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NEW JERSEY ADMINISTRATIVE CODE  
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\*\*\* New Jersey Register, Vol. 49 No. 13, July 3, 2017 \*\*\*

TITLE 10. HUMAN SERVICES  
CHAPTER 97. THE BUSINESS ENTERPRISE PROGRAM OF THE NEW JERSEY COMMISSION FOR THE  
BLIND AND VISUALLY IMPAIRED

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N.J.A.C. 10:97 (2017)

Title 10, Chapter 97 -- Chapter Notes

CHAPTER 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.

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2017 d.135, effective June 8, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

CHAPTER EXPIRATION DATE:

Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, expires on June 8, 2024.

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Chapter 97, The Vending Facility Program of the New Jersey Commission for the Blind and Visually Impaired, was repealed and Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, was adopted as new rules by R.1984 d.149,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).

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

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, was scheduled to expire on December 14, 2016. See: 43 N.J.R. 1203(a).

Chapter 97, The Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, was readopted as R.2017 d.135, effective June 8, 2017. As a part of R.2017 d.135, Subchapter 3, Licensing of Operators, was renamed Licensing of Managers; Subchapter 7, Transfer of Facility from One Operator to Another, was renamed Transfer of Facility from One Manager to Another; and Subchapter 10, New Private Business Enterprise Opportunities, was adopted as new rules, effective July 3, 2017. See: Source and Effective Date. See, also, section annotations.

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N.J.A.C. 10:97-1.1 (2017)

§ 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.

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N.J.A.C. 10:97-1.2 (2017)

§ 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.

**HISTORY:**

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".

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N.J.A.C. 10:97-1.3 (2017)

§ 10:97-1.3 Definitions

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

"Active participation" means an ongoing process of good-faith negotiation between the elected Committee of Business Enterprise Managers and the Commission for the Blind and Visually Impaired in the development of Business Enterprises New Jersey policies and procedures before implementation. The Commission shall be responsible for the administration and operation of all aspects of BENJ and authority in decisions affecting BENJ.

"Administrative hearing" means a formal proceeding before an Administrative Law Judge and conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

"Approved training" refers to training that is set forth by Business Enterprises New Jersey, with the active participation by the Committee of Business Enterprise Managers.

"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 that may be operated by blind managers and that 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 Enterprises New Jersey" or "BENJ" means the New Jersey Randolph-Sheppard Act business enterprise program.

"Business Enterprises New Jersey Fund, Federal" means funds that accrue to the Commission from any vending machines on Federal property.

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"Business Enterprises New Jersey Fund, non-Federal" means funds that accrue to the Business Enterprise Program from all non-Federal sources.

"Business Enterprises New Jersey Manager" means the individual administratively responsible for overseeing the operations of the Business Enterprises New Jersey program, staff, and other relevant matters.

"Certified for Placement List" means a roster of blind persons who have successfully completed approved training for Business Enterprises New Jersey and are so certified by the Commission. All individuals who successfully complete the training course will receive a certificate of completion.

"Committee" or "CBEM" means the Committee of Business Enterprise Managers, who are managers elected at the annual meeting by a majority of active licensed managers in the program.

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

"Field representative" means the front line business consultant at the Commission responsible for training and other program service delivery in support of a licensed manager or candidate seeking licensure.

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

"Inactive licensee" means a blind manager 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 or other business enterprise on Federal or other property.

"Licensee" means a blind manager who has been duly licensed by the Commission.

"Manager" means a qualified blind person assigned by the Commission to operate a business enterprise on Federal or other property. A manager is not an employee of the State of New Jersey.

"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 managers after deducting the cost of such sale and other expenses.

"Operating agreement" means the agreement, which shall be entered into between the Commission and each manager, 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 manager in Business Enterprises New Jersey. Work time must be unbroken unless there are extenuating circumstances that exist, through no fault of the manager.

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

"Suspension" means a temporary discontinuation of the operating agreement or license resulting in the halting of operations. The operating agreement 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 rehabilitation 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.

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**HISTORY:**

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 "Commission", "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.

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-1.4 (2017)

§ 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 Business Enterprises New Jersey on Federal and non-Federal property.

(b) Business Enterprises New Jersey 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.

HISTORY:

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".

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

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In (a), deleted "the" preceding "Business"; in the introductory paragraph of (b), deleted "The" preceding "Business"; and in (a) and the introductory paragraph of (b), substituted "New Jersey" for "Program", and substituted "Enterprises" for "Enterprise".

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N.J.A.C. 10:97-2.1 (2017)

§ 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 Business Enterprises New Jersey.

(c) The Commission will also consider applicants for BENJ who are referred to the Commission from other Randolph-Sheppard programs in other states or through individual personal initiative. In these cases, the BENJ management and staff are authorized to determine program eligibility based on criteria jointly determined by the state licensing agency and CBEM.

(d) Business Enterprises New Jersey shall verify an individual's eligibility to enter the program. The prospective applicant shall be interviewed by the BENJ Manager and the Committee of Business Enterprise Managers representative. The BENJ Manager will make the final determination for eligibility in consultation with the CBEM and related staff.

(e) Candidates shall be able to communicate effectively.

(f) All candidates must undergo a criminal background check.

**HISTORY:**

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).

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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).

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-2.2 (2017)

§ 10:97-2.2 Selection and training

(a) A blind person who has been certified eligible as set forth in N.J.A.C. 10:97-2.1 and wishes to enter Business Enterprises New Jersey must demonstrate proficiency in the following areas:

1. The ability to move about and orient to his or her environment, especially in small areas, and be able to travel independently;
2. The ability to keep information for oneself in some organized format and the ability to retrieve such information as needed;
3. The ability to do simple arithmetic, including addition, subtraction, multiplication, division, and the use of decimals and percentages, as demonstrated by a standardized test of this skill;
4. The ability to function with a computer, including keyboarding skills, familiarity with e-mail protocols, knowledge of how to navigate using the internet, and an understanding of word processing and spreadsheet software;
5. The ability to demonstrate soft skills congruent with successful business ownership; and
6. The ability to use generally-accepted skills of blindness in daily interaction with successful business ownership.

(b) If selected for the program the successful candidate will undergo a course of training as determined by the Commission, in consultation with the Committee. This training will include both academic and on-the-job training.

(c) Upon satisfactory completion of this training, the person will be issued a certificate and placed on the "Certified for Placement List."

**HISTORY:**

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).

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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.

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-2.3 (2017)

§ 10:97-2.3 On-the-job evaluation and training

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

(b) A manager will be paid for the training process at a rate agreed upon by the Commission and the Committee of Business Enterprise Managers.

**HISTORY:**

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".

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

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Section was "Business enterprises for training". Rewrote the section.

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N.J.A.C. 10:97-2.4 (2017)

§ 10:97-2.4 Initial assignment

(a) When a business enterprise location is available, and no active or inactive licensed manager 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 Business Enterprises New Jersey, along with the active participation of a Committee member, before an appointment is made. Once selected, the candidate will retain his or her business enterprise location upon successful completion of their probationary period.

(b) If only one candidate from the Certified for Placement List applies, he or she may be assigned to the location by the BENJ Manager, and retain his or her business enterprise location upon successful completion of his or her probationary period.

HISTORY:

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).

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Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Placement". Rewrote the section.

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N.J.A.C. 10:97-2.5 (2017)

§ 10:97-2.5 Probation for a new manager

(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 by the BENJ field representatives at the end of every six weeks and forwarded to the BENJ Manager for his or her review; and

2. After six-months, the BENJ Manager will decide whether the candidate has successfully completed the probationary period based on the reports provided by the field representative and in consultation with the Committee, and will certify that the probationary period has or has not been successfully completed.

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

1. The BENJ field representative will prepare a written report after each extension.

(c) All reports and decisions will be provided to the candidate for a license in an accessible format.

**HISTORY:**

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).

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

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

In the introductory paragraph of (a), substituted "six" for "three"; in (a)1, inserted "every" and deleted "and at the end of three months" following "weeks"; and in (a)2, substituted "six-month" for "three-month".

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Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Probation for a new operator". Rewrote the section.

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N.J.A.C. 10:97-2.6 (2017)

§ 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 eligibility for licensure with Business Enterprises New Jersey and, at his or her option, may be referred to a Vocational Rehabilitation Counselor to explore other vocational options.

**HISTORY:**

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).

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-3.1 (2017)

§ 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 manager for an indefinite period but subject to suspension or revocation, after affording the licensed manager an opportunity for a full evidentiary hearing.

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

(c) A license granted under this section is not transferrable.

(d) If the Commission has reasonable cause to believe that a licensee's vision has improved, such that he or she would not be eligible for licensure under this program, the Commission shall require that licensee to undergo an examination by a licensed Optometrist or Ophthalmologist of the Commission's choosing to determine continued eligibility. If the examination demonstrates that the manager no longer meets the definition of a legally blind person, then the Commission will immediately terminate the manager's license. A manager's license shall also be terminated by death, revocation, or voluntary withdrawal from Business Enterprises New Jersey by the licensee.

(e) 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 manager, the license will be inactive, and he or she will be eligible to apply for subsequent promotion and transfer opportunities.

(f) A manager who does not have a business enterprise location will have his or her license go into inactive status. The manager must continue to bid on locations and complete all upward mobility training requirements pursuant to N.J.A.C. 10:97-3.2 in order to maintain eligibility for assignment to a business enterprise. Failure to fulfill both of these requirements within one year of placement in inactive status will result in termination of a license. If no locations are available for bid, but the manager meets his or her upward mobility training requirements, the inactive status will be extended until such time that locations become available for bid.

**HISTORY:**

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.

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## N.J.A.C. 10:97-3.1

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.

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 ", after affording the licensed operator an opportunity for a full evidentiary hearing"; in (b)2, inserted "or" and "and the Committee"; in (c), deleted "license and" preceding "operating"; in (f), substituted "Business Enterprise Program" for "business"; and in (g), inserted "for a period of two years," and substituted "10:97-2.4(b) and 7.3" for "10:97-7.3".

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-3.2 (2017)

§ 10:97-3.2 Upward mobility training

(a) BENJ requires that all its managers participate in upward mobility training. Consistent with this practice, calculated to improve professionalism and high level customer service, managers will be required to complete 15 hours per calendar year of upward mobility training related to the Randolph-Sheppard program or general business management skills sets. This can be accomplished by participating in any combination of the following:

1. Statewide annual meeting; or
2. Instructional workshops conducted by Commission staff and Committee members.

(b) Managers must submit to the BENJ Manager their course selections for upward mobility for pre-approval, and proof of completion of all upward mobility training within 30 days of completion. The Commission will provide financial assistance, as available, to assist managers to complete this upward mobility training requirement. Managers who do not complete the annual upward mobility training requirement will have their licenses terminated.

**HISTORY:**

New Rule, R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Former N.J.A.C. 10:97-3.2, Operating agreement, recodified to N.J.A.C. 10:97-3.3.

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N.J.A.C. 10:97-3.3 (2017)

§ 10:97-3.3 Operating agreement

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

(b) No manager will be charged rent 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.

HISTORY:

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.

Recodified from N.J.A.C. 10:97-3.2 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote (a) and (b). Former N.J.A.C. 10:97-3.3, Responsibility of the Commission, recodified to N.J.A.C. 10:97-3.4.

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N.J.A.C. 10:97-3.4 (2017)

§ 10:97-3.4 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.
- (c) In relation to business enterprise locations, the Commission's responsibilities are outlined in the operating agreement between the State licensing agency and the manager.

**HISTORY:**

Recodified from N.J.A.C. 10:97-3.3 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Added (c). Former N.J.A.C. 10:97-3.4, Commission loans to start business; repayment of loans, recodified to N.J.A.C. 10:97-3.5.

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N.J.A.C. 10:97-3.5 (2017)

§ 10:97-3.5 Commission loans to start a business; repayment of loans

(a) When a manager is assigned to a business enterprise, a non-interest bearing loan in the maximum amount of \$ 4,000 in cash and/or equivalent stock may be granted by the Commission, upon request of the manager and recommendation of the Business Enterprises New Jersey Manager, 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 manager will be required to repay the loan, on a monthly basis, within 36 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 manager, including justification that 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.

**HISTORY:**

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).

Recodified from N.J.A.C. 10:97-3.4 and amended by R.2017 d.135, effective July 3, 2017.

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N.J.A.C. 10:97-3.5

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Commission loans to start business; repayment of loans". Rewrote (a) through (c). Former N.J.A.C. 10:97-3.5, Inventory taking, recodified to N.J.A.C. 10:97-3.6.

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N.J.A.C. 10:97-3.6 (2017)

§ 10:97-3.6 Inventory management

(a) When a business is transferred from one manager to another, for any cause, the new manager has the option of purchasing some or the entire existing inventory of the previous manager, if the previous manager 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. The two managers 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 managers' records.

(c) 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 manager shall be responsible for the cost of repairs of any defective equipment under conditions set forth in N.J.A.C. 10:97-4.8.

**HISTORY:**

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.

Recodified from N.J.A.C. 10:97-3.5 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Inventory taking". Rewrote the section.

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N.J.A.C. 10:97-4.1 (2017)

§ 10:97-4.1 Operating parameters of a business enterprise

(a) The manager shall ensure that the business enterprise is operated in accordance with the following:

1. This chapter;
2. The permit;
3. The operating agreement; and
4. Any other applicable laws and rules.

**HISTORY:**

New Rule, R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Former N.J.A.C. 10:97-4.1, Personal operation of a business enterprise, recodified to N.J.A.C. 10:97-4.2.

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N.J.A.C. 10:97-4.2 (2017)

§ 10:97-4.2 Personal operation of a business enterprise

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

(b) The manager 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 the suspension of a license after affording the licensed manager an opportunity for a full evidentiary hearing.

**HISTORY:**

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).

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

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

In (c), inserted "the" preceding "suspension" and inserted "of a license after affording the licensed operator an opportunity for a full evidentiary hearing".

Recodified from N.J.A.C. 10:97-4.1 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Substituted "manager" for "operator" throughout. Former N.J.A.C. 10:97-4.2, Absences, recodified to N.J.A.C. 10:97-4.3.

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N.J.A.C. 10:97-4.3 (2017)

§ 10:97-4.3 Absences

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

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

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

(b) Absence by a manager 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 a manager 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 manager, including justification for the request.

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

**HISTORY:**

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).

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N.J.A.C. 10:97-4.3

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.

Recodified from N.J.A.C. 10:97-4.2 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section. Former N.J.A.C. 10:97-4.3, Employees, recodified to N.J.A.C. 10:97-4.4.

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N.J.A.C. 10:97-4.4 (2017)

§ 10:97-4.4 Employees

(a) Preference in employment shall be given to persons who are blind or visually impaired and other persons with disabilities.

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

HISTORY:

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".

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), substituted "persons who are" for "other" and "persons with disabilities" for "disabled people" and deleted "people" following "impaired".

Recodified from N.J.A.C. 10:97-4.3 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

In (b), substituted "manager" for "operator". Former N.J.A.C. 10:97-4.4, Payment for supplies purchased, recodified to N.J.A.C. 10:97-4.5.

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N.J.A.C. 10:97-4.5 (2017)

§ 10:97-4.5 Payment for supplies purchased

The manager may take advantage of credit extended by suppliers, provided that the Commission shall have no liability in the event that a manager abuses any such credit.

**HISTORY:**

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).

Recodified from N.J.A.C. 10:97-4.4 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section. Former N.J.A.C. 10:97-4.5, Insurance, recodified to N.J.A.C. 10:97-4.6.

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N.J.A.C. 10:97-4.6 (2017)

§ 10:97-4.6 Insurance

The manager shall carry Workers' Compensation Insurance for all persons utilized by the manager, in accordance with Department of Labor and Workforce Development 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."

**HISTORY:**

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.

Recodified from N.J.A.C. 10:97-4.5 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section. Former N.J.A.C. 10:97-4.6, Equipment, recodified to N.J.A.C. 10:97-4.7.

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N.J.A.C. 10:97-4.7 (2017)

§ 10:97-4.7 Equipment

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

(b) Any request for purchase, lease, or use of equipment by a manager must be made in writing to the Commission. The Commission will notify the manager 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 manager at the time he or she leaves the program or from his or her heirs or assignees after his or her death.

HISTORY:

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.

Recodified from N.J.A.C. 10:97-4.6 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

In (a) and (c), substituted "manager" for "operator"; and in (b), inserted a comma following "lease", substituted "a manager" for "an operator"; and substituted the second occurrence of "manager" for "operator". Former N.J.A.C. 10:97-4.7, Maintenance and repair of equipment, recodified to N.J.A.C. 10:97-4.8.

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N.J.A.C. 10:97-4.8 (2017)

§ 10:97-4.8 Maintenance and repair of equipment

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

(b) The manager 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 a manager'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.

**HISTORY:**

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).

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

Recodified from N.J.A.C. 10:97-4.7 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

In (a) and (b), substituted "manager" for "operator"; and in (b), inserted a comma following "occurrence", and substituted "a manager's" for "an operator's". Former N.J.A.C. 10:97-4.8, Disposition of Commission owned property, recodified to N.J.A.C. 10:97-4.9.

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N.J.A.C. 10:97-4.9 (2017)

§ 10:97-4.9 Disposition of Commission owned property

The manager 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.

**HISTORY:**

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.

Recodified from N.J.A.C. 10:97-4.8 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Substituted "manager" for "operator", and inserted a comma following "sell" and following "equipment". Former N.J.A.C. 10:97-4.9, Sanitation, recodified to N.J.A.C. 10:97-4.10.

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N.J.A.C. 10:97-4.10 (2017)

§ 10:97-4.10 Sanitation

(a) Managers 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 regularly-scheduled cleanup of all areas of the facility by the manager.

(b) All recommendations regarding appearance and sanitation, made to a manager by a Commission field representative, 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 manager's expense.

**HISTORY:**

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.

Recodified from N.J.A.C. 10:97-4.9 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section. Former N.J.A.C. 10:97-4.10, Stock, recodified to N.J.A.C. 10:97-4.11.

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N.J.A.C. 10:97-4.11 (2017)

§ 10:97-4.11 Stock

- (a) The type of articles to be sold in a facility shall be determined in accordance with the language in the permit.
- (b) Under no circumstances will approval be given for the sale of any item that is prohibited by law or ordinance.
- (c) The manager shall be required to maintain stock at an adequate level to meet the needs of the business.

**HISTORY:**

Recodified from N.J.A.C. 10:97-4.10 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section. Former N.J.A.C. 10:97-4.11, Signs, recodified to N.J.A.C. 10:97-4.12.

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N.J.A.C. 10:97-4.12 (2017)

§ 10:97-4.12 Signs

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

**HISTORY:**

Recodified from N.J.A.C. 10:97-4.11 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Substituted "manager" for "operator". Former N.J.A.C. 10:97-4.12, Pricing of merchandise, recodified to N.J.A.C. 10:97-4.13.

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N.J.A.C. 10:97-4.13 (2017)

§ 10:97-4.13 Pricing of merchandise

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

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

**HISTORY:**

Recodified from N.J.A.C. 10:97-4.12 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

In (a), substituted "manager" for "operator", and inserted "field". Former N.J.A.C. 10:97-4.13, Notification of unusual incidents, recodified to N.J.A.C. 10:97-4.14.

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N.J.A.C. 10:97-4.14 (2017)

§ 10:97-4.14 Notification of unusual incidents

(a) The manager 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.

**HISTORY:**

Recodified from N.J.A.C. 10:97-4.13 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

In the introductory paragraph of (a), substituted "manager" for "operator". Former N.J.A.C. 10:97-4.14, Responsibility for damage, recodified to N.J.A.C. 10:97-4.15.

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N.J.A.C. 10:97-4.15 (2017)

§ 10:97-4.15 Responsibility for damage

The manager 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 manager. The deductible provisions of N.J.A.C. 10:97-4.8(b) and (c) shall not apply.

**HISTORY:**

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.

Recodified from N.J.A.C. 10:97-4.14 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Substituted "manager" for "operator" twice, inserted a comma following "instances", and substituted "4.8(b)" for "4.7(b)". Former N.J.A.C. 10:97-4.15, Operator owned or leased vending machines, recodified to N.J.A.C. 10:97-4.16.

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N.J.A.C. 10:97-4.16 (2017)

§ 10:97-4.16 Manager owned or leased vending machines

(a) Managers 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 manager.

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

**HISTORY:**

*The following annotation applies to N.J.A.C. 10:97-4.16 prior to its repeal by R.2017 d.135:*

New Rule, R.1994 d.209, effective May 2, 1994.

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

*The following annotations apply to N.J.A.C. 10:97-4.16 subsequent to its recodification from N.J.A.C. 10:97-4.15 by R.2017 d.135:*

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".

Recodified from N.J.A.C. 10:97-4.15 and amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Operator owned or leased vending machines". In (a), substituted "Managers" for "Operators" and "manager" for "operator". Former N.J.A.C. 10:97-4.16, Motor vehicle operation, repealed.

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N.J.A.C. 10:97-5.1 (2017)

§ 10:97-5.1 Weekly sales report

(a) The manager shall submit to the Commission the prescribed weekly sales report.

(b) Weekly reports shall be submitted on a monthly basis, on or before the 20th 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.

**HISTORY:**

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.

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

In (a), substituted "manager" for "operator", and deleted the second sentence; and in (b), deleted "at least" following "submitted on", and substituted "20th" for "15th".

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N.J.A.C. 10:97-5.2 (2017)

§ 10:97-5.2 Recordkeeping

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

(b) The records required in (a) above 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 the suspension of a license after affording the licensed manager an opportunity for a full evidentiary hearing.

**HISTORY:**

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.

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), substituted "The records required in (a) above" for "Such records", inserted "the" preceding "suspension" and inserted "of a license after affording the licensed operator an opportunity for a full evidentiary hearing".

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

In (a) and (b), substituted "manager" for "operator"; and in (a), deleted "the" preceding "New Jersey" and preceding both occurrences of "Division", and inserted a comma following "Compensation".

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N.J.A.C. 10:97-5.3 (2017)

§ 10:97-5.3 Right of inspection

(a) The manager 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 field representative shall make site visits at a minimum of one visit every month; however, more frequent visits may occur. Each time a Commission field representative visits a business enterprise, a site visit report shall be completed and shared with the manager. If the manager disputes the findings in the site visit report, the manager shall have the right to respond in writing. The manager shall be given a copy in an accessible format, if requested, and the Commission shall retain a copy. It shall be the responsibility of the manager to implement the requirements set forth in the site visit report.

**HISTORY:**

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.2010 d.015, effective January 19, 2010.

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

In (b), inserted "in an accessible format, if requested,".

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-5.4 (2017)

§ 10:97-5.4 Confidentiality of records

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

**HISTORY:**

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Substituted "manager or" for "operator and/or".

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N.J.A.C. 10:97-6.1 (2017)

§ 10:97-6.1 Business Enterprises New Jersey Fund, Federal

(a) Business Enterprises New Jersey Fund, Federal, 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 managers in Business Enterprises New Jersey.

**HISTORY:**

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.

Amended by R.2017 d.135, effective July 3, 2017.

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N.J.A.C. 10:97-6.1

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Federal Set Aside Fund". Rewrote (a) and (c).

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N.J.A.C. 10:97-6.2 (2017)

§ 10:97-6.2 (Reserved)

**HISTORY:**

Repealed by R.1989 d.249, effective May 15, 1989.

See: 21 New Jersey Register 424(a), 21 New Jersey Register 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.

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N.J.A.C. 10:97-6.3 (2017)

§ 10:97-6.3 Business Enterprises New Jersey Fund, non-Federal

The Business Enterprises New Jersey Fund, non-Federal, consists of all monies accruing to the program from non-Federal sources. These funds will be used to cover expenses that are necessary for the operation of the program as determined by the Commission and the Committee.

**HISTORY:**

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.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Business Enterprise Program Fund Non-Federal". Rewrote the section.

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N.J.A.C. 10:97-6.4 (2017)

§ 10:97-6.4 Vending machine income due to managers

Managers located on Federal property shall be eligible for vending machine income pursuant to Randolph-Sheppard regulations. (see 34 CFR 395.8). Any such income due a manager that has been disbursed to the Commission, shall be remitted to the manager on at least a quarterly basis. All unassigned vending machine income from Federal sources will become a part of the Business Enterprises New Jersey Fund, Federal.

**HISTORY:**

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".

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Vending machine income due to operators". Rewrote the section.

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N.J.A.C. 10:97-6.5 (2017)

§ 10:97-6.5 Access to program and financial information

(a) Each manager will be provided access, in accessible formats, to all financial data relevant to the operation of Business Enterprises New Jersey.

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

**HISTORY:**

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.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote (a).

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N.J.A.C. 10:97-7.1 (2017)

§ 10:97-7.1 Advance notice of termination

If a manager decides to terminate his or her assignment at a location or as a business enterprise manager, he or she shall notify the Commission in writing at least 45 days in advance of the actual date of termination. Notification of such intent with less than 45 days' notice shall result in the manager exiting the program in bad standing, which will preclude readmission to the program at any future date.

HISTORY:

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.

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

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

Inserted "at a location or".

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-7.2 (2017)

§ 10:97-7.2 Procedure when a manager leaves a business enterprise

(a) Whenever a manager 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 manager 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 N.J.A.C. 10:97-3.6.

**HISTORY:**

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.

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Procedure when an operator leaves a business enterprise". In (a), substituted "a manager" for "an operator"; and rewrote (b).

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N.J.A.C. 10:97-7.3 (2017)

§ 10:97-7.3 Promotions and transfers

(a) The Business Enterprises New Jersey Manager shall circulate a letter to all managers and persons on the Certified for Placement List in print, electronic form, or braille 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 field representative shall be present at that time to answer any questions that managers may have regarding the location. The on-site inspection shall not be rescheduled for managers on an individual basis.

(b) Any eligible interested individual shall apply, in writing, to the designee of Business Enterprises New Jersey within two weeks of the vacancy announcement.

1. Any manager who is not current in repayment of his or her stock loan at the posting of the location availability under conditions set forth in N.J.A.C. 10:97-3.5(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 manager who is not current in payment of their State business taxes shall not be eligible to apply.

3. Any manager who has not met the net profit standards for the previous year shall be ineligible to apply.

4. An inactive licensed manager shall not be considered for business enterprise opportunities when at least one active licensed manager applies for the vacancy.

(c) The award of the location will be granted to the candidate with the highest score based on the following:

1. Interview scores (80 points); and

2. Business Engagement scores (20 points).

(d) The interview panel shall be composed of five members and include the following:

1. Two Committee members (those bidding on the location are excluded from serving on the panel);

2. The BENJ Manager;

3. The BENJ field representative assigned to the vacant location; and

4. Another staff member of the Commission not affiliated with the Business Enterprises New Jersey unit.

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(e) Interviewers will rate candidates based on: answers to questions; presentation of a business plan; and general demeanor on the day of the interview. All panelists will rate the candidates; the highest and lowest scores will be discarded and the final interview score will be based on an average of the three middle scores from the panelists.

(f) Candidates will be evaluated on the level of business engagement in the BENJ program. The following elements will be used to score the candidates:

1. Timely submission of all required weekly reports (10 points);
2. Attendance at the Statewide Annual Meeting (five points); and
3. Participation in two additional Commission and Committee sponsored trainings (Total of five points - 2.5 each).

(g) In the event of a tied score, seniority in the BENJ program will determine the selection.

(h) If a candidate does not appear for his or her scheduled interview and has not given prior notice to or been excused by the designee of Business Enterprises New Jersey, the candidate shall not be rescheduled and shall be ineligible for the announced promotion or transfer opportunity. In addition, the candidate will be ineligible for bidding on future promotional and transfer opportunities for six months.

(i) Once a manager 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. If a candidate is selected and accepts an assignment, but subsequently withdraws, the candidate may not bid on future opportunities for the next six months.

#### HISTORY:

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).

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

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

Rewrote (a); in the introductory paragraph of (b) and in (c) and (g), substituted "manager/designee" for "supervisor"; in the introductory paragraph of (b), substituted "individual" for "operator"; added (b)3; rewrote (d); and in (g), inserted a comma following "to" and "by" and substituted "rescheduled" for "re-scheduled".

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Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-7.4 (2017)

§ 10:97-7.4 Interim manager of a business enterprise

When a business enterprise becomes vacant, it is often necessary to keep that business enterprise operating so that the location is not lost to Business Enterprises New Jersey. A vacancy shall be filled in an emergency by the appointment of an interim manager, pending the completion of the formal promotion process. The interim manager will be appointed at the discretion of the BENJ Manager and in consultation with the Committee as an emergency appointment.

**HISTORY:**

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.2010 d.015, effective January 19, 2010.

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

Section was "Interim operator". Substituted "A" for "Such a", "person" for "operator" twice and "certified for placement" for " 'certified for placement' ", inserted "in an emergency" and inserted the last sentence.

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Interim person". Rewrote the section.

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N.J.A.C. 10:97-8.1 (2017)

§ 10:97-8.1 Immediate suspension

(a) In the event that a manager is in violation of the regulations 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 a manager 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 manager shall be notified of the reason for suspension. In addition, the manager 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 manager 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)).

**HISTORY:**

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).

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Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-8.2 (2017)

§ 10:97-8.2 Disciplinary probation

(a) In situations other than those warranting immediate suspension, if there is a violation of this chapter or any State or Federal law, the manager shall be placed on disciplinary probation. The manager 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 manager a notice of license termination, citing any unresolved violation. Termination shall be effective 15 days after such notice of termination, provided that the manager has been given an opportunity for an Administrative Review and/or an Administrative Hearing prior to final termination.

**HISTORY:**

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.

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote the section.

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N.J.A.C. 10:97-8.3 (2017)

§ 10:97-8.3 Administrative Reviews and Hearings

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

(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 accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1), subject to any superseding Federal or State law (see 34 CFR 361.48 and 34 CFR 395.13).

(d) If a manager 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 manager shall indicate consent for the release of such information for the hearing of an ad hoc arbitration panel (see 34 CFR 395.13).

**HISTORY:**

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.

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Rewrote (a), (c), and (d).

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N.J.A.C. 10:97-9.1 (2017)

§ 10:97-9.1 Committee of Business Enterprise Managers

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

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

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

(d) The Committee of Business Enterprise Managers shall:

1. Actively participate with the Commission in major administrative decisions and policy and program development decisions affecting the overall administration of Business Enterprises New Jersey;

2. Receive and transmit to the Commission grievances at the request of managers and serve as advocates for such managers 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 managers;

4. Actively participate with the Commission in the development of training and re-training programs for managers; and

5. Sponsor, with the assistance of the Commission, meetings and instructional conferences for managers within the State.

(e) It is the responsibility of the Committee of Business Enterprise Managers to establish and maintain bylaws under which they will operate.

1. The CBEM bylaws will be subject to review and approval by the Commission.

**HISTORY:**

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

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

Vending changed to business enterprise.

Amended by R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

Section was "Committee of Business Enterprise Operators". Rewrote the section.

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N.J.A.C. 10:97-10.1 (2017)

§ 10:97-10.1 Manager initiative

(a) Blind managers, who participate in the activity of the Business Enterprises New Jersey, are encouraged to identify and help secure potential business opportunities in private, non-governmental buildings. This new, private entrepreneurial initiative is designed to expand the Business Enterprises New Jersey and create increased employment opportunities for eligible blind consumers.

1. Once a private site is identified, the manager shall bring this opportunity to the attention of the Commission for potential evaluation as a viable location to include among the BENJ network. If deemed a viable business enterprise location by the Commission, the new opportunity will be established and become part of the blind manager's business enterprise. Only at such time as the blind manager separates from BENJ as a result of resignation, retirement, or removal for cause, will the Commission exercise its programmatic responsibility to resume management of this private enterprise and place it out for bid pursuant to the transparent provisions of N.J.A.C. 10:97-7.

2. All newly acquired private facilities that the Commission accepts and deems appropriate to operate within the confines of BENJ will be equally subject to all procedural processes, benefits, and obligations that apply to existing, traditional facilities located in or on Federal, State, and municipal properties and host agencies. Further, the due process rights of blind managers who operate such private facilities/locations shall be the same as those set forth in N.J.A.C. 10:97-8, and that apply to participants in BENJ generally.

(b) Nothing in this section is intended to prohibit a manager from pursuing and developing his or her own business enterprise outside the scope of BENJ.

**HISTORY:**

New Rule, R.2017 d.135, effective July 3, 2017.

See: 49 N.J.R. 165(a), 49 N.J.R. 1904(a).

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