

HUMAN SERVICES

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

**The Business Enterprise Program of the New Jersey Commission for the Blind and
Visually Impaired**

Proposed Readoption with Amendments: N.J.A.C. 10:97

Proposed New Rules: N.J.A.C. 10:97-3.2, 4.1, and 10

Proposed Repeal: N.J.A.C. 10:97-4.16

Authorized By: Elizabeth Connolly, Acting Commissioner, Department of Human Services.

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.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-014.

Submit comments by March 18, 2017, to:

Daniel Frye, J.D., Executive Director

New Jersey Commission for the Blind and Visually Impaired

153 Halsey Street

6th Floor

PO Box 47017

Newark, NJ 07101

Daniel.frye@dhs.state.nj.us

The agency proposal follows:

Summary

N.J.A.C. 10:97 sets forth the rules describing the Commission for the Blind and Visually Impaired's Randolph Sheppard Program, also known as the Business Enterprises New Jersey (BENJ) program. The vending facility program authorized by the Randolph-Sheppard Act provides persons who are blind with employment and self-support through the operation of vending facilities on Federal and other property. Under this program, state licensing agencies recruit, train, license, and place individuals who are blind as managers of vending facilities. The Commission for the Blind and Visually Impaired (Commission) is the State licensing agency for the Randolph Sheppard Program. In accordance with N.J.S.A. 52:14B-5.1, 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. As the Commission filed this notice of re-adoption with the Office of Administrative Law prior to expiration, that date is extended 180 days to June 12, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The Commission for the Blind and Visually Impaired has reviewed these rules and, with the amendments, a repeal, and new rules described below, determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The proposed amendments, a repeal, and new rules provide a description of services provided in the Commission's Business Enterprises New Jersey program. The proposed amendments, a repeal, and new rules are also intended to give more clarity to the standards and procedures within the program. Additionally, the rules are designed to inform the public of the rights and responsibilities of the Commission and program participants.

A summary of the rules proposed for re-adoption with amendments, a repeal, and new rules follows.

Throughout the chapter, the name of the program has changed from “Business Enterprise Program” to “Business Enterprises New Jersey” or “BENJ.” The new title encompasses the State, and focuses on it being an endeavor rather than just a program. In addition, the term “operator” has been replaced by “manager” to reflect the shift in the national sentiment, that the term manager reflects a blind vendor possessing the maximum authority in the administration of his or her business. As necessary, amendments have been made to correct cross references within the subchapter.

Subchapter 1. General Provisions

N.J.A.C. 10:97-1 states the legal authority for and the objectives of the chapter, as well as the definitions used in the chapter.

N.J.A.C. 10:97-1.3 contains the definitions used in the chapter. The proposed amendments add definitions for the terms “administrative hearing,” “Business Enterprises New Jersey’ or ‘BENJ,’” “Business Enterprises New Jersey Fund, Federal,” “Business Enterprises New Jersey Manager,” “field representative,” and “manager.”

The definition of “active participation” has been rewritten to provide better clarity on the role of the elected Committee of Business Enterprise Managers as it relates to the Commission and to clarify that the Commission is responsible for the administration and operation of all aspects of the BENJ.

The term, “Business Enterprise Program Fund, non-Federal” was changed to “Business Enterprises New Jersey Fund, non-Federal” without any substantive change. The definitions of “Federal Set Aside Funds” and “management services” were deleted from the chapter because they are not currently used therein. The term “vocational counselor” has been replaced with “vocational rehabilitation counselor” to give better clarity of the professional title of the worker.

Subchapter 2. Program Entry Requirements

N.J.A.C. 10:97-2 states the eligibility criteria for program participation. N.J.A.C. 10:97-2.1(c) is proposed for deletion and replacement to affirm that candidates from other states or programs may be eligible to participate in BENJ. This provision guarantees that Commission management and staff will determine eligibility for potential participants in this program, based on criteria jointly determined by the Commission and the Committee of Business Enterprise Managers. This expansion of potential program participants creates goodwill and reciprocity among State licensing agencies and supports the Commissioner's effort to recruit additional program participants. Proposed new N.J.A.C. 10:97-2.1(d) specifies that final eligibility determinations will be made by the BENJ Manager in consultation with the Committee of Business Enterprise Managers (Committee). Existing N.J.A.C. 10:97-2.1(d) is proposed for deletion and is replaced with new subsection (e), to make it less restrictive by removing specific criteria for admission, which have changed and are outlined elsewhere in the chapter. Proposed new N.J.A.C. 10:97-2.1(f) requires criminal background checks for BENJ applicants.

Proposed amendments to N.J.A.C. 10:97-2.2(a) remove the term "Vocational Rehabilitation Program," as it is already mentioned in N.J.A.C. 10:97-2.1, which is added as a cross-reference. Also in subsection (a), the Commission is proposing to delete the terms "mobility skills" and "self-communication skills" as these terms are duplicative and unnecessary. Proposed new N.J.A.C. 10:97-2.2(a)⁴ requires applicants to be able to operate a computer. Proposed new N.J.A.C. 10:97-2.2(a)⁵ requires applicants to demonstrate "soft skills," which are those skills demonstrating the ability to interact appropriately and socially with the general public, that is, interviewing, customer service, and other skill sets consistent with public

engagement. Proposed new N.J.A.C. 10:97-2.2(a)6 requires applicants to demonstrate general “blindness skills.” These new requirements ensure that applicants possess the independent skills needed to successfully run a business. Proposed amendments to N.J.A.C. 10:97-2.2(b) require candidates to receive training as determined by the Commission in consultation with the Committee, and remove the requirement that the training be a minimum of 21 weeks.

Proposed amendments to N.J.A.C. 10:97-2.3 clarify that training for BENJ candidates includes on-the-job training with existing licensed business managers. The heading of this section has been changed to “on-the-job evaluation and training,” consistent with the substantive change to this section. N.J.A.C. 10:97-2.3(c) is proposed for deletion to guarantee that manager trainees receive compensation as employees. Previously, manager trainees were permitted to be unpaid.

Proposed amendments to N.J.A.C. 10:97-2.4 clarify the process for placing a non-licensed manager into an existing BENJ location. The Commission is proposing to delete existing N.J.A.C. 10:97-2.4(b) and (c) as proposed new N.J.A. C. 10:97-3.2 codifies the expectation that managers participate in upward mobility training. The heading of this section has been changed to “initial assignment,” consistent with the substantive change to this section.

Proposed amendments at N.J.A.C. 10:97-2.5(a) clarify how the Commission will document a manager’s performance during the six-month probationary period. Every six weeks, the assigned BENJ Field Representative will prepare a written report and submit it to the BENJ Manager. N.J.A.C. 10:97-2.5(c) is reworded to reflect more autonomy for the manager.

Proposed amendments at N.J.A.C. 10:97-2.6(a) update terms.

Subchapter 3. Licensing of Managers

N.J.A.C. 10:97-3 states the licensing procedures and program start up requirements for business enterprises. The Commission is proposing to delete the classes of licenses described at N.J.A.C. 10:97-3.1(b) and (c). Over the years, the Commission has gradually moved away from training managers to handle limited types of locations and has concentrated on preparing people to be equipped to operate any type of business available. The Commission's new online training course that potential program participants take, coupled with on-the-job training is calculated to ready these participants to manage all types of business operations. Given the comprehensive nature of the training now offered, and the practice of no longer distinguishing what manager can handle a specific type of business, the Commission determined that it is appropriate to eliminate the classes of licenses. The proposed amendments at recodified N.J.A.C. 10:97-3.1(d) eliminates the mandatory biennial ophthalmological exam for managers. Instead, the Commission will only require an ophthalmological exam where it has reasonable cause to believe that a licensee's vision has improved to the point that they are no longer eligible for BENJ. The vast majority of the participants in the BENJ program are blind or nearly so and they are not expected to improve. Moreover, no program participant has ever been excluded from the program due to improved eyesight. Given that historical experience, the Commission believes it is appropriate to remove this requirement and manage this on a case-by-case basis. Proposed amendments to recodified N.J.A.C. 10:97-3.1(e) state that if the underlying permit authorizing a business enterprise to operate at a specific location is revoked, then the manager of that business enterprise will not necessarily lose his or her license. Instead, the manager's license will be inactivated while the manager seeks a new opportunity to operate a business enterprise. Proposed new N.J.A.C. 10:97-3.1(f) will require managers with inactive licenses to continue to bid on new opportunities

and to complete all mandatory training required to maintain licensure in accordance with N.J.A.C. 10:97-3.2.

Proposed new N.J.A.C. 10:97-3.2 establishes a requirement for managers to participate in upward mobility training. This proposed new rule honors and gives greater emphasis to the Federal requirement in the Randolph-Sheppard program that state licensing agencies provide upward mobility training to their blind managers. See, 20 U.S.C. § 107d-4. The theory is that upward mobility training, offered above and beyond initial training, will guarantee better customer service, higher quality food service, and increased professionalism among the affiliated blind managers. In addition, making upward mobility opportunities more readily available to blind managers gives the Commission a good sense of which managers are most invested and engaged in the program, and this program engagement will be used as one factor to determine promotional eligibility and success.

Proposed amendments to recodified N.J.A.C. 10:97-3.4 explain that the Commission's responsibilities as related to individual business enterprise locations are set forth in the individual agreements between the Commission and the business enterprise manager.

N.J.A.C. 10:97-3.5 states that new business enterprise managers may receive a non-interest bearing loan to cover the cost of acquiring stock and supplies. Proposed amendments to this section would increase the maximum loan amount from \$2,500 to \$4,000 and extend the time for repayment from 24 to 36 months.

Proposed amendments to N.J.A.C. 10:97-3.6(c) would eliminate the option for a manager to decline to be present for the inventory of stock prior to a transfer of the business enterprise. The absence of one manager or another has the potential to create controversy. The Commission believes that it is more efficient and effective for all three parties (the two managers and a CBVI

representative) to be present.

Subchapter 4. Rules of Operations

N.J.A.C. 10:97-4 states the operating requirements for a business enterprise. Proposed new N.J.A.C. 10:97-4.1 requires managers of a business enterprise to comply with the requirements of this chapter, the permit authorizing the business to operate in the particular location, the operating agreement, and any other applicable rules and regulations.

Proposed amendments to N.J.A.C. 10:97-4.11 requires managers to maintain stock at a level that will meet the needs of the business. The Commission is proposing to repeal N.J.A.C. 10:97-4.16, as there is no underlying authority authorizing the Commission to revoke a manager's enterprise license when it determines that a manager has operated a motor vehicle in any location that requires a state driver's license.

Subchapter 5. Records and Monitoring

N.J.A.C. 10:97-5 states the recordkeeping requirements for the manager of a business enterprise and the monitoring responsibilities of the Commission. Managers are required to submit a report each month that summarizes their weekly sales. N.J.A.C. 10:97-5.1(a) is proposed for amendment to simplify expectations for submitting reports and to eliminate language that is technologically obsolete. Proposed amendments to N.J.A.C. 10:97-5.1(b) would extend the due date for that report from the 15th to the 20th of the month. Proposed amendments at N.J.A.C. 10:97-5.3(b) require Commission representatives to make monthly rather than quarterly site visits. The Commission believes monthly visits will benefit both the program managers and the host agency because it will facilitate more frequent interaction, feedback, and

consultation opportunities. The proposed amendments also clarify how a manager may challenge the findings resulting from the month site visit.

Subchapter 6. Program Fiscal Requirements

N.J.A.C. 10:97-6 describes funding sources for the business enterprise and how they are to be utilized. Proposed amendments at N.J.A.C. 10:97-6.1 and 6.3 rename the categories of income from Federal sources - “Business Enterprises New Jersey Fund, Federal” and sources of income from non-Federal sources - “Business Enterprises New Jersey Fund, non-Federal.”

Subchapter 7. Transfer of Facility from One Manager to Another

N.J.A.C. 10:97-7 states the process whereby an ongoing business enterprise is transferred from one manager to another. N.J.A.C. 10:97-7.1 requires operators to provide 45 days’ notice of intent to leave the program. Proposed amendments to this section state that failure to provide the 45 days’ notice will prevent reentry into the program.

Proposed amendments at N.J.A.C. 10:97-7.3(a) clarify that business enterprise vacancies will be provided in a “print, electronic, or Braille” format. Proposed amendments to N.J.A.C. 10:97-7.3(b) require interested applicants to satisfy certain prerequisites. Applicants must be up-to-date with the repayment of any existing stock loans and with the payment of their State business taxes, they must have met the net profit standard for the previous year, and their business enterprise license must be current. Existing N.J.A.C. 10:97-7.3(b)4 is proposed for deletion to remove potential discretion resulting in unequal treatment of managers and guaranteeing greater consistency in program administration.

N.J.A.C. 10:97-7.3(c) through (i) are proposed for deletion and replacement to set forth

the new criteria for scoring applications. Proposed new N.J.A.C. 10:97-7.3(c) describes how applications will be scored. Points will be assigned based on the applicant's interview and past performance. Proposed new N.J.A.C. 10:97-7.3(d) describes the structure of the interview panel. Proposed new N.J.A.C. 10:97-7.3(e) describes what factors the interview panel will consider and how the candidate's scores will be calculated. Proposed new N.J.A.C. 10:97-7.3(f) describes how the candidate's past performance will be evaluated. Proposed new N.J.A.C. 10:97-7.3(g) clarifies that seniority will be a factor only in the event of a tie; with the candidate with the most seniority being selected. Recodified N.J.A.C. 10:97-7.3(h) is proposed for amendment to describe the consequences for candidates who fail to arrive for their scheduled interview. Proposed amendments to N.J.A.C. 10:97-7.3(i) would impose a six-month ban on making applications for other opportunities for those candidates who are selected for an assignment and accept said assignment but subsequently withdraw.

Proposed amendments to N.J.A.C. 10:97-7.4 clarify the roles of the Manager of BENJ and the Committee when appointing an interim manager of a business enterprise.

Subchapter 8. Suspensions and Grievance Procedures

N.J.A.C. 10:97-8 states the conditions under which the Commission may suspend a manager from the program. It also describes the process whereby a manager may express dissatisfaction with the program.

Subchapter 9. Committee of Business Enterprise Managers

N.J.A.C. 10:97-9 states the requirements for the Committee of Business Enterprise Managers. N.J.A.C. 10:97-9.1(e)1 is proposed to reflect that the Commission shall review and

approve the bylaws adopted by the Committee of Business Enterprise Managers.

Subchapter 10. New Private Business Enterprise Opportunities

Proposed new Subchapter 10 encourages managers to obtain and secure new potential business opportunities in non-governmental buildings, which can then become part of the manager's BENJ business enterprise.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-6.3.

Social Impact

The Business Enterprises New Jersey program provides assistance to blind entrepreneurs operating businesses in Federal, State, and local municipalities throughout the State. The program is looking to grow into the private sector. This program affords the opportunity for any eligible, legally-blind person, utilizing the Vocational Rehabilitation Services of the Commission, another opportunity for employment, particularly for individuals who seek to further their independence with self-employment. Additionally, clients are provided with skill sets that can be transferred to an array of employment possibilities in both business and food services.

Exposure to individuals with various disabilities, most notably blindness, provides a benefit to society. Blindness myths can be countered by blind entrepreneurs, who provide the general public a positive view of the vast capabilities of independent business persons, who happen to be blind. Successful blind entrepreneurs may open the public's view on blind individuals' capabilities, and lead to other possible employment outcomes for blind and visually

impaired adults. Overall, it will provide a better understanding and openness for blind and visually impaired individuals seeking employment.

Economic Impact

The rules proposed for readoption with amendments, a repeal, and new rules will have a positive economic impact on blind managers. Managers will be encouraged to attend upward mobility training to remain current and knowledgeable regarding market trends and operations of a business. Managers will have some training cost deferred based on the Federal Surface Transportation Assistance Act, commonly known as the Kennelly Amendment. In addition, upward mobility training will allow managers to operate their business more efficiently, as well as increase their revenue, so that they in turn are able to contribute more to the economy.

Federal Standards Statement

The rules proposed for readoption with amendments, a repeal, and new rules do not exceed any Federal standards or guidelines. Federal standards for operation of the BENJ are provided by 34 CFR Part 395. The Business Enterprises New Jersey program is operated under the Randolph Sheppard Act of 1936, 20 U.S.C. §§ 107 et seq., as amended in 1954 and 1974, that gives priority vending to blind persons on Federal property. The Randolph Sheppard Program and its regulations are governed by the Rehabilitation Services Administration (RSA). RSA oversees how state licensing agencies implement the rules and regulations of the program according to the Act.

Jobs Impact

In light of the rules proposed for readoption with amendments, a repeal, and new rules, BENJ anticipates an increase in the number of locations, as well as the number of jobs within the State. Providing managers with the option of pursuing private locations will create additional opportunities for employment. This new opportunity will open doors for small businesses in various neighborhoods, especially urban neighborhoods where transportation is vast, which creates employment opportunities for job seekers who rely solely on public transportation. The rules proposed for readoption with amendments, a repeal, and new rules will provide additional employment opportunities for blind vocational rehabilitation clients, as well as the general public and local communities.

Agriculture Industry Impact

The rules proposed for readoption with amendments, a repeal, and new rules will not have any impact on the agriculture industry.

Regulatory Flexibility Analysis

All businesses under the BENJ are small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. Currently, the program consists of 56 businesses, including cafeterias, snack bars, newsstands, and vending machine facilities on Federal, State, county, and municipal property throughout all areas of the State. Managers are responsible for submitting weekly sales reports (see N.J.A.C. 10:97-5.1) to the Commission on at least a monthly basis, due on or before the 15th day of the following month, as well as keeping payments current on any stock loan (N.J.A.C. 10:97-3.4(b)). The proposed amendments will not change these requirements. In

addition, it is recommended to all managers that they engage the services of accountants to help them comply with Federal and State recordkeeping requirements. Also, management services are provided to managers by the Commission. These services include supervision, inspection, quality control, consultation, and other related services to assist the licensee in the profitable operation of his or her business.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, a repeal, and new rules will have no impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing as the rules pertain to the BENJ program.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, a repeal, and new rules will have an insignificant impact on smart growth development. There is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey as the rules pertain to the BENJ program.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:97:

Full text of the proposed amendments, new rules, and repeal follows (additions in boldface **thus**; deletions indicated in brackets [thus]).

SUBCHAPTER 1. GENERAL PROVISIONS

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.]

“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 [the] Business Enterprises [Program] **New Jersey**, with the active participation by the Committee of Business Enterprise [Operators] **Managers**.

...

“Business enterprise” means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate equipment [which] **that** may be operated by blind [operators] **managers** and [which] **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 Enterprise Program Fund, non-Federal” means funds which accrue to the Business Enterprise Program from all non-Federal sources.]

“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.

“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] **Placement List**” means a roster of blind persons who have successfully completed approved training for [the] Business Enterprises [Program] **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 [Operators] **Managers**, [which] **who** are [operators] **managers** elected at the annual meeting by a majority of active licensed [operators] **managers** in the program.

“Commission” means the New Jersey Commission for the Blind and Visually Impaired, **the State licensing agency**.

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

“**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**.

...

“Inactive licensee” means a blind [operator] **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 [operator] **manager** 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.]

“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 [operators] **managers** 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] **manager**, covering the basic terms and conditions required of each party for the operation of a specific business enterprise.

...

“Seniority” means the total of work time as a [Licensed Operator] **licensed manager** in [the] Business Enterprises [Program] **New Jersey**. Work time must be unbroken unless there are extenuating circumstances that exist, through no fault of the [Operator] **manager**.

...

“Suspension” means a temporary discontinuation of the [Operating Agreement and/or] **operating agreement or** license resulting in the halting of operations. The [Operating Agreement and/or] **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.

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 Enterprises [Program] **New Jersey** on Federal and non-Federal property.

(b) [The] Business Enterprises [Program] **New Jersey** is designed to:

1. - 4. (No change.)

SUBCHAPTER 2. PROGRAM ENTRY REQUIREMENTS

10:97-2.1 Application and qualification to enter program

(a) (No change.)

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

[(c)] **(d)** [The] Business Enterprises [Program] **New Jersey** 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.] **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.**

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

(e) Candidates shall be able to communicate effectively.

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

10:97-2.2 Selection and training

(a) A blind person who has been certified eligible [by the Vocational Rehabilitation Program] **as set forth in N.J.A.C. 10:97-2.1** and wishes to enter [the] Business Enterprises [Program must meet the following minimum criteria] **New Jersey must demonstrate proficiency in the following areas:**

1. [Mobility skills, that is, the] **The** ability to move about and orient to **his or her** environment, especially in small areas, and be able to travel independently;
2. [Self-communication skills, that is, the] **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, **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 [he or she] **the successful candidate** 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.] **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] **Certified for Placement List.**”

10:97-2.3 [Business enterprises for] **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) [An operator] **A manager** will be paid for the training process at a rate agreed upon by the Commission and the Committee of [Blind Operators] **Business Enterprise Managers.**

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

10:97-2.4 [Placement] **Initial assignment**

(a) When a **business enterprise location is available, and** no active or inactive licensed

[operator] **manager** has applied for an announced promotional opportunity and two or more candidates from the [certified for placement list] **Certified for Placement List** have applied, they shall be personally interviewed by the manager or designee of [the] Business Enterprises [Program] **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 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.]

(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.

10:97-2.5 Probation for a new [operator] **manager**

(a) When a person from the [certified for placement list] **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. [The] **After** six-months, [report] **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. [A] **The BENJ field representative will prepare a** written report [will be completed] after each extension.

(c) All reports [will be read to the operator and a copy of each report given to the operator] **and decisions will be provided to the candidate for a license in an accessible format.**

10:97-2.6 Failure to complete probation

Any person who is unable to satisfactorily complete the probation period, after a maximum of two extensions, will lose [certification] **eligibility for licensure** with [the] Business Enterprises [Program] **New Jersey** and, at his or her option, may be referred [for] **to a Vocational Rehabilitation [reevaluation] Counselor to explore other vocational options.**

SUBCHAPTER 3. LICENSING OF [OPERATORS] **MANAGERS**

10:97-3.1 Completion of probation period and license

(a) When the probationary period has been successfully completed, a license shall be issued to the business enterprise [operator] **manager** for an indefinite period but subject to suspension or revocation, after affording the licensed [operator] **manager** an opportunity for a full

evidentiary hearing.

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

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

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

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

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

[(d)] **(b)** (No change in text.)

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

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

[(f)] **(d)** [The license shall be immediately terminated by improvement of vision if the

operator] **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 [set forth at N.J.A.C. 10:97-1.3], then the Commission will immediately terminate the manager's license.** [This shall be determined by a mandatory biennial examination of each operator by an ophthalmologist or optometrist. Also, the] **A manager's license shall also be terminated by death, revocation, or voluntary withdrawal from [the] Business Enterprises [Program] New Jersey by the licensee.**

[(g)] **(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 [operator] **manager, the license will be inactive, and** he or she will be eligible to apply for subsequent promotion and transfer opportunities[, for a period of two years, under conditions set forth in N.J.A.C. 10:97-2.4(b) and 7.3].

(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.**

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.**

10:97-[3.2]3.3 Operating agreement

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

(b) No [operator] **manager** will be charged [rental] **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 change.)

10:97-[3.3]**3.4** Responsibility of the Commission

(a) - (b) (No change.)

(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.

10:97-[3.4]**3.5** Commission loans to start a business; repayment of loans

(a) When [an operator] **a manager** is assigned to a business enterprise, a non-interest bearing loan in the maximum amount of [\$2,500] **\$4,000** in cash and/or equivalent stock may be granted by the Commission, upon request of the [operator] **manager** and recommendation of [the supervisor of] the Business Enterprises [Program] **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 [operator] **manager** will be required to repay the loan, on a monthly basis, within [24] **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 [operator] **manager**, including justification [which]**that** relates to the objectives of the program.

(d) (No change.)

10:97-[3.5]**3.6** Inventory [taking] **management**

(a) When a business is transferred from one [operator] **manager** to another, for any cause, the new [operator] **manager** has the option of purchasing some or [all of] the **entire** existing inventory of the previous [operator] **manager**, if the previous [operator] **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. [Both operators and/or their representatives,] **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 [operators'] **managers'** records.

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

[(d)] (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 [operator] **manager** shall be responsible for the cost of repairs of any defective equipment under conditions set forth in N.J.A.C. 10:97-[4.7]**4.8**.

SUBCHAPTER 4. RULES OF OPERATIONS

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.**

10:97-[4.1]**4.2** Personal operation of a business enterprise

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

(b) The [operator] **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 [operator] **manager** an opportunity for a full evidentiary hearing.

10:97-[4.2]**4.3** Absences

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

1. In the event that [an operator] **a manager** is absent, the [operator] **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 [the] closing [of] the facility or there has been a pattern of abuse.

(b) Absence by [an operator] **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 [an operator] **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 [operator] **manager**, including justification for the request.

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

10:97-[4.3]4.4 Employees

(a) (No change.)

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

10:97-[4.4]4.5 Payment for supplies purchased

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

10:97-[4.5]4.6 Insurance

The [operator] **manager** shall carry [workers' compensation insurance] **Workers' Compensation Insurance** for all persons utilized by the [operator] **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."

10:97-[4.6]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 [operator] **manager**.

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

10:97-[4.7]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 [operator] **manager** to insure continued operation of the business enterprise.

(b) The [operator] **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 [an operator's] **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) – (d) (No change.)

10:97-[4.8]**4.9** Disposition of Commission owned property

The [operator] **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.

10:97-[4.9]**4.10** Sanitation

(a) [Operators] **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 [regular scheduled] **regularly-scheduled** cleanup of all areas of the facility by the [operator] **manager**.

(b) All recommendations regarding appearance and sanitation, made to [an operator] **a manager** by a Commission field [staff member] **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 [operator's] **manager's** expense.

10:97-[4.10]**4.11** Stock

(a) The type of articles to be sold in a facility shall be determined [by the property manager and the Commission] **in accordance with the language in the permit**.

(b) Under no circumstances will approval be given for the sale of any item [which] **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.

10:97-[4.11]**4.12** Signs

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

10:97-[4.12]**4.13** Pricing of merchandise

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

(b) (No change.)

10:97-[4.13]**4.14** Notification of unusual incidents

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

1. – 2. (No change.)

10:97-[4.14]**4.15** Responsibility for damage

The [operator] **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 [operator] **manager**. The deductible provisions of N.J.A.C.

10:97-[4.7(b)]**4.8(b)** and (c) shall not apply.

10:97-[4.15]**4.16** [Operator] **Manager** owned or leased vending machines

(a) [Operators] **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 [operator] **manager**.

(b) (No change.)

[10:97-4.16 Motor vehicle operation

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

SUBCHAPTER 5. RECORDS AND MONITORING

10:97-5.1 Weekly sales report

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

(b) Weekly reports shall be submitted on [at least] a monthly basis, on or before the [15th] **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) (No change.)

10:97-5.2 Recordkeeping

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

(b) 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 [operator] **manager** an opportunity for a full evidentiary hearing.

10:97-5.3 Right of inspection

(a) The [operator] **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 [three] month[s]; however, more frequent visits may occur. Each time a Commission **field** representative visits a business enterprise, a site visit report shall be completed[, read to the operator (who shall have the right to include his or her comments) and signed by both the

operator and the Commission representative.] **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 [operator] **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 [operator] **manager** to implement the requirements set forth in the site visit report.

10:97-5.4 Confidentiality of records

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

SUBCHAPTER 6. PROGRAM: FISCAL REQUIREMENTS

10:97-6.1 [Federal Set Aside] **Business Enterprises New Jersey Fund, Federal**

(a) [Federal Set Aside] **Business Enterprises New Jersey Fund, Federal**, consists of those funds accruing to the program from unassigned vending machine income from Federal locations.

(b) (No change.)

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

10:97-6.3 Business Enterprises [Program Fund Non-Federal] **New Jersey Fund, non-Federal**

The Business Enterprises [Fund Non-Federal] **New Jersey Fund, non-Federal**, consists of all monies accruing to the [Program] **program** from non-Federal sources. These funds will be used to cover expenses [which] **that** are necessary for the operation of the [Program except for

cost which can be paid from the Federal Set Aside Fund] **program as determined by the Commission and the Committee.**

10:97-6.4 Vending machine income due to [operators] **managers**

[Operators] **Managers** located on Federal property shall be eligible for vending machine income pursuant to Randolph-Sheppard regulations. (see 34 CFR [395:8] **395.8**). Any such income due [an operator which] **a manager that** has been disbursed to the Commission, shall be remitted to the [operator] **manager** on at least a quarterly basis. All unassigned vending machine income from Federal sources will become a part of the [Federal Set Aside Fund] **Business Enterprises New Jersey Fund, Federal.**

10:97-6.5 Access to program and financial information

(a) Each [operator] **manager** will be provided access, in [braille, recorded tape, or print] **accessible formats**, to all financial data relevant to the operation of [the] Business Enterprises [Program] **New Jersey.**

(b) (No change.)

SUBCHAPTER 7. TRANSFER OF FACILITY FROM ONE [OPERATOR] MANAGER TO ANOTHER

10:97-7.1 Advance notice of termination

If [an operator] **a manager** decides to terminate his or her assignment at a location or as a business enterprise [operator] **manager**, he or she shall notify the Commission [by mail] **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.**

10:97-7.2 Procedure when [an operator] **a manager** leaves a business enterprise

(a) Whenever [an operator] **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 [operator] **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 ["Inventory taking" at] N.J.A.C. 10:97-[3.5]**3.6**.

10:97-7.3 Promotions and transfers

(a) The [manager/designee of the] Business Enterprises [Program] **New Jersey Manager** shall circulate a letter to all [operators] **managers** and persons on the [certified for placement list] **Certified for Placement List** in [their requested media] **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 [operators] **managers** may have regarding the location. The on-site inspection shall not be rescheduled for [operators] **managers** on an individual basis.

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

1. Any [operator] **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-[3.4(b)]**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.

[2.] **3.** Any [operator] **manager** who has not [reported at least a 20 percent net profit margin for the previous year] **met the net profit standards for the previous year** shall be ineligible to apply.

[3. Exceptions may be granted by written request to the manager/designee. Requests should include relevant financial analysis and/or reason for extenuating circumstances. Approval may be granted by the manager/designee on a case-by-case basis.

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

(d) The performance evaluation shall account for 50 percent of the total promotion and

transfer evaluation procedure. The evaluation shall be based on individual site visit reports, semi-annual evaluations and any other documented reports completed by field representatives assigned to work with the interested operators. The manager/designee of the Business Enterprise Program shall give weight value to each factor, depending on the type and needs of the specific business enterprise up for bid. Weight values for all factors shall total 25 points. Each weight value shall be multiplied by the respective performance value ranging from zero for “unsatisfactory” to one for “conditionally satisfactory” to two for “satisfactory.” The factors on which all interested operators shall be rated are management ability, health and sanitation requirements and rules as set forth by the Department of Health and Senior Services at N.J.A.C. 8:24, public relations, compliance with Business Enterprise Program rules and participation in meetings and instructional conferences sponsored by the Commission. The performance evaluation score shall be provided to each applicant prior to the scheduled interview.

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

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

event of a tie score, the location will be awarded to the senior operator.]

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.**

(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.

[(g)] **(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 [manager/designee] **designee** of [the] Business Enterprises [Program] **New Jersey**, [he or she] **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.**

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

(i) Once [an operator] **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.**

10:97-7.4 Interim [person] **manager of a business enterprise**

When a business enterprise becomes vacant, it is often necessary to keep that business enterprise operating [in order] **so** that the location is not lost to [the] Business Enterprises [Program] **New Jersey**. A vacancy shall be filled in an emergency by the appointment of an interim [person] **manager**, pending the completion of the formal promotion process. The interim [person may] **manager** will be appointed [from the certified for placement list. The

appointment will be made by the manager/designee] **at the discretion of the BENJ Manager and in consultation with the Committee as an emergency appointment.**

SUBCHAPTER 8. SUSPENSIONS AND GRIEVANCE PROCEDURES

10:97-8.1 Immediate suspension

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

(b) Grounds for immediate suspension of a license shall exist when any activity, policy or conduct of [an operator] **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.- 4. (No change.)

(c) The [operator] **manager** shall be notified of the reason for suspension. In addition, the [operator] **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 [operator] **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)).

10:97-8.2 Disciplinary probation

(a) In situations other than **those warranting** immediate suspension, [the operator shall comply with all of the requirements in these regulations and of State and Federal law. In the event that] **if there is a violation of this chapter or any State or Federal law**, the [operator]

manager shall be placed on disciplinary probation. The [operator] **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 [operator] **manager** a notice of license termination, citing any unresolved violation. Termination shall be effective 15 days after such notice of termination, provided that the [operator] **manager** has been given an opportunity for an Administrative Review and/or an Administrative Hearing prior to final termination.

10:97-8.3 Administrative Reviews and Hearings

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

(b) (No change.)

(c) The Commission shall afford an opportunity for an Administrative Hearing, also known as a Full Evidentiary Hearing, to each operator in [accord] **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[-1 et seq.]), subject to any superseding Federal or State law (see 34 [C.F.R.] **CFR** 361.48 and 34 [C.F.R.] **CFR** 395.13).

(d) If [an operator] **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 [operator] **manager** shall indicate consent for the release of such information for the hearing of an ad hoc arbitration panel (see 34 [C.F.R.] **CFR** 395.13).

SUBCHAPTER 9. COMMITTEE OF BUSINESS ENTERPRISE OPERATORS

10:97-9.1 Committee of Business Enterprise [Operators] **Managers**

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

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

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

(d) The Committee of Business Enterprise [Operators] **Managers** shall:

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

2. Receive and transmit to the Commission grievances at the request of [operators] **managers** and serve as advocates for such [operators] **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 [operators] **managers**;
 4. Actively participate with the Commission in the development of training and re-training programs for [operators] **managers**; and
 5. Sponsor, with the assistance of the Commission, meetings and instructional conferences for [operators] **managers** within the State.
- (e) It is the responsibility of the Committee of Business Enterprise [Operators] **Managers** to establish and maintain bylaws under which they will operate [and which are approved by the Commission].

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

SUBCHAPTER 10. NEW PRIVATE BUSINESS ENTERPRISE OPPORTUNITIES

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.**