

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, and 30:6-15.1 and 15.2; 20 U.S.C. §§107 et seq.;
and 34 CFR Part 395.

Source and Effective Date

R.2010 d.015, effective December 14, 2009.
See: 41 N.J.R. 2603(a), 42 N.J.R. 483(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, expires on December 14, 2016. See: 43 N.J.R. 1203(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Chapter 97, The Vending Facility Program of the New Jersey Commission for the Blind and Visually Impaired, was repealed and Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, was adopted as new rules by R.1984 d.149,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: 36 N.J.R. 1702(a), 36 N.J.R. 3425(a).

Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, was readopted as R.2010 d.015, effective December 14, 2009. 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.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 10:97-1.1 Legal authority
- 10:97-1.2 Uniform applicability of chapter compliance with Federal standards

- 10:97-1.3 Definitions
- 10:97-1.4 Objectives

SUBCHAPTER 2. PROGRAM ENTRY REQUIREMENTS

- 10:97-2.1 Application and qualification to enter program
- 10:97-2.2 Selection and training
- 10:97-2.3 Business enterprises for training
- 10:97-2.4 Placement
- 10:97-2.5 Probation for a new operator
- 10:97-2.6 Failure to complete probation

SUBCHAPTER 3. LICENSING OF OPERATORS

- 10:97-3.1 Completion of probation period and license
- 10:97-3.2 Operating agreement
- 10:97-3.3 Responsibility of the Commission
- 10:97-3.4 Commission loans to start business; repayment of loans
- 10:97-3.5 Inventory taking

SUBCHAPTER 4. RULES OF OPERATIONS

- 10:97-4.1 Personal operation of a business enterprise
- 10:97-4.2 Absences
- 10:97-4.3 Employees
- 10:97-4.4 Payment for supplies purchased
- 10:97-4.5 Insurance
- 10:97-4.6 Equipment
- 10:97-4.7 Maintenance and repair of equipment
- 10:97-4.8 Disposition of Commission owned property
- 10:97-4.9 Sanitation
- 10:97-4.10 Stock
- 10:97-4.11 Signs
- 10:97-4.12 Pricing of merchandise
- 10:97-4.13 Notification of unusual incidents
- 10:97-4.14 Responsibility for damage
- 10:97-4.15 Operator owned or leased vending machines
- 10:97-4.16 Motor vehicle operation

SUBCHAPTER 5. RECORDS AND MONITORING

- 10:97-5.1 Weekly sales report
- 10:97-5.2 Recordkeeping
- 10:97-5.3 Right of inspection
- 10:97-5.4 Confidentiality of records

SUBCHAPTER 6. PROGRAM: FISCAL REQUIREMENTS

- 10:97-6.1 Federal Set Aside Fund
- 10:97-6.2 (Reserved)
- 10:97-6.3 Business Enterprise Program Fund Non-Federal
- 10:97-6.4 Vending machine income due to operators
- 10:97-6.5 Access to program and financial information

**SUBCHAPTER 7. TRANSFER OF FACILITY FROM ONE
OPERATOR TO ANOTHER**

- 10:97-7.1 Advance notice of termination
- 10:97-7.2 Procedure when an operator leaves a business enterprise
- 10:97-7.3 Promotions and transfers
- 10:97-7.4 Interim person

**SUBCHAPTER 8. SUSPENSIONS AND GRIEVANCE
PROCEDURES**

- 10:97-8.1 Immediate suspension
- 10:97-8.2 Disciplinary probation
- 10:97-8.3 Administrative Reviews and Hearings

**SUBCHAPTER 9. COMMITTEE OF BUSINESS
ENTERPRISE OPERATORS**

- 10:97-9.1 Committee of Business Enterprise Operators

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, the laws governing the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended.

Amended by R.2010 d.015, effective January 19, 2010.
See: 41 N.J.R. 2603(a), 42 N.J.R. 483(a).

Substituted "uniformly" for "uniformally" and inserted "the laws governing the Americans with Disabilities Act".

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 will actively participate in the decision making process by making recommendations for the formulation and development of the overall 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. All individuals who successfully complete the training course will receive a certificate of completion.

"Committee" means the Committee of Business Enterprise Operators, which are operators elected at the annual meeting by a majority of active licensed operators in the program.

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

"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.

"Inactive licensee" means a blind operator who has been duly licensed by the Commission but is not presently operating a location.

"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, accounting, regulating, in-service training and other related services provided on a systematic basis to support and improve business enterprises. Management services does not include those services or costs, which pertain to the ongoing operation of an individual facility after the initial establishment period.

"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 and/or license resulting in the halting of operations. The Operating Agreement and/or license 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.

“Vocational counselor” means a person hired to assist disabled clients in the process of selecting and obtaining necessary training and related services for their vocational rehabilitation.

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”.

Amended by R.2010 d.015, effective January 19, 2010.
See: 41 N.J.R. 2603(a), 42 N.J.R. 483(a).

In definition “Active participation”, substituted “will actively participate in” for “provides meaningful input into” and “by making recommendations for” for “in” and inserted “and development” and “the overall”; in definition “Certified for placement list”, inserted the last sentence; rewrote definition “Committee”; added definitions “Commis-

sion”, “Inactive license” and “Vocational counselor”; in definition “Management services”, substituted “accounting,” for “bookkeeping services,”; deleted a comma following “training” and inserted the last sentence; and in definition “Suspension”, inserted “and/or license” twice.

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 independent; 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.

Amended by R.2010 d.015, effective January 19, 2010.

See: 41 N.J.R. 2603(a), 42 N.J.R. 483(a).

In (b)3, inserted “and independent”.

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 equivalent certificate in order to participate in the Business Enterprise Program.

(c) The Business Enterprise Program shall verify an individual’s eligibility to enter the program. The prospective applicant shall be interviewed by the manager, trainer, Committee of Blind Vendors representative and the vocational counselor.

(d) Candidates shall be able to read, write and converse in English. Adjustment to vision loss counseling shall also be provided.

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).

Amended by R.2010 d.015, effective January 19, 2010.

See: 41 N.J.R. 2603(a), 42 N.J.R. 483(a).

Added (c) and (d).

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, and be able to travel independently;
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. Training shall be a minimum of 21 weeks.

(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".

Amended by R.2010 d.015, effective January 19, 2010.

See: 41 N.J.R. 2603(a), 42 N.J.R. 483(a).

In (a)1, inserted ", and be able to travel independently"; and in (b), inserted a comma following "site" and inserted the last sentence.

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 for the training process at a rate agreed upon by the Commission and the Committee of Blind Operators.

(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.

Amended by R.2010 d.015, effective January 19, 2010.

See: 41 N.J.R. 2603(a), 42 N.J.R. 483(a).

In (b), deleted "not less than \$150.00 per week" following "paid" and inserted "at a rate agreed upon by the Commission and the Committee of Blind Operators".

10:97-2.4 Placement

(a) When no active or inactive licensed operator has applied for an announced promotional opportunity, and two or more candidates from the certified for placement list have applied, they shall be personally interviewed by the manager or designee of the Business Enterprise Program, along with the participation of a Committee member, before an appointment is made.

(b) If any inactive licensee or applicant from the certified for placement list has been inactive or on the certified for placement list for two or more years, they will be required to undergo re-evaluation and then, if needed, complete training to update and maintain their skill level prior to being considered for a Business Enterprise Location.

(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.

Amended by R.2010 d.015, effective January 19, 2010.

See: 41 N.J.R. 2603(a), 42 N.J.R. 483(a).

In (a), inserted "active or inactive" and ", along with the participation of a Committee member," and substituted "two" for "one" and "manager or designee" for "supervisor"; and rewrote (b).

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 six months.

1. Written reports will be prepared at the end of every six weeks; and
2. The six-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.

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.