

CHAPTER 97

**THE BUSINESS ENTERPRISE PROGRAM OF THE
NEW JERSEY COMMISSION FOR THE
BLIND AND VISUALLY IMPAIRED**

Authority

N.J.S.A. 30:1-12, 30:6-15.1 and 15.2, 20 U.S.C.
§§ 107 et seq., and 34 CFR 395.

Source and Effective Date

R.2004 d.277, effective June 24, 2004.
See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, expires on December 21, 2009. See: 41 N.J.R. 2603(a).

Chapter Historical Note

Chapter 97, The Vending Facility Program of the New Jersey Commission for the Blind and Visually Impaired, was adopted and became effective prior to September 1, 1969.

Chapter 97, The Vending Facility Program of the New Jersey Commission for the Blind and Visually Impaired, was repealed and Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, was adopted as new rules by R.1984 d.149, effective April 16, 1984. See: 15 N.J.R. 2020(a), 16 N.J.R. 909(a).

Pursuant to Executive Order No. 66(1978), Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, was readopted as R.1989 d.249, effective May 15, 1989. See: 21 N.J.R. 424(a), 21 N.J.R. 1431(a).

Pursuant to Executive Order No. 66(1978), Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, was readopted as R.1994 d.209, effective April 5, 1994. See: 26 N.J.R. 725(b), 26 N.J.R. 1841(a).

Pursuant to Executive Order No. 66(1978), Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, was readopted as R.1999 d.101, effective March 1, 1999. See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, was readopted as R.2004 d.277, effective June 24, 2004. See: Source and Effective Date. See, also, section annotations.

Cross References

See N.J.A.C. 10:91-4.4, Blind and visually impaired vending facility program.

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SUBCHAPTER 1. GENERAL PROVISIONS

10:97-1.1 Legal authority

(a) This chapter is promulgated pursuant to authority of P.L. 74-732, as amended by P.L. 83-565 and P.L. 93-516; 34 CFR, part 395.

(b) N.J.S.A. 30:6-15.1 and N.J.S.A. 30:6-15.2.

10:97-1.2 Uniform applicability of chapter compliance with Federal standards

This chapter shall be deemed uniformly and impartially applicable to all persons and procedures and is in complete compliance with the laws of the State of New Jersey, the Randolph-Sheppard Act, Title VI of the Civil Rights Act of 1964, and the Rehabilitation Act of 1973, as amended.

10:97-1.3 Definitions

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

“Active participation” means the activity in which the Committee of Business Enterprise Operators provides meaningful input into the decision making process in the formulation of policies and standards that affect the Program.

“Approved training” refers to training that is set forth by the Business Enterprise Program, with the active participation by the Committee of Business Enterprise Operators.

“Blind person” means a person who, after examination by an ophthalmologist or by an optometrist, which ever such person shall select, has been determined to have:

1. Not more than 20/200 central visual acuity in the better eye with corrective lenses; or
2. An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

“Business enterprise” means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters and such other appropriate equipment which may be operated by blind operators and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of the State.

“Business Enterprise Program Fund, non-Federal” means funds which accrue to the Business Enterprise Program from all non-Federal sources.

“Certified for placement list” means a roster of blind persons who have successfully completed approved training for the Business Enterprise Program and are so certified by the Commission.

“Committee” means Committee of Business Enterprise Operators.

“Federal Set-Aside Funds” means funds which accrue to the Commission from any income from vending machines on Federal property.

“Full Evidentiary Hearing”: for purposes of this Code Full Evidentiary Hearing and Administrative Hearing are synonymous.

“License” means a written instrument issued by the State licensing agency to a blind person authorizing such person to operate a vending facility on Federal or other property.

“Licensee” means a blind operator who has been duly licensed by the Commission.

“Management services” means supervision, inspection, quality control, consultations, bookkeeping services, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises.

“Net profit or net proceeds” means the amount remaining from the sale of articles or services of business enterprises and any vending machine or other income accruing to operators after deducting the cost of such sale and other expenses.

“Operator” means a qualified blind person assigned by the Commission to operate a business enterprise on Federal or other property. An operator is not an employee of the State of New Jersey.

“Operating agreement” means the agreement which shall be entered into between the Commission and each operator, covering the basic terms and conditions required of each party for the operation of a specific business enterprise.

“Permit” means the agreement between the Commission and a department or agency in the control of the maintenance, operation and protection of Federal and non-Federal property whereby the Commission is authorized to establish a business enterprise.

“Property manager” means the official responsible for the property where the business enterprise is located.

“Revocation of license” means a termination of license for cause, after, if requested, a full evidentiary hearing.

“Secretary” means the Secretary of the United States Department of Education.

"Seniority" means the total of work time as a Licensed Operator in the Business Enterprise Program. Work time must be unbroken unless there are extenuating circumstances that exist, through no fault of the Operator.

"State licensing agency" means the New Jersey Commission for the Blind and Visually Impaired.

"Suspension" means a temporary discontinuation of the Operating Agreement resulting in the halting of operations. The Operating Agreement will be restored when the reason for suspension has been remedied. If the reason for suspension is not or cannot be remedied, the operating agreement will be revoked, after a full evidentiary hearing.

Amended by R.1989 d.249, effective May 15, 1989.
See: 21 N.J.R. 424(a), 21 N.J.R. 1431(a).

Technical corrections made. Definition for "Federal Set-Aside Funds" amended and definition for "Set-aside levy" repealed to conform to Attorney General's opinion and to N.J.S.A. 30:6-15.2.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Definitions for "Active participation", "Business enterprise", "Business Enterprise Program Fund, non-Federal", "Certified for placement list" added; vending changed to business enterprise throughout; definitions for "Vending facility" and "Vending Facility Program Fund, non-Federal" deleted.

Amended by R.1992 d.515, effective December 21, 1992.
See: 24 N.J.R. 2798(a), 24 N.J.R. 4551(a).

Definition of seniority added.

Amended by R.1994 d.27, effective January 18, 1994.

See: 25 N.J.R. 4551(d), 26 N.J.R. 378(a).

Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

Added "Approved training"; in "Certified for placement list", inserted "approved" preceding "training for the Business Enterprise Program"; in "Revocation of license", substituted "license for cause, after, if requested," for "license for cause after" preceding "a full evidentiary hearing".

10:97-1.4 Objectives

(a) The rules of the New Jersey Commission for the Blind and Visually Impaired are intended to set forth the administrative requirements governing the operation of the Business Enterprise Program on Federal and non-Federal property.

(b) The Business Enterprise Program is designed to:

1. Provide blind persons with remunerative career opportunities;
2. Enlarge the economic opportunities for blind persons;
3. Stimulate blind persons to greater efforts in striving to make themselves self supporting; and
4. Improve the public awareness of the business capabilities of blind persons.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise.

Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (b), deleted "and visually impaired" preceding "persons" in 4.

SUBCHAPTER 2. PROGRAM ENTRY REQUIREMENTS

10:97-2.1 Application and qualification to enter program

(a) Any blind person desiring to operate a business enterprise, under the supervision of the Commission, shall apply to the Commission and will be referred to the Vocational Rehabilitation Program in order to receive proper evaluation.

(b) The interested blind person must be certified as eligible by the Vocational Rehabilitation Program, be a citizen of the United States and possess a high school diploma or equivalency certificate in order to participate in the Business Enterprise Program.

Amended by R.1991 d.512, effective October 21, 1991.

See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise.

Amended by R.1999 d.101, effective April 5, 1999.

See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

In (b), inserted "and possess a high school diploma or equivalency certificate" following "States"; and added (c).

Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

Deleted (c).

10:97-2.2 Selection and training

(a) A blind person who has been certified eligible by the Vocational Rehabilitation Program and wishes to enter the Business Enterprise Program must meet the following minimum criteria:

1. Mobility skills, that is, the ability to move about and orient to environment, especially in small areas;
2. Self-communication skills, that is, the ability to keep information for oneself in some organized format and the ability to retrieve such information as needed; and
3. The ability to do simple arithmetic as demonstrated by a standardized test of this skill.

(b) If selected for the program he or she will undergo a course of evaluation and training at the Joseph Kohn Rehabilitation Center or other approved training facility, vending facility or site as appropriate.

(c) Upon satisfactory completion of this training, the person will be issued a certificate and placed on the "certified for placement list."

Amended by R.1991 d.512, effective October 21, 1991.

See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise; training at Joseph Kohn required.

Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (b), substituted "or other approved training facility, vending facility or site" for "or other training facility, or site".

10:97-2.3 Business enterprises for training

(a) Any business enterprise may be used for evaluation or training under terms and conditions established in the operating agreement.

(b) An operator will be paid not less than \$150.00 per week for the training process.

(c) The trainee will be an unpaid employee of the operator.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise.
Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

Added (c).
Amended by R.2004 d.277, effective July 19, 2004.
See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).
Rewrote the section.

10:97-2.4 Placement

(a) When no licensed operator has applied for an announced promotional opportunity, and one or more candidates from the certified for placement list have applied, they shall be personally interviewed by the supervisor of the Business Enterprise Program before an appointment is made.

(b) If any applicant from the certified for placement list has been on the Certified for Placement List for two or more years, they will be required to undergo training to update and maintain their skill level.

(c) When a business enterprise is available, the Commission will make every effort to match the individual needs and capabilities of persons on the certified for placement list to the demands of the business enterprise offered to him or her.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise; seniority considered in placement.
Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

Designated the former section as (a); and added (b) and (c).
Amended by R.2004 d.277, effective July 19, 2004.
See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).
Rewrote the section.

10:97-2.5 Probation for a new operator

(a) When a person from the certified for placement list is assigned to a business enterprise, he or she will be subject to a probationary period of three months.

1. Written reports will be prepared at the end of six weeks and at the end of three months; and

2. The three month report will certify that the probationary period has or has not been successfully completed.

(b) This probationary period may be extended, one month at a time, with a maximum of two extensions.

1. A written report will be completed after each extension.

(c) All reports will be read to the operator and a copy of each report given to the operator.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Vending changed to business enterprise.
Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

10:97-2.6 Failure to complete probation

Any person who is unable to satisfactorily complete the probation period, after a maximum of two extensions, will lose certification with the Business Enterprise Program and at his or her option may be referred for Vocational Rehabilitation reevaluation.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Vending changed to business enterprise.
Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

SUBCHAPTER 3. LICENSING OF OPERATORS**10:97-3.1 Completion of probation period and license**

(a) When the probationary period has been successfully completed, a license shall be issued to the business enterprise operator for an indefinite period but subject to suspension or revocation.

(b) There shall be three classes of licenses, as follows:

1. "C" licenses shall be issued to all persons who have been assigned to a business enterprise and have satisfactorily completed the probationary period. The "C" license shall qualify an individual to operate a snack bar or newsstand.

2. "B" licenses shall be issued to all persons who possess a "C" license, have satisfactorily completed vending machine training approved by the Commission, and are able to demonstrate proficiency in the operation and maintenance of vending machines. The "B" license shall qualify an individual to operate a vending machine facility.

3. "A" licenses shall be issued to all persons who possess a "C" license, have completed a Food Service Manager Certification (FMC), or ServSafe course sponsored by the New Jersey State Department of Health and Senior Services or the National Restaurant Association, and subsequently have been certified by the Department of Health and Senior Services or the National Restaurant Association. The "A" license shall qualify an individual to operate a coffee shop or cafeteria facility.

(c) No person who currently operates a facility in the Business Enterprise Program shall be required to surrender his or her license and operating agreement for that facility because they do not possess an appropriate license. However, to be eligible for promotion or transfer to another facility in the program, he or she must possess an appropriate license for that facility.

(d) All licenses shall be displayed to the public.

(e) The granting of a license to an operator is not subject to transfer.

(f) The license shall be immediately terminated by improvement of vision if the operator no longer meets the definition of a legally blind person set forth at N.J.A.C. 10:97-1.3. This shall be determined by a mandatory biennial examination of each operator by an ophthalmologist or optometrist. Also, the license shall be terminated by death, revocation or voluntary withdrawal from the business by the licensee.

(g) If a permit authorizing a business to be established in a specific location is terminated, the operating agreement is terminated. However, if termination is through no fault of the operator, he or she will be eligible to apply for subsequent promotion and transfer opportunities, under conditions set forth in N.J.A.C. 10:97-7.3.

Amended by R.1991 d.512, effective October 21, 1991.

See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise; (d) and (e) added.

Amended by R.1994 d.27, effective January 18, 1994.

See: 25 N.J.R. 4551(d), 26 N.J.R. 378(a).

Amended by R.1994 d.209, effective May 2, 1994.

See: 26 N.J.R. 725(b), 26 N.J.R. 1841(a).

Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (b), rewrote 3.

10:97-3.2 Operating agreement

(a) A written agreement shall be entered into between the Commission and the operator, covering the basic terms and conditions required of each party each time an operator begins business at any business enterprise, including the probation period. A signed copy will be provided to the operator.

(b) No operator will be charged rental for the operation of a business enterprise on State, county or municipal property pursuant to N.J.S.A. 30:6-15.2.

(c) No operating agreement shall be transferred to another person.

Amended by R.1991 d.512, effective October 21, 1991.

See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise; agreement must be written, vendor gets copy.

Amended by R.1999 d.101, effective April 5, 1999.

See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

Added (c).

Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (b), deleted "Federal," preceding "State" and deleted the C.F.R. reference following the N.J.S.A. reference.

10:97-3.3 Responsibility of the Commission

(a) The Commission will conduct surveys to establish new facilities in Federal and non-Federal locations.

(b) The Commission must comply with all of the Randolph-Sheppard requirements for a state licensing agency.

10:97-3.4 Commission loans to start business; repayment of loans

(a) When an operator is assigned to a business enterprise, a non-interest bearing loan in the maximum amount of \$2,500 in cash and/or equivalent stock may be granted by the Commission, upon request of the operator and recommendation of the supervisor of the Business Enterprise Program, for the initial stock and supplies of the business enterprise.

(b) Repayment may be deferred until the first day of the fourth month after the effective date of the promissory note. The operator will be required to repay the loan, on a monthly basis, within 24 months.

(c) Exceptions to the maximum loan and any subsequent loans may be granted by the Executive Director of the Commission upon written request of the operator, including justification which relates to the objectives of the program.

(d) If a second loan is issued concurrently with initial loan, a second three-month extension will not be added.

Amended by R.1991 d.512, effective October 21, 1991.

See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise.

Amended by R.1999 d.101, effective April 5, 1999.

See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

In (a), substituted "maximum amount of \$2,500" for "amount of \$1,000" preceding "in cash", and inserted "and recommendation of the supervisor of the Business Enterprise Program" following "operator"; in (b), extended the loan repayment period from 18 to 24 months; and in (c), inserted a reference to subsequent loans.

Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (b), substituted "promissory note" for "operating agreement" in the first sentence and inserted ", on a monthly basis," preceding "within 24 months" in the second sentence; added (d).

10:97-3.5 Inventory taking

(a) When a business is transferred from one operator to another, for any cause, the new operator has the option of purchasing some or all of the existing inventory of the previous operator, if the previous operator wishes to sell all or part of the inventory.

(b) The Commission shall schedule the taking of inventory on the effective date of transfer or closing of the facility. Both operators and/or their representatives, and a representative of the Commission, are to be present so that there can be agreement as to the amount and value of stock and

supplies on hand. The Commission may compute the value of the inventory using current average wholesale prices and document the procedure in the operators' records.

(c) Either operator may waive, in writing, his or her right to participate in the scheduled inventory. If either operator chooses not to participate in the inventory taking or signs a waiver, the Commission shall determine the value of the inventory and document the procedure in the operators' records.

(d) At the time of the inventory taking, the Commission will conduct an inspection of all equipment in which the Commission has title to assure its working order. The previous operator shall be responsible for the cost of repairs of any defective equipment under conditions set forth in N.J.A.C. 10:97-4.7.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Inventory includes inspection; computation may utilize average wholesale price; (d) added.

SUBCHAPTER 4. RULES OF OPERATIONS

10:97-4.1 Personal operation of a business enterprise

(a) The operator shall personally conduct the business assigned to him or her.

(b) The operator shall devote whatever time is required in the conduct of his or her particular business to ensure the likelihood of success at the location.

(c) Failure to comply with business time requirements in (b) above may result in suspension.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Stylistic changes.
Amended by R.2004 d.277, effective July 19, 2004.
See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).
Rewrote (b); added (c).

10:97-4.2 Absences

(a) The operator bears full responsibility for the operation of the business during his or her absence.

1. In the event that an operator is absent, the operator shall select and compensate, in accordance with the Department of Labor standards, a qualified substitute.

2. Advance notice to the Commission is not necessary unless the absence would involve the closing of the facility or there has been a pattern of abuse.

(b) Absence by an operator from his or her business enterprise because of serious sickness or accident shall be limited to a period of no more than three consecutive months from the date of initial absence. The absence must be supported by a letter of medical justification from his or her attending licensed physician. If an operator is absent from the business enterprise for more than three consecutive months, his or her license shall be subject to suspension. Exceptions may be granted by the Executive Director of the Commission, upon written request of the operator, including justification for the request.

(c) Abandonment of a business enterprise by an operator for two or more business days shall make him or her subject to immediate suspension (see N.J.A.C. 10:97-8.1(b)).

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Provision added to allow termination of license after six-month absence.

Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

In (a), added "or there has been a pattern of abuse" at the end of 2; rewrote (b); and added (c).

Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (a), inserted ", in accordance with the Department of Labor standards." preceding "a qualified substitute" in 1; in (b), substituted "medical justification" for "prognosis" in the second sentence and substituted "suspension" for "termination" in the third sentence.

10:97-4.3 Employees

(a) Preference in employment shall be given to other blind or visually impaired people and other disabled people.

(b) The operator is required to comply with all State and Federal laws pertaining to hiring, employment, and workers' compensation.

Amended by R.2004 d.277, effective July 19, 2004.
See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (b), substituted "hiring, employment, and workers' compensation" for "hiring and employment".

10:97-4.4 Payment for supplies purchased

The operator may take advantage of credit extended by suppliers, provided that the Commissioner shall have no liability in the event that an operator abuses any such credit.

Amended by R.2004 d.277, effective July 19, 2004.
See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In former (a), deleted the paragraph designation; deleted former (b).

10:97-4.5 Insurance

The operator shall carry workers' compensation insurance for all persons utilized by the operator, in accordance with Department of Labor rules, and any other insurance required for the operation of the business. The Commission shall be included on all policies except workers' compensation as "additionally insured."

Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

Rewrote the section.
Amended by R.2004 d.277, effective July 19, 2004.
See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).
Rewrote the first sentence.

10:97-4.6 Equipment

(a) Title to and interest in all equipment shall be vested in the Commission, with the exception of equipment that has been purchased, leased by, or loaned to the operator.

(b) Any request for purchase, lease or use of equipment by an operator must be made in writing to the Commission. The Commission will notify the operator of its decision regarding the request within 20 days.

(c) The granting of permission to purchase equipment does not imply agreement on the part of the Commission to maintain the equipment or purchase the item from the operator at the time he or she leaves the program or from his or her heirs or assignees after his or her death.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Stylistic changes.

Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

In (a), inserted a reference to equipment loaned to operators; and in (b), inserted a reference to use of equipment.

10:97-4.7 Maintenance and repair of equipment

(a) All business enterprise equipment in which the Commission has title shall be maintained in good repair by the operator to insure continued operation of the business enterprise.

(b) The operator shall pay the first \$200.00 for the repair of each piece of equipment per occurrence except when the cost of equipment repair is incurred during the first 45 calendar days of an operator's occupancy at a business enterprise. Full cost of repair of equipment during the first 45 calendar days shall be the responsibility of the Commission.

(c) The Commission shall pay for repair charges over and above the first \$200.00 except as stated in (b) above.

(d) Worn and obsolete equipment shall be replaced by the Commission when it is determined by the Commission that the cost of repair of the equipment cannot be justified in relation to the value of the equipment.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Commission pays for repairs during first 45 days, then operator pays first \$150.00.

Amended by R.1997 d.49, effective February 3, 1997.
See: 28 N.J.R. 4839(a), 29 N.J.R. 424(a).

In (b) and (c) increased payment amounts.
Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

In (d), substituted "when it is determined by the Commission that" for "as necessary, when" preceding "the cost".
Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (b), inserted "per occurrence" following "each piece of equipment".

10:97-4.8 Disposition of Commission owned property

The operator or his or her employees shall not destroy, sell or in any way alter or dispose of any of the fixtures, equipment or other property to which the Commission holds title or permit anyone else to do so without the written authorization of the Commission.

Amended by R.1991 d.512, effective October 21, 1991.

See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Stylistic changes.

10:97-4.9 Sanitation

(a) Operators are required to meet all Federal, State, county and municipal health standards, including the standards required by the Commission. These standards include a regular schedule of maintenance of all fixtures and equipment and a regular scheduled cleanup of all areas of the facility by the operator.

(b) All recommendations regarding appearance and sanitation, made to an operator by a Commission field staff member, must be implemented within the time frame established by the Commission in the site review report. Failure to implement the recommendations shall result in the Commission securing the services of a commercial cleaning company at the operator's expense.

Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

In (b), added a second sentence.

10:97-4.10 Stock

(a) The type of articles to be sold in a facility shall be determined by the property manager and the Commission.

(b) Under no circumstances will approval be given for the sale of any item which is prohibited by law or ordinance.

10:97-4.11 Signs

The licensed operator shall use only such identifying signs and insignia as approved by the Commission and the property manager.

10:97-4.12 Pricing of merchandise

(a) Prices will be set by the operator in consultation with the Commission's representative.

(b) The retail price of merchandise at a facility shall not exceed the general price pattern prevailing in the immediate locality.

10:97-4.13 Notification of unusual incidents

(a) The operator shall immediately notify the Commission, by telephone, of any unusual incident.

1. An unusual incident is anything that causes or might cause the business a problem.

2. Such incidents may be, but are not limited to, any governmental or legal actions, customer's complaints, accidents and insurance claims.

10:97-4.14 Responsibility for damage

The operator shall be liable to the Commission for any damage of the equipment or fixtures owned by the Commission or any losses resulting from the neglect or failure to observe the rules of the Commission. In such instances the full cost of repairs or replacement shall be the responsibility of the operator. The deductible provisions of N.J.A.C. 10:97-4.7(b) and (c) shall not apply.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Stylistic changes.

Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

Added the second and third sentences.

10:97-4.15 Operator owned or leased vending machines

(a) Operators must obtain written approval from the Commission and the property manager to have vending machines as part of the business enterprise, whether owned or leased by, or loaned to, the operator.

(b) All income from these vending machines will be reported as miscellaneous sales of the business enterprise.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Stylistic changes.

Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

In (a), added "whether owned or leased by, or loaned to, the operator" at the end; and in (b), substituted "reported" for "counted" following "will be".

10:97-4.16 Motor vehicle operation

Except as may otherwise be permitted by law, Business Enterprise Program operators shall not operate any motor vehicle on any public street or highway. If it is determined that an operator has operated a vehicle on any public street or highway for which a state driver's license is required, his or her Business Enterprise Program Operating Agreement and/or Business Enterprise Program Operator's license shall be subject to revocation, effective 15 days from the date of such notice of revocation, provided that the operator has been given an opportunity for an Administrative Review and/or an Administrative Hearing in accordance with N.J.A.C. 10:97-8 prior to final determination.

New Rule. R.1994 d.209, effective May 2, 1994.
See: 26 N.J.R. 725(b), 26 N.J.R. 1841(a).

SUBCHAPTER 5. RECORDS AND MONITORING

10:97-5.1 Weekly sales report

(a) The operator shall submit to the Commission the prescribed weekly sales report. Cash register tapes, or daily reports where registers are not available, along with invoices or photocopies, shall also be submitted.

(b) Weekly reports shall be submitted on at least a monthly basis, on or before the 15th day of the following month. These reports do not constitute complete financial reporting as set forth in N.J.A.C. 10:97-5.2.

(c) Cash registers shall be used at all business enterprises, except those enterprises consisting of vending machines only.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Registers and register tapes required; weekly reports submitted at least once a month.

Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

In (c), substituted "except those enterprises consisting of vending machines only" for "when available" at the end.

10:97-5.2 Recordkeeping

(a) The operator is required to keep books of account. These books of account shall meet the requirements of the Internal Revenue Services, Social Security Administration, the New Jersey Sales Tax Division, the Division of Employment Security, the Division of Workers' Compensation and any other agency having jurisdiction.

(b) Such records must be open for the inspection of the Commission one working week after receipt of the notice requesting inspection. Failure to comply with this requirement may result in suspension.

Amended by R.2004 d.277, effective July 19, 2004.
See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (b), substituted "one working week" for "one (1) working day" preceding "after receipt" in the first sentence and added the second sentence.

10:97-5.3 Right of inspection

(a) The operator shall recognize any representative directed by the Commissioner of Human Services or the Commission, with official State identification, to make unannounced inspections in order to monitor the appearance and conduct of the business enterprise.

(b) The Commission representative shall make site visits at a minimum of one visit every three months; however, more frequent visits may occur. Each time a Commission representative visits a business enterprise, a site visit report shall be completed, read to the operator (who shall have the right to include his or her comments) and signed by both the operator and the Commission representative. The operator shall be given a copy and the Commission shall retain a copy. It shall be the responsibility of the operator to implement the requirements set forth in the site visit report.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Stylistic changes.

Case Notes

Commission required to ensure compliance of its agreements.
Blume v. New Jersey Commission for the Blind and Visually Impaired,
97 N.J.A.R.2d (CVB) 1.

10:97-5.4 Confidentiality of records

No operator and/or client information shall be released
except under the provisions of N.J.A.C. 10:91-5.7.

SUBCHAPTER 6. PROGRAM: FISCAL REQUIREMENTS

10:97-6.1 Federal Set Aside Fund

(a) The Federal Set Aside Fund consists of those funds
accruing to the program from unassigned vending machine
income from Federal locations.

(b) The funds may be used only for purpose of:

1. Maintenance and replacement of equipment;
2. The purchase of new equipment;
3. Management services;
4. Assuring a fair minimum return to vendors; or
5. The establishment and maintenance of retirement
or pension funds, health insurance contributions, and
provisions for paid sick leave and vacation time, if it is so
determined by a majority vote of blind vendors, after the
Commission provides to each vendor information related
to the proposed purposes.

(c) A use set forth in (b)1, 2, 3 and 4 above can be
authorized only by the Commission. The use set forth in
(b)5 above can only be authorized by a majority vote of all
the licensed operators in the Business Enterprise Program.

Amended by R.1989 d.249, effective May 15, 1989.
See: 21 N.J.R. 424(a), 21 N.J.R. 1431(a).
Reference to set-aside levy deleted from (a).
Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Vending changed to business enterprise.

10:97-6.2 (Reserved)

Repealed by R.1989 d.249, effective May 15, 1989.
See: 21 N.J.R. 424(a), 21 N.J.R. 1431(a).
Provisions for set-aside levy repealed, pursuant to Attorney General's
opinion that levy would be in conflict with N.J.S.A. 30:6-15.2.

10:97-6.3 Business Enterprise Program Fund Non- Federal

The Business Enterprise Fund Non-Federal consists of all
monies accruing to the Program from non-Federal sources.
These funds will be used to cover expenses which are
necessary for the operation of the Program except for costs
which can be paid from the Federal Set Aside Fund.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Vending changed to business enterprise.

10:97-6.4 Vending machine income due to operators

Operators located on Federal property shall be eligible
for vending machine income pursuant to Randolph-Shep-
pard regulations (34 CFR 395:8). Any such income due an
operator which has been disbursed to the Commission, shall
be remitted to the operator on at least a quarterly basis. All
unassigned vending machine income from Federal sources
will become a part of the Federal Set Aside Fund.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Title of rule revised.

Amended by R.2004 d.277, effective July 19, 2004.
See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).
Substituted "shall" for "may" preceding "be eligible".

10:97-6.5 Access to program and financial information

(a) Each operator will be provided access, in braille,
recorded tape, or print, to all financial data relevant to the
operation of the Business Enterprise Program.

(b) Such access will include quarterly and annual finan-
cial reports, provided that such disclosure does not violate
Federal and State laws pertaining to the disclosure of
confidential information.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Vending changed to business enterprise.

SUBCHAPTER 7. TRANSFER OF FACILITY FROM ONE OPERATOR TO ANOTHER

10:97-7.1 Advance notice of termination

If an operator decides to terminate his or her assignment
as a business enterprise operator, he or she shall notify the
Commission by mail at least 45 days in advance of the actual
date of termination.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).
Vending changed to business enterprise.

Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).
Substituted a reference to 45 days for a reference to one month.

10:97-7.2 Procedure when an operator leaves a business enterprise

(a) Whenever an operator is transferred, terminated, or otherwise leaves a business enterprise, all equipment and other property belonging to the Commission shall be surrendered in good working order and condition, except for reasonable wear and tear, as determined by the Commission. Also, the premises shall be cleaned to the satisfaction of the Commission representative, or the services of a commercial cleaning company shall be engaged, as provided at N.J.A.C. 10:97-4.9(b).

(b) To maintain good standing with the program, the operator shall provide proof that all taxes, accounts and bills have been paid in full. Also, an inventory of stock shall be taken as required under the provisions of "Inventory taking" at N.J.A.C. 10:97-3.5.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise.
Amended by R.1999 d.101, effective April 5, 1999.
See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).
Rewrote the section.

10:97-7.3 Promotions and transfers

(a) The supervisor of the Business Enterprise Program shall circulate a letter to all operators and persons on the Certified for Placement List announcing business enterprise vacancies. The letter shall contain a description and the location of the business enterprise, the gross sales and the net profit for the previous year, scheduled hours of operation and other significant information about the vacancy. An on-site inspection shall be scheduled for all potential applicants by the Commission for a time during business hours, sometime during the two week response period. A Commission representative shall be present at that time to answer any questions that operators may have regarding the location. The on-site inspection shall not be rescheduled for operators on an individual basis.

(b) Any eligible interested operator shall apply, in writing, to the supervisor of the Business Enterprise Program within two weeks of the vacancy announcement.

1. Any operator who is not current in repayment of his or her stock loan, under conditions set forth in N.J.A.C. 10:97-3.4(b), or has not satisfied the debt, in full, within 30 days prior to the application for appointment, shall be ineligible to apply.

2. Any operator who has not reported at least a 20 percent net profit margin for the previous year shall be ineligible to apply.

(c) The selection shall be made by the supervisor of the Business Enterprise Program based on an evaluation of the operator's record of performance for the previous year and the results of a panel interview.

(d) Performance evaluation shall account for 50 percent of the total promotion and transfer evaluation procedure. Evaluation shall be based on individual site visit reports, semi-annual evaluations and any other documented reports completed by field representatives assigned to work with the interested operators. The supervisor of the Business Enterprise Program shall give weight value to each factor, depending on the type and needs of the specific business enterprise up for bid. Weight values for all factors shall total 25 points. Each weight value shall be multiplied by the respective performance value ranging from zero for "unsatisfactory" to one for "conditionally satisfactory" to two for "satisfactory." The factors on which all interested operators shall be rated are management ability, health and sanitation, public relations, compliance with Business Enterprise Program rules and participation in meetings and instructional conferences sponsored by the Commission.

(e) The prescribed interview shall account for 50 percent of the total promotion and evaluation procedure. The interview panel shall consist of the supervisor of the Business Enterprise Program (who shall serve as lead interviewer), the field representative assigned to the announced vacant business enterprise, a non-vocational rehabilitation employee of the Commission and a member of the Committee of Business Enterprise Operators (excluding Committee members who have expressed an interest in the vacant business enterprise) or a designee assigned by the Chairperson of the Committee.

(f) As a group, the panel shall give each candidate a rating for the interview based on a scale of one to 50. Questions to be asked of all candidates, based on the requirements of the vacant business enterprise, and procedures for scoring shall be designated by the supervisor of the Business Enterprise Program when the panel convenes and before the interviews are held. In the event of a tie score, the location will be awarded to the senior operator.

(g) If a candidate does not appear for his or her scheduled interview and has not given prior notice to or been excused by the supervisor of the Business Enterprise Program, he or she shall not be re-scheduled and shall be ineligible for the announced promotion or transfer opportunity.

(h) The candidate with the highest overall rating shall be selected for appointment as operator of the business enterprise for which he or she has applied. In the event of a tie, the candidate with the highest seniority shall receive the appointment.

(i) Once an operator accepts an assignment to a new location, the only way that he or she can return to the previous location shall be as a new applicant.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise; gross sales included in vacancy notice; text added at (d) through (i).

Amended by R.1992 d.515, effective December 21, 1992.

See: 24 N.J.R. 2798(a), 24 N.J.R. 4551(a).

Prerequisites added to (b); evaluation limited to past year's performance and panel review; range and formula changed; points and preference given for highest seniority; exemption for those evaluated in the past year.

Amended by R.1999 d.101, effective April 5, 1999.

See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

In (a), added the third through fifth sentences; and rewrote (b)2.

Amended by R.2004 d.277, effective July 19, 2004.

See: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

In (a), inserted "and persons on the Certified for Placement List" following "letter to all operators"; in (f), deleted the former second sentence and added the last sentence; deleted former (h) and recodified former (i) and (j) as (h) and (i).

10:97-7.4 Interim operator

When a business enterprise becomes vacant, it is often necessary to keep that business enterprise operating in order that the location is not lost to the Business Enterprise Program. Such a vacancy shall be filled by the appointment of an interim operator, pending the completion of the formal promotion process. The interim operator may be appointed from the "certified for placement" list.

Amended by R.1991 d.512, effective October 21, 1991.

See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise.

SUBCHAPTER 8. SUSPENSIONS AND GRIEVANCE PROCEDURES

10:97-8.1 Immediate suspension

(a) In the event that an operator is in violation of the regulations and/or laws of a governmental agency, his or her license shall be subject to immediate suspension.

(b) Grounds for immediate suspension of a license shall exist when any activity, policy or conduct of an operator presents a serious or imminent hazard to the health, safety, civil rights, and well being of the public, or otherwise demonstrates total unfitness or inability to operate a business enterprise in compliance with all of the requirements of these regulations and all applicable Federal and State law, including:

1. Willfully defrauding a private vendor or any agency of government of any taxes or other amounts of money due;
2. Jeopardizing the Commission's permit for the facility as a result of building management complaint and request for removal;
3. Abandonment of the business enterprise; or
4. Indictment for, or conviction of, a crime.

(c) The operator shall be notified of the reason for suspension. In addition, the operator shall be afforded an Administrative Review, if so requested, as set forth in

N.J.A.C. 10:97-8.3(a) and (b). The operator shall be entitled to all the grievance procedures afforded by New Jersey and Federal Law, including an Administrative Hearing if the Administrative Review does not resolve the problem (see N.J.A.C. 10:97-8.3(c)).

Amended by R.1991 d.512, effective October 21, 1991.

See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise.

Amended by R.1999 d.101, effective April 5, 1999.

See: 31 N.J.R. 21(a), 31 N.J.R. 873(b).

Rewrote (b).

10:97-8.2 Disciplinary probation

(a) In situations other than immediate suspension, the operator shall comply with all of the requirements in these regulations and of State and Federal law. In the event that there is a violation, the operator shall be placed on disciplinary probation. The operator shall be given a written notice by the Commission stating the grounds at issue and shall have a period of 15 days to correct any violation cited in the notice.

(b) In the event that the violation is not corrected during the disciplinary probation period, the Commission shall issue to the operator a notice of license termination, citing any unresolved violation. Termination shall be effective 15 days after such notice of termination, provided that the operator has been given an opportunity for an Administrative Review and/or an Administrative Hearing prior to final termination.

Amended by R.1991 d.512, effective October 21, 1991.

See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Notice and opportunity for hearing required prior to termination.

10:97-8.3 Administrative Reviews and Hearings

(a) The Commission shall afford an opportunity for an Administrative Review to each operator who is dissatisfied with any action arising from the operation or administration of the Business Enterprise Program when a written request is submitted within 15 days of the occurrence of the action. The operator has the option of transmitting the grievance through the Committee of Business Enterprise Operators.

(b) The Administrative Review shall be conducted by the Commission as an internal non-contested case not subject to New Jersey Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.).

(c) The Commission shall afford an opportunity for an Administrative Hearing, also known as a Full Evidentiary Hearing, to each operator in accord with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.), subject to any superseding Federal or State law (see 34 C.F.R. 361.48 and 34 C.F.R. 395.13).

(d) If an operator has participated in an Administrative Hearing and is dissatisfied with any action taken or decision

rendered as a result of the hearing, he or she may file a complaint with the Secretary, United States Department of Education. Such complaint shall be accompanied by all supporting documents, including a statement of the decision which was rendered and the reasons in support thereof. Filing of the complaint by the operator shall indicate consent for the release of such information for the hearing of an ad hoc arbitration panel (see 34 C.F.R. 395.13).

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise; Administrative Hearing also known as Full Evidentiary Hearing; (d) added to allow complaint to U.S. Secretary of Education.

SUBCHAPTER 9. COMMITTEE OF BUSINESS ENTERPRISE OPERATORS

10:97-9.1 Committee of Business Enterprise Operators

(a) The Commission shall provide for the biennial election of a Committee of Business Enterprise Operators which, to the extent possible, shall be representative of all operators in the Business Enterprise Program on the basis of such factors as geography and type of business enterprise, with the goal of providing for proportional representation of operators on Federal property and operators on other property.

(b) The Committee shall be elected by the majority of all active licensed operators in the State Program.

(c) Participation by any active licensed operator in any election shall not be conditioned upon the payment of dues or any other fee.

(d) The Committee of Business Enterprise Operators shall:

1. Actively participate with the Commission in major administrative decisions and policy and program development decisions affecting the overall administration of the Business Enterprise Program;
2. Receive and transmit to the Commission grievances at the request of operators and serve as advocates for such operators in connection with such grievances;
3. Actively participate with the Commission in the development and administration of the system for the transfer and promotion of operators;
4. Actively participate with the Commission in the development of training and re-training programs for operators; and
5. Sponsor, with the assistance of the Commission, meetings and instructional conferences for operators within the State.

(e) It is the responsibility of the Committee of Business Enterprise Operators to establish and maintain bylaws under which they will operate and which are approved by the Commission.

Amended by R.1991 d.512, effective October 21, 1991.
See: 23 N.J.R. 1749(a), 23 N.J.R. 3161(a).

Vending changed to business enterprise.