obligations; demonstration of compliance through documentation of EEBOP implementation

(a) Each casino licensee or applicant shall be required to demonstrate its compliance with the requirements of the Act and this chapter through an annual assessment of its performance under its approved EEBOP.

(b) The annual EEBOP assessment of a casino licensee shall be scheduled either as part of its casino license renewal hearing or on the anniversary date of the license renewal, if the casino licensee is operating under a multi-year casino license.

(c) The annual EEBOP assessment of a casino license applicant shall occur on a schedule to be set by the Commission, which schedule shall be based on the anticipated date of either the initial licensure hearing of the applicant or, if a casino hotel is being built or renovated, the opening of the casino.

(d) Four months prior to the scheduled date of the casino license hearing or the annual EEBOP assessment hearing, the casino licensee or applicant shall submit the annual statistical report required pursuant to N.J.A.C. 19:53-4.6 and, in the case of a casino licensee, N.J.A.C. 19:53-5.8. The Commission shall review these reports and the report prepared pursuant to N.J.A.C. 19:53-2.10 and shall advise the casino licensee or applicant of its findings within 30 days.

(e) If the Commission finds, based on these reports, that the casino licensee or applicant has satisfied all of the performance goals set forth in N.J.A.C. 19:53-2.3, 4.4 and, if applicable, 5.3, the casino licensee or applicant shall be entitled to a determination that it has complied with the equal opportunity and affirmative action obligations imposed by the Act and this chapter and, except as otherwise provided in (g) below, no further annual EEBOP assessment proceedings shall be required.

(f) If the Commission finds that the casino licensee or applicant has failed to reach some or all of the performance goals set forth in N.J.A.C. 19:53-2.3, 4.4 and, if applicable, 5.3, the casino licensee or applicant shall be required to establish its good faith efforts to achieve such goals. The good faith of the casino licensee or applicant shall be demonstrated by its documentation, to the satisfaction of the Commission, of its implementation and compliance with those portions of its approved EEBOP which relate to the achievement of the performance goals as to which the casino licensee or applicant was deficient.

(g) Notwithstanding any other provision of this section, the Commission may direct any casino licensee or applicant to document its implementation and compliance with any programmatic portion of its approved EEBOP during the annual assessment period, including those portions that address the obligation of the casino licensee or applicant to recruit and employ persons with disabilities, if such review is considered necessary to the achievement of the purposes of the Act and this chapter.

(h) Any documentation required by (f) or (g) above shall be submitted to the Commission at least two months prior to the scheduled date of the annual EEBOP assessment hearing and shall include, as applicable and without limitation, the following:

1. An internal review and evaluation of each of the areas of the EEBOP which relate to the performance goals which were not achieved, including documentation of specific transactions or programs which were included in the EEBOP as a means to attain these goals;

2. An analysis by the casino licensee or applicant as to why the particular performance goals were not achieved, addressing such issues as the availability of workers or vendors, the performance of workers or vendors, or any other information which the casino licensee or applicant considers relevant to its failure to attain the particular performance goals;

3. An internal review and evaluation of each programmatic portion of its approved EEBOP as to which the Commission has directed an annual assessment pursuant to (g) above; and

4. Modifications to the approved EEBOP proposed by the casino licensee or applicant as a means to improve its performance in deficient areas during the next EEBOP assessment period.

(i) Upon completion of an annual EEBOP assessment hearing for a casino licensee or applicant which has failed to achieve some or all of the participation goals set forth in N.J.A.C. 19:53-2.3, 4.4 and, if applicable, 5.3, the Commission may find that the casino licensee or applicant has in fact exerted good faith efforts to comply with the obligations of the Act and this chapter if:

1. The casino licensee or applicant did implement and comply with the terms of its approved EEBOP during the assessment period; or

2. The failure of the casino licensee or applicant to comply with its approved EEBOP and, as a consequence, to achieve its performance goals was based on occurrences which were beyond the control of the casino licensee or applicant.

(j) If, upon completion of an annual EEBOP assessment hearing, the Commission determines that a casino licensee or applicant has failed to comply with the requirements of the Act, this chapter or its approved EEBOP, the Commission may impose one or more of the sanctions authorized by N.J.A.C. 19:53-6.11.

Amended by R.1996 d.33, effective January 16, 1996.
See: 27 N.J.R. 3924(b), 28 N.J.R. 284(a).

19:53-6.9 Special EEBOP reviews and hearings

(a) Notwithstanding any other provision of this chapter, the Commission may require a casino licensee or applicant to conduct a self assessment of all or any part of its approved EEBOP whenever the Commission has cause to question whether the EEBOP or the implementation of the EEBOP by the casino licensee or applicant is likely to achieve compliance with the obligations imposed by the Act and this chapter.

(b) Any casino licensee or applicant which is notified that a special review of its EEBOP shall be conducted pursuant to this section shall supply whatever documentation or reports are requested by the Commission. A special hearing on the EEBOP of the casino licensee or applicant may be ordered by the Commission at any time and shall be conducted under such terms and conditions as the Commission may direct. The sole purpose of such hearing shall be to determine whether the casino licensee or applicant should be required to make immediate modifications to its EEBOP consistent with the purposes of the Act and this chapter.

19:53-6.10 On-site monitoring and inspections

A representative of the Commission and a representative of the Division shall be entitled to enter the casino hotel, casino, casino simulcasting facility or any related facilities of a casino licensee or applicant for the purposes of determining whether the licensee or applicant is complying with the Act, this chapter and its approved EEBOP. In making such a determination, the Commission or Division shall be entitled to inspect or copy any relevant books or records.

19:53-6.11 Sanctions

(a) If the Commission determines that a casino licensee or applicant is in violation of any applicable provision of the Act, this chapter or its approved EEBOP, the Commission, as appropriate, may:

1. Impose penalties in accordance with N.J.S.A. 5:12-129;
2. Deny, suspend or revoke or refuse to renew the casino license;

3. Enter a cease and desist order which specifies the practice or contract to be discounted or altered by the casino licensee or applicant;

4. Issue public letters of reprimand or censure to be made a permanent part of the file of the casino licensee or applicant;

5. Assess appropriate civil penalties as allowed by the Act;

6. Refer to the Attorney General or his or her designee circumstances which may constitute violation of the "Law Against Discrimination," N.J.S.A. 10:5-1 et seq.;

7. Enforce in a court of law the applicable provisions of the Act, or join in or assist any enforcement proceeding initiated by an aggrieved person;

8. Impose license conditions; and

9. Take any other action authorized or permitted by the Act.

19:53-6.12 Waiver of reporting requirements for casino licensees

(a) If the contractor and subcontractor work force of a casino licensee meets all of the employment goals for women or minorities set forth in N.J.A.C. 19:53-2.3 for four consecutive quarters, the monthly reports required by N.J.A.C. 19:53-2.4(a)1 and 2 shall be waived.

(b) If the operations work force of a casino licensee meets all or any of the employment goals for women or minorities set forth in N.J.A.C. 19:53-4.4 for four consecutive quarters, the quarterly report required by N.J.A.C. 19:53-4.5 shall be waived as to any EEOC job categories for which compliance has been attained.

(c) If a casino licensee meets the applicable goals specified in N.J.A.C. 19:53-5.3 for goods and services purchased from certified MBEs and WBEs for four consecutive quarters, the quarterly disbursement report required by N.J.A.C. 19:53-5.7 shall be waived.

(d) A waiver of the obligation to file certain reports as provided in this section shall not alter the obligation of a casino licensee to prepare and maintain such information and records on-site. In addition, the Commission reserves the right to seek and obtain from a casino licensee at any time any information that may be pertinent to determining the compliance of the casino licensee with the Act, this chapter and its approved EEBOP.

Amended by R.1995 d.310, effective June 19, 1995.
See: 27 N.J.R. 1373(a), 27 N.J.R. 2462(a).

Deleted a provision governing provisionally certified MBEs and WBEs.