

This rule was filed as 9 NMAC 4.5.

TITLE 9 HUMAN RIGHTS
CHAPTER 4 PERSONS WITH DISABILITIES
PART 5 BUSINESS ENTERPRISE PROGRAM POLICIES FOR BLIND VENDORS

9.4.5.1 ISSUING AGENCY: New Mexico Commission for the Blind.
[4/15/97; Recompiled 10/01/01]

9.4.5.2 SCOPE: Legally blind licensed managers and applicants.
[4/15/97; Recompiled 10/01/01]

9.4.5.3 STATUTORY AUTHORITY: Section 22-14-24 to Section 22-14-29 NMSA 1978, “Horace DeVargas Act,” authorizes the New Mexico commission for the blind to establish, maintain and operate a vending stand program for legally blind persons under the auspices of the “Randolph-Sheppard Act,” Public Law 74-732 as amended by Public Law 83-565, 93-516 and 95-602, 20 U.S.C. Section 107 et seq. The law locates the state licensing agency (SLA) for the program in the individual state or territorial agency that offers vocational rehabilitation services for individuals who are blind under the Rehabilitation Act of 1973, as amended.
[4/15/97; Recompiled 10/01/01]

9.4.5.4 DURATION: Permanent.
[4/15/97; Recompiled 10/01/01]

9.4.5.5 EFFECTIVE DATE: April 15, 1997, unless a later date is cited at the end of a section or paragraph.
[4/15/97; Recompiled 10/01/01]
[Compiler’s note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

9.4.5.6 OBJECTIVE: Provide uniform policies for the administration of the business enterprise program operated by the state licensing agency (SLA), including:

- A. establish and equip business enterprise program facilities in a satisfactory manner to provide employment opportunities to qualified legally blind persons;
- B. assure availability of qualified licensed managers through the provision of skills assessment and indicated training to ensure a career development process;
- C. provide management support services to business enterprise program licensed managers.
- D. develop and maintain procedures for quality customer service;
- E. attain the program’s financial self-sufficiency through its administration in an operationally efficient and cost-effective manner.

[4/15/97; Recompiled 10/01/01]

9.4.5.7 DEFINITIONS: The following words or terms, when used in this document, shall have the following meaning, unless the context clearly states otherwise.

- A. Definitions: “A”:
 - (1) **“Acquired stock”** means that stock in which the licensed manager has accrued equity through personal acquisition of the inventory, and which the state licensing agency, in conjunction with the licensed manager or licensed managers involved, has determined is suitable for use. Stock in which the licensed manager(s) has not accrued equity is not acquired stock and remains the property of the state licensing agency.
 - (2) **“Act”** means the Randolph-Sheppard Vending Stand Act (Public Law 74-732), as amended by Public Law 83-565 and Public Law 93-516, 20 U.S.C., Chapter 6A, Section 107.
 - (3) **“Active participation”** means an ongoing process of negotiations between the state licensing agency and the committee of licensed managers to achieve joint planning of program standards and procedures affecting the overall operation of the business enterprise program.
 - (4) **“Assistant director”** means the assistant director of the New Mexico commission for the blind, who is the ultimate administrative authority for the BEP program in New Mexico.

B. Definitions: "B":

(1) **"BEP"** means the business enterprise program of the state licensing agency that provides self-employment opportunities for qualified persons who are legally blind.

(2) **"BEP business consultant"** means the individual(s) who is (are) responsible for planning, coordinating, and/or conducting the training activities for prospective licensed managers and for in-service and career development training activities for experienced licensed managers.

(3) **"BEP manager"** means the person who has responsibility for the operation of the business enterprise program in the state.

(4) **"Blind person"** means a legally blind person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have:

(a) not more than 20/200 central visual acuity in the better eye with correcting lenses, or

(b) 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.

(5) **"Business enterprise facility"** means an automated coin or currency operated business enterprise which dispenses a variety of food and refreshment items and services. Included in this category are interstate highway locations and vending machine routes.

C. Definitions: "C":

(1) **"Cafeteria"** means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves him or herself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria, and table or booth seating facilities are always provided.

(2) **"Commission"** means the New Mexico commission for the blind, which has final responsibility for all administrative functions and day-to-day management activities in the New Mexico business enterprise program.

(3) **"Commissioner"** means the commissioner of the rehabilitation services administration (RSA) exercising approval authority for the federal government under the Randolph-Sheppard Act.

(4) **"Committee of licensed managers"** means the committee elected biennially by licensed managers to represent all active licensed managers in the business enterprise program. The committee shall be:

(a) fully representative of all active licensed managers;

(b) elected biennially; and

(c) established, constituted and maintained in accordance with 34 CFR 395.14 and these regulations.

(5) **"Consumer"** means any person who has made application for the state licensing agency's vocational rehabilitation services and has been determined by the state licensing agency to be eligible for those services.

(6) **"Contract"** means written agreement between the state licensing agency and officials in control of federal or other property to establish a business enterprise.

(7) **"Counselor"** means rehabilitation services counselors assigned to the state licensing agency's program of vocational rehabilitation.

D. Definitions: "D":

(1) **"Direct competition"** means the presence and operation of a vending machine or vending facility on the same premises as a vending facility operated by a licensed manager, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a licensed manager, shall not be considered to be in direct competition with the vending facility operated by a licensed manager.

(2) **"Displaced licensed manager"** means a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own actions; i.e., the property control manager of a building containing a BEP facility required the closure of the facility in order to expand office space to accommodate additional employees.

(3) **"Dry/wet facility"** means all facilities providing manual dispensing of prepackaged articles, refreshments and services.

E. Definitions: "E":

(1) **"Employee"** means a person who receives compensation for services rendered to a licensed manager.

(2) **“Equipment, essential”** means all necessary equipment for the satisfactory operation of a facility, as determined by the type of location, e.g., dry stand: microwaves, refrigerator, freezer, counters, cash register; snack bar and cafeteria: stove, refrigerator, freezer, counters, microwaves, 3 compartment sink; vending stand: candy/snack machines, can beverage machine (if required by permit, coffee machine and/or sandwich machine).

(3) **“Equipment, expendable”** means items having a relatively small cost per item and having a relatively short life expectancy.

(4) **“Equipment, non-essential”** means espresso machine, soft serve ice cream machine, coin counting or bill counting equipment, or any specialized equipment that is not required by the permit of that particular location.

(5) **“Equipment, non-expendable”** means all necessary equipment that requires a relatively high capital outlay and has a normal life expectancy of several years or more.

(6) **“Executive director”** means the executive director of the New Mexico commission for the blind.

F. Definitions: “F”:

(1) **“Federal property”** means any building, land or other real property owned, leased or occupied by any department, agency or instrumentality of the United States (including the department of defense and the United States postal service), or any other instrumentality wholly owned by the United States, located in New Mexico.

(2) **“Federal regulations”** means the regulations issued pursuant to the Randolph-Sheppard Act.

G. Definitions: “G”: **“Gross receipts”** means all revenue including sales tax.

H. Definitions: “H”: **“Horace DeVargas Act”** means Section 22-14-24 to 22-14-29 NMSA 1978 which authorizes blind persons licensed in accordance with the act to operate vending stands on any state property where such vending stands may be properly and satisfactorily operated by blind persons, grants such blind persons a preference in the operation of vending stands and authorizes the New Mexico commission for the blind to establish, maintain and operate a vending stand program for the blind.

I. Definitions: “I”:

(1) **“Initial stock and supplies”** means merchandise and/or cash supplies necessary for the opening and operation of a specific type of business enterprise.

(2) **“Interim licensed manager”** means a licensed manager appointed by the state licensing agency to manage a business enterprise on a temporary basis.

J. Definitions: “J”. [RESERVED]

K. Definitions: “K” [RESERVED]

L. Definitions: “L”.

(1) **“License”** means a written instrument issued by the state licensing agency to a qualified person who is legally blind, and who has met the qualifications and completed the required training program, authorizing such person to manage a business enterprise vending facility on federal, state or other property.

(2) **“Licensed manager”** means a licensed individual who has signed an agreement with the state licensing agency to manage a business enterprise under the supervision of the state licensing agency, or a licensed individual awaiting assignment to a business enterprise.

(3) **“Licensing agency”** means the state licensing agency that has been designated by the commissioner, in this case the New Mexico commission for the blind, pursuant to the act, to issue licenses to qualified persons who are legally blind for the management of business enterprises.

M. Definitions: “M”:

(1) **“Management services”** means supervision, inspection, quality control, consultation, accounting, regulating, in-service training and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers. “Management services” does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

(2) **“Manager’s agreement”** means a written instrument issued by the commission to a licensed manager, authorizing the licensee to operate a vending site at a specific location and setting forth the respective responsibilities of the parties with respect to the vending operation.

N. Definitions: “N”:

(1) **“Net earnings”** or “net profits” means gross profit after deducting operating expenses and collected set-aside fees.

(2) **“Net proceeds”** means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to licensed managers after deducting the cost of such sales and other expenses excluding set aside charges required to be paid by such licensed managers.

(3) **“Net sales”** means the sum total of sales, excluding sales tax.

(4) **“Nominee”** means a nonprofit agency or organization designated by the state licensing agency through a written agreement to act as its agent in the provision of services to licensed managers under the state’s business enterprise program.

(5) **“Normal working hours”** means an eight hour work period between the approximate hours of 6:00 AM to 4:00 PM, Monday through Friday, for a typical facility in federal, state or other office buildings. For other situations, normal working hours will be determined on an individual basis by the needs of the particular facility.

O. Definitions: “O”:

(1) **“Other income”** means money received by a licensed manager from sources other than over the counter and machine sales.

(2) **“Other property”** means property which is not federal property or state property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any federal property.

P. Definitions: “P-Q”:

(1) **“Permit”** means the official approval given to the SLA by a department, agency or instrumentality in control of the maintenance, operation, and protection of federal or state property, or person in control of other property, whereby the SLA is authorized to establish a vending facility (See Appendices C and D).

(2) **“Post employment services”** means the training program provided by the commission as necessary to facilitate career advancement training and additional training or retraining for licensed managers to assure that the maximum vocational potential of such managers is achieved and suitable employment is maintained.

(3) **“Primary location”** is the official location awarded to a licensed manager and does not come up for bid every 6 months. Benefits and seniority are based upon the manager’s primary location.

(4) **“Property managing agency”** means the agency that is responsible for authorizing the establishment of a vending facility on federal, state or other property and issuing the permit.

(5) **“Purveyor”** means an approved, regulatory source of supply for food, beverages, supplies or services.

Q. Definitions: “R”:

(1) **“Randolph-Sheppard Act”** means Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C., Chapter 6A, Section 107 et seq.

(2) **“Ready-for-assignment list”** means a roster of licensed managers awaiting initial assignment to vending facilities in the vending facility program.

(3) **“Repair of equipment”** means all repairs necessary to keep equipment operational.

(4) **“Retained vending machine income”** means vending machine income disbursed by a property managing department, agency or instrumentality of the United States, or received from vending machines on state or other property in excess of the amounts eligible to accrue to licensed managers.

(5) **“Routine/preventive maintenance”** means the regular care, upkeep and cleaning of equipment used in a business enterprise whether owned by the state licensing agency or licensed manager.

(6) **“Rules and regulations”** means the instrument written by the state licensing agency and committee of licensed managers and approved by the secretary of education, setting forth the conduct and operation of the business enterprise program.

R. Definitions: “S”:

(1) **“Satellite facility”** means a secondary facility, which after receiving no bids from any licensed manager, has been determined jointly by the SLA and committee of licensed managers to be appropriate for award as a satellite facility based on such factors as gross sales.

(2) **“Satisfactory site”** means an area determined by the BEP administrator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

(3) **“Secretary”** means the United States secretary of education.

(4) **“Seniority”** means accrued time for a licensed manager counting only those days during which there is an effective operating agreement. Seniority refers exclusively to continuous service. For example, a licensed manager who has been with the program for 10 years, resigns or is terminated from the program and then returns to

the program at a later time, has no seniority at the time he or she returns to the program. The 10 years worked prior to his or her resignation do not count toward accrued seniority. However, if a licensed manager is displaced due to no fault of his or her own the manager does not lose the seniority right acquired prior to displacement. During the period of displacement the manager does not gain additional time toward seniority, but can resume accruing time toward seniority at the time he or she is assigned a new facility. For example, a licensed manager who had been with the vending program for 3 years, displaced for 1 year and then assigned a new facility, has 3 years of seniority at the time he or she is assigned to the new facility.

(5) **“Set-aside funds”** means funds which accrue to the SLA from an assessment against the net proceeds of each vending facility in the vending facility program, net income of facilities operated temporarily by the SLA, receipts of vending machines located on federal property and retained by the SLA, receipts of vending machines located on non-federal property and retained by the SLA, excess vending machine amounts determined under Chapter 6 of this manual, and interest earned on reserve funds.

(6) **“Skills of blindness”** means those skills necessary to enable a blind person to function independently in the home, community and at work. Such skills include braille, typing, handwriting, abacus, calculator, phone, cane travel, and personal and home management skills.

(7) **“SLA”** means the state licensing agency designated by the federal secretary of education to issue licenses to blind persons for the operation of vending facilities on federal, state and other property. The commission for the blind is the SLA for the state of New Mexico.

(8) **“Snack bar”** means a facility engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service. Included in this group are establishments which sell food and refreshment items prepared on or off the premises and usually wrapped or placed in containers at point of sale and customers may or may not be provided with on-site seating accommodations.

(9) **“State”** means the state of New Mexico.

(10) **“State property”** means any building or land owned, leased or occupied by any department or agency of the state or any instrumentality wholly owned by the state of New Mexico or by any county or municipality or by any other local governmental entity located in the state of New Mexico.

S. Definitions: “T”:

(1) **“Trainee”** means a qualified vocational rehabilitation consumer, who when referred to the business enterprise program, is placed in appropriate training to prepare for licensing under the rules and regulations of the state licensing agency. When the person has successfully completed the application, assessment and training requirements as certified by the SLA, he or she will receive a license and be placed on the ready-for-assignment list.

(2) **“Training program”** means the program of skills of blindness, technical courses and on-the-job training provided by the SLA to qualified blind persons with the capacity to operate a vending facility as prescribed through the agency’s assessment procedures.

T. Definitions: “U”: [RESERVED]

U. Definitions: “V”:

(1) **“Vending facility”** means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the sale or exchange of chances for any lottery authorized by state law and conducted by an agency of the state. [CFR 34, Part 395.1(X)].

(2) **“Vending machine”** for the purpose of assigning vending machine income, means a coin or currency operated machine which dispenses articles or services, except those machines operated by the United States postal service for the sale of postage stamps, or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

(3) **“Vending machine facility”** means an automated coin or currency operated business enterprise which dispenses a variety of food and refreshment items and services. Included in this category are interstate highway locations and vending machine routes.

(4) **“Vending machine income (commissions)”** means receipts (other than those of a licensed manager) from vending machines operated on federal, state or other property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns) where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, state of New Mexico or private owner; or, commissions (other than to a licensed manager) by a commercial vending concern which operates services and maintains vending

machines on federal, state or other property for, or with the approval of, a department, agency or instrumentality of the United States, state of New Mexico or private owner. In other words, this is income that licensed managers receive when vending machines are being serviced by a private entity.

(5) **“Vending machine sales”** means receipts (of a licensed manager) from vending machines operated on federal, state or other property, where the machines are operated, serviced or maintained by the licensed manager.

(6) **“Vocational rehabilitation services”** means those services as defined in the Rehabilitation Act of 1973, as amended.

V. Definitions: “W”, “X”, “Y”, “Z”: [RESERVED]
[4/15/97; Recompiled 10/01/01]

9.4.5.8 PROMULGATION OF BUSINESS ENTERPRISE PROGRAM POLICIES:

A. Rules and procedures, that is, the policies governing the administration of the business enterprise program are developed and maintained in accordance with the Randolph-Sheppard Act [20 U.S.C. Section 107 et seq.], the Rehabilitation Act [29 U.S.C. 31-42] and the Horace DeVargas Act [Section 22-14-24 to Section 22-14-29 NMSA 1978].

B. The rulemaking authority is the SLA for rehabilitation services, hereinafter referred to as the New Mexico commission for the blind. Promulgation of rules and procedures governing the business enterprise program generally follows the process outlined in (8.2.1 through (8.2.4) of this subsection [now Paragraphs (1) through (4), Subsection B of 9.4.5.8 NMAC].

(1) Staff in the SLA, in consultation with the licensed managers committee, draft proposed policy. Draft policy should be submitted to RSA at this stage for their review and comment upon compliance with federal statute and regulation. Draft policy is presented to the SLA for it to consider the issuance of a notice of proposed rulemaking.

(2) Should the SLA issue a notice of proposed rulemaking, this notice is submitted to the proper state agency for publication in the state register. The SLA also notifies individuals and organizations that have filed a timely request to receive such notices. Upon publication of the notice in the state register, a public comment period lasting 20 calendar days commences. The SLA conducts public hearings in accordance with the schedule stated in the notice of proposed rulemaking.

(3) Following the close of the public comment period, the proposed rules, with any changes resulting from the public comment period, are submitted to the SLA for adoption.

(4) Upon approval by the RSA, the SLA declares the effective date of the rules, not to be earlier than 10 days after the publication of the rules in the state register. The rules are distributed to all appropriate parties. A rule manual will be distributed to each BEP licensed manager.

[4/15/97; Recompiled 10/01/01]

9.4.5.9 POLICY OF NON-DISCRIMINATION:

A. The state licensing agency assures that it shall not exclude from participation, deny the benefits of the program, or otherwise subject any person to discrimination because of the person’s gender, age, physical or mental impairment, religion, race, creed, national origin or political affiliation in accordance with the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990.

B. Every licensed manager of a business enterprise program facility or route shall operate the business enterprise in such a manner that no person shall be subject to discrimination because of the person’s gender, age, physical or mental impairment, religion, race, creed, national origin or political affiliation whether that person is a present or prospective supplier, customer, employee or other individual who might come into contact with the enterprise.

[4/15/97; Recompiled 10/01/01]

9.4.5.10 - 9.4.5.11 [RESERVED]

9.4.5.12 STATE LICENSING AGENCY ORGANIZATION:

A. **Organization and operation of the state licensing agency:**

(1) The state licensing agency (SLA) shall:

(a) cooperate with the commissioner in applying the requirements of the Randolph-Sheppard Act in a uniform manner;

(b) take effective action to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with the Randolph-Sheppard Act, the regulations at 34 CFR 395.1, the Horace DeVargas Act, Section 22-14-24 to Section 22-14-29, NMSA 1978, the SLA's established rules and regulations, and the terms and conditions governing the permit for establishment of a vending facility;

(c) submit promptly to the commissioner for approval a description of any changes in the legal authority of the state licensing agency, its rules and regulations, blind licensed manager agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application; and

(d) be reasonable, if it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities and obtain a prior determination by the commissioner that the amount of such funds to be set aside is reasonable.

(2) The business enterprise program is a program component of the New Mexico commission for the blind.

(a) Responsibility for supervision of commission personnel engaged in the administration of the business enterprise program rests with the assistant director of the commission for the blind.

(b) Day-to-day administration of vending facilities is the responsibility of the administrator of the business enterprise program.

(c) Monthly reports received from licensed managers (see Appendix 9) are audited by the BEP manager and posted by the fiscal office. These reports must be **received by the BEP administrator by the 25th of the following month**. All monies received from licensed managers are deposited to the set-aside fund by the fiscal office of the commission for the blind.

(d) The commission for the blind provides vocational rehabilitation for eligible blind persons under an approved state plan. The vocational rehabilitation program and the business enterprise program are closely coordinated so as to assure the maximum utilization of the BEP as an employment resource for vocational rehabilitation consumers for whom such employment is considered suitable, and to assure that all persons placed in the business enterprise program will receive the vocational rehabilitation services which they may require.

(3) Central office staff: The program is administered by the BEP administrator who reports directly to the assistant director of the SLA. The manager is assisted by BEP business consultants.

(4) Field staff: The state is divided into specific geographic areas for the purpose of administering the business enterprise program. A BEP business consultant is assigned to each designated area to provide the link between the licensed managers and central office, and is authorized to provide the services and obligated to assist and support compliance with the rules and regulations of the rehabilitation services administration and the SLA relative to business enterprises established under the Randolph-Sheppard and/or Horace DeVargas Acts.

(5) Licensed managers: The individual enterprises established by the BEP are managed by licensed managers who derive their livelihood from net profits of the operations. Licensed managers are subject to instructions, policies, rules and regulations of the BEP program, but are not employees of the program, the SLA or the state of New Mexico. They do, however, have a contractual relationship with the SLA and are required to manage the facilities and/or operations in accordance with established rules and regulations. All licensed managers will be treated equally regardless of the type of property in which the facility is located; i.e., federal, state or other.

(6) Duties of the business enterprises program manager: The duties of the business enterprises program manager are:

(a) assures compliance with all applicable rules, regulations and statutory provisions;

(b) prepares program budgets and approves expenditures, maintains records for the business enterprise program;

(c) plans for the development and expansion of the program and upgrading of existing facilities;

(d) drafts program policy, operating instructions and regulation changes as needed to make the program more efficient or to conform to current legislative mandate;

(e) promotes the program to the general public;

(f) actively participates with the committee of licensed managers in accordance with 34 CFR 395.14;

(g) procures facilities through the SLA. The SLA will pursue locations in federal, state, county, municipal and private buildings whenever it appears the location will enable a blind person to make a living.

The selection of suitable locations for vending facilities is made according to standards which afford the most favorable earning potential to the prospective licensed manager.

(i) Business enterprise locations are selected only after it has been determined that the establishment of a vending facility at the location will contribute to the maximum development of economic opportunities for the licensed manager and will provide for the most productive utilization of program assets.

(ii) This determination is made on the basis of a comprehensive economic survey and evaluation of the location.

(iii) The evaluation of locations for vending facilities takes into consideration such factors as building population, traffic, competition, continued availability, type of premises, potential return upon investment, and other applicable factors.

(iv) SLA resources are available to establish the facility successfully.

(v) Lastly, the plan is brought before the committee of licensed managers to notify them, and to solicit their thoughts regarding operations for a licensed manager in the facility, including equipment, set-up and efficiency;

(h) conducts public relations activities which promote a positive image of the program to existing and potential host organizations, rehabilitation staff, consumers and the general public;

(i) negotiates the terms and conditions of building permits with property control managers;

(j) negotiates and executes operating agreements with licensed managers;

(k) coordinates and supervises a training program for applicants;

(l) administers, with the participation with the committee of licensed managers, the system for initial assignment or transfer of licensed managers;

(m) in conjunction with the business consultant, completes the facility visit summary to assist in evaluation of the licensed manager's performance.

(7) Duties of the BEP business consultants: The duties of the BEP business consultants are:

(a) assist each licensed manager in operating the business enterprise within applicable rules and regulations;

(b) oversee the development of new installations;

(c) provide management services to licensed managers;

(d) collect and analyze data on the operation of each business enterprise in order to provide technical assistance and for monitoring federal and state reporting requirements;

(e) communicate with the committee of licensed managers on various operations.

(8) Guidelines for communication: Communication of information is to occur so that the best interests of the business enterprises program are served. This is best accomplished when information is shared and acted upon by those who can respond most effectively in the circumstances. The administrative staff of the SLA is responsible for assuring that active communication among SLA staff and licensed managers contributes to the effective operation of the entire business enterprises program. Management services and operational matters are best handled by first communicating with the appropriate business consultant. Paragraphs (A) through (C) of this Subsection [now Subparagraphs (a) through (c) of Paragraph 8 of Subsection A of 9.4.5.12 NMAC] describe appropriate levels to which various types of communication should be directed.

(a) Communications originated by a licensed manager: The licensed manager is to maintain appropriate and professional communication with customers and building management personnel. The point of communication for licensed managers with the SLA is the business consultant. Circumstances in which a licensed manager may contact the business enterprises program manager are:

(i) when a problem cannot be solved through normal channels;

(ii) when there is a specific complaint concerning the conduct and/or behavior of a business consultant; and/or

(iii) when an emergency develops and the business consultant is not available.

(b) Business consultant communication: A business consultant is expected to maintain open and ongoing communications with all the licensed managers in his/her area. Should a situation require immediate action beyond the business consultant's authority, he/she may contact the proper administrative official. All significant information will be communicated to the BEP administrator at the earliest opportunity.

(c) Written communications: Any communication of major consequence is to be documented in writing. Situations needing immediate action are to be addressed promptly by the appropriate official and subsequently documented in writing. Records of written documentation will be maintained in accordance with agency policy. Written requests require written responses.

B. Management services provided by the state licensing agency:

(1) Overview of management services: Management services include supervision, inspection, quality control, consultation, accounting, regulating, inservice training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers. "Management services" does **not** include those services or costs which pertain to the ongoing operation of an individual facility after the initial establishment period.

(2) Technical assistance services: The SLA shall provide each licensed manager with:

- (a) recommendations for optimizing facility profitability;
- (b) recommendations and feedback on facility operations including quality, service and cleanliness;

(c) possible solutions to problems recognized by the licensed manager or brought to the licensed manager's attention by BEP staff or the property managing agency;

- (d) providing career development and inservice training;
- (e) explanation of the SLA's procedures, policies and standards.

(3) Responsibilities of the business consultants (BEP staff): Business consultants are required to assist licensed managers in their district to meet business enterprise program requirements through review and consultation on:

- (a) compliance with applicable laws and program regulations;
- (b) hiring employees in accordance with rules and regulations;
- (c) compliance with all conditions on the licensed manager's license;
- (d) assuring that merchandise is:
 - (i) sold in accordance with the property managing agency's agreement;
 - (ii) of high quality, adequately stocked and properly displayed.

(e) monitoring performance to ensure:

- (i) standards for employee personal appearance and hygiene;
- (ii) quality customer service;
- (iii) maintenance of sanitation and safety standards;
- (iv) proper maintenance of equipment;
- (v) communications and working relationships between the licensed manager and customers, suppliers, employees, property managing agency and the general public;
- (vi) SLA and other agency requirements for record keeping; and
- (vii) licensed manager performance evaluations.

(4) BEP staff facility visits: BEP consultants shall visit facilities as often as necessary to insure the continued success of the facility. The BEP consultants will work with licensed managers to maximize profits. Each time the consultant visits a facility, he/she will complete a facility visit summary.

(5) Assistance of vocational rehabilitation staff: At the request of the business consultants or other BEP staff, rehabilitation staff will provide necessary assistance to the program when the best interest of the licensed manager or the SLA needs such assistance.

(6) SLA provision of training: The SLA, with the active participation of the licensed managers committee, shall develop and maintain training, retraining and career development programs for all persons who are either licensed managers or applicants for licensed managers. The SLA assures that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools and other training materials shall be provided to all applicants as vocational rehabilitation services. The training program shall be open to all legally blind unemployed persons who meet the application and eligibility requirements in Subsection 15.1.2 of this rule (9 NMAC 4.5) [now Paragraph (2) of Subsection A of Section 9.4.5.15 NMAC]. Minimally, the training shall consist of the following.

(a) This training is open to all candidates for the BEP who have completed the application process, met all eligibility requirements as listed in Subsection 15.1.2 of this rule [now Paragraph (2) of Subsection A of Section 9.4.5.15 NMAC], and been accepted into the program;

(b) Assessment and provision, as necessary, of skills of blindness: Blindness skills of each applicant shall be assessed by staff during a minimum of two weeks' attendance at the New Mexico orientation center for the blind, who shall make recommendations for training based upon skills deficiencies, if any; and

(c) Completion of approved culinary arts program at any appropriate facility to be determined on a case-by-case basis (approximately 16 weeks or one trimester). Previous successful food service experience will

be taken into account by the facility in assessing training needs and by the SLA for the final recommendation on granting of a license;

(d) On-the-job training with a licensed manager consisting of food purchasing, menu planning, precosting entrees, food preparation and handling; accounting procedures, inventory control, daily sales reports, monthly reports and cash register operation; and, sanitation, housekeeping and labor scheduling. On-the-job training is expected to be completed concurrently with the culinary arts program. The length of time of on-the-job training will be determined by SLA staff and may be extended by the SLA staff, if so determined by his or her counselor, the committee of licensed managers, trainer and/or SLA staff for the success of the licensed manager in his/her new facility. The average length of time for on-the-job training is six to nine months.

(7) The SLA shall certify as qualified to operate a vending facility all trainees whom the BEP manager has determined to have successfully completed the training program. Once the trainee successfully completes the training program and receives his/her license to operate a business enterprise, he/she will be placed on the ready for assignment list.

(8) Failure to complete the training: If, during the course of the training, it is the trainers' opinion that this consumer cannot satisfactorily complete the BEP training program, the BEP manager will review the case upon the written recommendation of the trainers. If the situation warrants, the BEP manager may terminate the consumer's training. The manager will immediately notify the consumer and the consumer's vocational rehabilitation counselor about the termination of the training program and the reasons for the action.

(9) Retraining and career development: Career development training including further education and additional training for improved work opportunities shall be provided for all licensed managers. Opportunity for retraining shall be provided by the SLA, as needed, and shall be made available:

(a) upon a licensed manager's request;

(b) whenever the SLA finds that the retraining is necessary to enable the licensed manager to operate the vending facility successfully;

(c) any licensed manager undergoing retraining for any purpose including improvement of skills or for career development in the program will continue to have responsibility for the vending facility to which he/she is assigned, and the operating agreement for such manager shall remain in effect while he/she receives retraining or career development services;

(d) post employment services will be provided to licensed managers as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such managers is achieved and suitable employment is maintained.

C. State licensing agency responsibilities for business enterprise operations.

(1) The SLA will provide for an annual review, including input from all vendors, of the BEP procedures manual for possible updates.

(2) Business enterprise equipment and fixtures: The SLA will ensure that each BEP facility has essential equipment so as to give reasonable assurance of satisfactory operation by the licensed manager.

(3) Additions, deletions or modifications to equipment: The licensed manager will make no additions, deletions or modifications to the facility and its operation, in the form of equipment, fixtures or facilities, without first obtaining written authorization from the SLA.

(4) Maintenance and replacement of vending facility equipment: The SLA shall maintain, or cause to be maintained, all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility (34 CFR 395.10).

(5) Purchase of equipment by SLA: In order to lessen the budget impact of various requests for major equipment throughout the fiscal year, licensed managers shall make their equipment requests in writing to the licensed managers committee, which shall review the list, and organize purchases to ensure cost-effectiveness (volume buying of duplicate items) for the SLA expenditures.

(6) Initial inventory and supplies: The counselor shall provide a predetermined amount for funds for purpose of initial inventory of merchandise for resale for operating a facility by a licensed manager. The original dollar amount of the vocational rehabilitation funds or inventory allocated by the counselor for start-up costs should remain in the facility at the time of the manager's departure. Any initial inventory needed that exceeds the predetermined amount will be provided by the set-aside fund. Additional start-up funds provided by the BEP set-aside fund will be repaid to the set-aside fund in an amount agreed to by the BEP manager and the licensed manager.

(7) Existing inventory upon transfer or dismissal: The SLA will oversee the following procedures:

(a) the outgoing licensed manager or a representative is present and is responsible for making an accurate, comprehensive listing of the inventory with prices, proof of prices (invoices) and extending the inventory;

(b) the incoming licensed manager or a representative is also present and can exercise his/her rights as described in Subsection 18.2 of this rule [now Subsection B of Section 9.4.5.18 NMAC];

(c) an SLA representative is present to oversee the process.

(8) Cleaning of facility during transfer: Upon leaving a facility, it is the responsibility of the outgoing manager to fully clean the facility and its equipment. If the outgoing manager fails to comply, the SLA will hire a cleaning company to clean the facility at the outgoing manager's expense. The cleaning cost will be deducted from the inventory being purchased by the SLA. If the amount exceeds the amount of the inventory being purchased, or if the outgoing manager takes his inventory, the balance forward must be paid prior to reinstatement in the program or before transferring to another facility.

(9) Assignment, transfer of licensed managers: The SLA will carry out assignment and transfer of licensed managers through facility vacancy announcements, eligibility verification, and the establishment and convening of an evaluation committee.

(a) Facility vacancy announcement:

(i) The SLA will develop minimum qualifications specific to the characteristics of the vacant enterprise. These minimum qualifications will establish the level of accomplishment expected of the applicant for a vacant facility in each of the areas to be considered by the evaluation committee as described in Section 36 [now 9.4.5.36 NMAC]. Priority will be given licensed managers whose business enterprise was lost due to natural disaster or other unpredictable circumstance beyond control of the licensed manager.

(ii) The SLA shall develop a vacancy announcement to be sent to all licensed managers when a facility becomes available. The vacancy announcement must include location, type of enterprise, and general description of operations; minimum qualifications; for a new enterprise, estimates of monthly net sales based upon potential patronage, with the disclaimer this estimate is not a guarantee of sales; and application due date.

(b) Eligibility verification and referral to evaluation committee: The SLA shall provide files of all bidders to the members of the evaluation committee, that will review all applicants considering the criteria below.

(i) The files will contain information including but not limited to managerial and other skills and abilities demonstrated by the licensed managers under consideration as they fit the available facility, including handling labor needs and managing staff; complexity of financial skills needed for food production; and customer relations.

(ii) previous records of the licensed manager under consideration, including consideration of timeliness and accuracy of record keeping; customer satisfaction; improvements in profits and customer base; safety and sanitation inspections; fee, taxes, and bill payment history; initiative shown in upgrading skills; regularity of work attendance; compliance with applicable rules and laws; and past evaluations by the SLA, and/or those from previous work histories, including references. Initial assignments shall give consideration to the unemployed qualified licensed manager.

(iii) seniority of eligible licensed manager.

(iv) licensed managers on probation may not bid for another facility.

(c) Evaluation committee, recommendation for assignment: The evaluation committee, consisting of an equal number of licensed managers and SLA staff, will consider applicants for initial assignments and transfers. The committee shall make recommendation to the executive director of the SLA.

(10) Vending machine income: Vending machine income will be managed in accordance with the following Paragraphs A through F [now Subparagraphs (a) through (f) of Paragraph 10 of Subsection C of 9.4.5.12 NMAC].

(a) Vending machine income (commission) from vending machines on federal property which has been disbursed to the SLA by a property manager under the vending machine income sharing provisions of the federal regulations shall accrue to each licensed manager operating a vending facility on federal property in an amount not to exceed the average net income of the total number of licensed managers, as determined each fiscal year on the basis of each prior year's operations, except that vending machine income shall not accrue to any licensed manager in any amount exceeding the average net income of the total number of licensed managers in the United States.

(b) No licensed manager shall receive less vending machine income than he/she was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling (34 CFR 395.32).

(c) No limitation shall be imposed on income from vending machines combined to create a vending facility if such facility is maintained, serviced or operated by a licensed manager; however, the SLA will retain the vending machine commissions disbursed by a federal property manager in excess of the amounts eligible to accrue to licensed managers (34 CFR 395.32(b); 34 CFR 395.8(b)).

(d) The SLA will disburse vending machine income (royalties) to qualifying licensed managers on at least a quarterly basis (34 CFR 395.8(b)).

(e) Vending machine income retained by the SLA will be used in accordance with applicable federal regulations (34 CFR 395.8(c)).

(f) Unassigned income from non-federal property is used to develop and enhance BEP facilities as designated by state laws and regulations.

(11) Due process: The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP, and are set forth in the following Subsections (A) through (D) [now Subparagraphs (a) through (d) of Paragraph 11 of Subsection C of 9.4.5.12 NMAC].

(a) Informal administrative review: It is the policy of the SLA to resolve complaints in an expeditious and facilitating manner. These resolutions shall be accomplished through the informal administrative review process whenever possible.

(i) A licensed manager who is dissatisfied with any action arising from the operation or the administration of the vending facility program may ask for an informal administrative review of the action by filing a written request with the executive director of the commission. The written request for an informal administrative review, filed by the licensed manager or his designee (who may be a member of the committee of licensed managers), must specify the action or actions with which the manager is dissatisfied, and must be received by the executive director within 15 calendar days of the occurrence of the action with which the manager is dissatisfied.

(ii) Informal administrative reviews are conducted by the SLA staff person, appointed by the executive director, who is closest to the problem but not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.

(iii) Within 15 calendar days after receipt of the written request, the executive director shall convene an administrative review conference which shall include the licensed manager and his or her representative, if so designated, vending facility program staff, and the executive director's appointee. Written notice of the time and place of the administrative review shall be sent to the manager and his/her representative, if so designated, by the executive director.

(iv) The informal administrative review shall be held at a time and place convenient to the manager requesting such review. The administrative review shall normally be held during regular SLA working hours.

(v) The results of the informal administrative review are to be reported in writing to the BEP administrator, with a copy going to the licensed manager.

(b) Full evidentiary hearing: When a licensed manager is dissatisfied with any SLA action arising from the operation or administration of the vending facility program, such manager may file a complaint with the SLA requesting a full evidentiary hearing. Such complaint should identify all of the disputed issues of fact to be resolved in an evidentiary hearing. The following procedures have been adopted by the SLA to provide a manager with a full evidentiary hearing:

(i) Licensed managers shall be informed, in writing, of their right to and the procedures to be followed in obtaining a full evidentiary hearing at the time they are licensed to operate a facility.

(ii) The manager, or his or her chosen representative, shall request a full evidentiary hearing in writing within 15 calendar days of the receipt of the commission's determination as a result of the informal administrative review process.

(iii) The written request for a full evidentiary hearing must be transmitted to the executive director of the commission either personally or by certified mail, return receipt requested. The request may be transmitted through the committee of licensed managers in accordance with these rules and regulations.

(iv) A manager is entitled to legal counsel or other representation in a full evidentiary hearing. Such counsel shall be at the manager's own expense or he/she may obtain any legal services available in

the community at little or no cost, such as legal aid society, neighborhood legal services, or any other sources able and willing to provide representation.

(v) Reader services or other communication services shall be arranged for the manager should he so request. Transportation costs and per diem shall be provided to the licensed manager during the full evidentiary hearing if the location of the hearing is in a city other than the legal residence of the manager.

(vi) The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel, in writing, at least 15 calendar days prior to the date set for the hearing. The licensed manager shall be provided a copy of the hearing procedures and other relevant information necessary to enable him or her to prepare his/her case for the hearing.

(vii) The hearing will be conducted by an impartial and qualified hearing officer with no involvement or vested interest in the SLA action at issue or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with state and/or federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay, maintains order and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.

(viii) The overall time limit for processing a full evidentiary hearing is 90 calendar days except when a hearing is delayed for illness of the licensed manager; or delay in obtaining evidence because of circumstances beyond the control of the licensed manager or the commission. The time limit applies to the period extending from the date the original request is received by the executive director until the date of the decision.

(ix) The federal rules of evidence do not apply to full evidentiary hearings conducted pursuant to this section. Both the licensed manager and the SLA are entitled to present their case by oral or documented evidence to submit rebuttal evidence and to conduct such examination and cross-examination of witnesses that may be required for a full and true disclosure of all facts bearing on the issue. All papers and documents introduced into evidence at the hearing shall be filed with the hearing officer and provided to the other party. All such documents and other evidence submitted shall be open to examination by the parties and opportunities shall be given to refute facts and arguments advanced on either side of the issue.

(x) Transcripts shall be made of the oral evidence and shall be made available to the parties. The SLA shall pay all transcript costs and shall provide the licensed manager with at least one copy of the transcript. The transcripts of testimony, exhibits and all papers and documents filed in the hearing shall constitute the exclusive record for the decision. The decision shall also set forth any remedial action necessary to resolve the issues and dispute. The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law, and the existing rules of the SLA. The hearing officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and the facts to be ruled upon.

(xi) The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report shall be issued to the BEP manager and the licensed manager, or his/her authorized representative, within 20 working days of the receipt of the official transcript. The decision shall be mailed promptly to the licensed manager and the SLA. If the licensed manager is dissatisfied with the decision, he or she may request that the secretary (USDE) convene an arbitration panel.

(c) Arbitration of complaints after the evidentiary hearing: The licensed manager has the right to file a request for arbitration with the secretary (USDE) if dissatisfied with the outcome of the evidentiary hearing. By filing a complaint with the secretary, the manager consents to the release of information necessary for the conduct of an ad hoc panel.

(i) The complaint must be filed in writing and must contain a statement of grievance; the date and place of the full evidentiary hearing; a copy of the decision and what actions have been taken because of the decision; the part of the decision which is causing the dissatisfaction and reason for the dissatisfaction; and a statement as to what is required to remedy the situation.

(ii) The secretary (USDE) will convene an arbitration panel after receiving a complaint which meets the requirements in the abover Paragraph 12.3.10.C.1 of this rule [now Item (i) of Subparagraph (c) of Paragraph (11) of Subsection C of 9.4.5.12 NMAC]. The decision of the panel will be final, except as provided for in 20 U.S.C. Section 107d-2. The secretary will pay the reasonable costs for the arbitration. An abstract of the arbitration decision will be published in the federal register. The panel will be convened by the secretary in accordance with (1) through (3) of this Subparagraph. (1) The SLA shall designate one member of the panel. (2) The licensed manager shall designate one member of the panel. (3) The designees of the SLA and the licensed

manager shall together designate a third panel member who shall not be an employee of the SLA or its parent agency. This member shall be the chairperson of the panel.

(iii) If either the SLA or the licensed manager fails to designate a member of an arbitration panel, the secretary shall designate such member on behalf of such party.

(d) Arbitration of SLA complaints:

(i) Arbitration of SLA complaints against federal agencies. The SLA is to resolve problems related to the operation of a business enterprise with the full participation of the licensed manager and the appropriate property manager. The SLA may file a complaint with the secretary (USDE) if it determines that an agency controlling federal property is not complying with the provisions of the Randolph-Sheppard Act or United States department of education regulations. After the complaint is received, the secretary will convene an arbitration panel. If the panel finds that the federal agency is in violation of the act or USDE regulations, that federal agency will be notified that it is expected to correct the violation according to 20 U.S.C. Section 107d.

(ii) The secretary pays the reasonable costs of this arbitration. The decision resulting from the arbitration will be published in the federal register. The arbitration panel will be convened by the secretary in accordance with (1) through (3) of this Paragraph. (1) The SLA will designate one member of the panel. (2) The agency controlling the federal property over which the dispute arose will designate one member of the panel. (3) The designees of the SLA and the agency controlling the property will designate a third member who is not an employee of the agency. This member will chair the panel.

[4/15/97; Recompiled 10/01/01]

9.4.5.13 - 9.4.5.14 [RESERVED]

9.4.5.15 LICENSED MANAGERS:

A. Licensing requirements for operating a business enterprise.

(1) Definition of license: A license is a written instrument issued by the SLA to a qualified licensed manager, authorizing such person to operate a vending facility on federal or other property (34 CFR 395.1).

(2) Issuance and conditions of a license: A license shall be issued by the SLA in accordance with federal regulations making the individual eligible to operate a facility. The license shall be prominently displayed in the licensed manager's facility. The license remains effective for an indefinite length of time, unless terminated or suspended by the SLA in accordance with state and federal regulations. A license issued to an individual is non-transferable (34 CFR 395.7). Preference is given to blind persons who are in need of primary employment. Requirements for the issuance of a BEP license is that the individual:

(a) must be legally blind as verified by documentation (34 CFR 395.7);

(b) must be a United States citizen residing in the state in which he/she desired to be trained and licensed. Birth certificate or other applicable documentation must be submitted with application (34 CFR 395.7);

(c) be at least 18 years of age or older;

(d) applied and been determined eligible for the NMCB vocational rehabilitation program, including completing an application form for the BEP listing relevant education, business experience and references (see Appendix T) [sic Appendix 2] [now 9.4.7.13 NMAC]; and, participating in an interview with the VR counselor, member of the committee of licensed managers and BEP staff. After the interview, the vocational rehabilitation counselor and BEP staff will discuss the checklist of prerequisites for BEP training (see Appendix 1) [now 9.4.7.12 NMAC], and discuss any items of concern with the BEP staff member;

(e) have completed all services on the IWRP which may interfere with training;

(f) have completed the proscribed training program required by the SLA (Paragraph 12.2.6 of this rule) [now Paragraph (6) of Subsection B of 9.4.5.12 NMAC].

(3) Termination of license: A license automatically expires when the licensed manager is no longer a United States citizen, no longer meets the definition of legal blindness, surrenders his/her license, resigns, retires or dies. A license may be terminated or suspended by the SLA in accordance with BEP, state or federal regulations as described below.

(4) Grounds for probation, suspension or termination of a license: A licensed manager may be put on probation, and a BEP license may be suspended or terminated for the reasons set forth in the following Paragraphs (A) through (S) [now Subparagraphs (a) through (s) of Paragraph (4) or Subsection A of 9.4.5.15 NMAC].

(a) failure to open the assigned BEP facility as stated in the agreement with the grantor agency, without prior proper approval from the SLA (abandonment of facility);

(b) defrauding any agency of government (including the SLA) or any supplier or failure to pay monies due including taxes, fees, or assessments to any governmental entity or supplier;

(c) failure to file required financial and other records with the SLA or preserve them for a specified time and failure to comply/cooperate with the audits conducted by the SLA or other state or federal agencies;

(d) the vending facility is not being operated in accordance with the rules and regulations, terms and conditions of the permit with the grantor agency, or the terms and conditions of the manager's agreement;

(e) intentional abuse, neglect, unauthorized use or removal of the BEP facility equipment; or failure to properly maintain the equipment in a clean and operating manner within the scope of the licensed manager's level of maintenance authorization;

(f) misconduct or unprofessional behavior by the licensed manager, as defined by the code of ethics or state/federal regulations. This requirement includes but is not limited to: use of profane language with the SLA, property manager, employees and/or customers; threatening, belligerent or harassing behavior; other behavior inappropriate to successful operation of a business;

(g) substance abuse (alcoholic beverages, illegal drugs, etc.) while operating the BEP facility; or substance abuse off the premises that interferes with the operation of a vending facility;

(h) operation of a BEP facility in such a way that the SLA's investment is obviously endangered, including significant loss of clientele due to actions of the licensed manager;

(i) an attempt by a licensed manager to acquire an existing or proposed BEP facility as a private operation while operating a BEP facility or awaiting assignment to a BEP facility without prior approval by SLA staff and recommendation for that action by the committee of licensed managers;

(j) failure to comply with all federal and state laws prohibiting discrimination and failure to assure services without distinction on the basis of race, gender, color, national origin, religion, age or disability;

(k) incompetence or determination by the SLA or its designee that the licensed manager no longer has the necessary skills and abilities for managing a BEP facility;

(l) use of the facility to conduct unlawful activities or activities unauthorized by the SLA or property manager's permit;

(m) failure to personally operate and manage the facility or vending route in accordance with the manager's agreement;

(n) failure to manage a facility in the business enterprise program at a reasonable profit;

(o) failure to bid on a facility for three years, with no extension, could be grounds for the termination of a license by the SLA. For example, if a manager fails to bid on one or more vacant facilities located within his/her geographic area, within a three year period, the license could be terminated. The three year provision is effective as of the date of the issuance of this manual. Licenses issued prior to the effective date of the manual are issued for an indefinite time period;

(p) extended illness with a medical leave-documented diagnosis of prolonged incapacity of the licensed manager to operate the facility or vending route in a manner consistent with the needs of the location or other available locations in the BEP;

(q) withdrawal of the manager from the program upon his/her written notification to the SLA;

(r) failure to comply with the Parental Responsibility Act (New Mexico Laws of 1995, Chapter 25), which provides for the denial, suspension or revocation of professional and occupational licenses for nonpayment of child support;

(s) failure to maintain workman's compensation insurance following the initial year of coverage provided by the SLA, should the facility and/or route have one or more employees;

(t) the SLA provides for procedures for fair hearings for licensed managers' grievances regarding termination, probation or suspension of a license; these procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the termination, probation or suspension of a license.

(5) A licensed manager on disciplinary probation, or who has been suspended or had his/her license terminated, may not bid on another vending facility.

B. Seniority status upon termination: Upon the effective date of any termination, the terminated manager shall be removed from the seniority list. A terminated manager who returns to the program at any future date shall not be credited with any seniority from any previous period of service.

C. Probation: Managers may be placed on probation for disciplinary purposes only when the SLA determines that the vending facility is not being operated in accordance with applicable provisions of law, these

rules and regulations, the terms and conditions of the permit, or the terms and conditions of the manager's agreement.

(1) Notice of probation shall be sent to the manager by certified mail, return receipt requested and the effective date of the probationary period shall be the date on which the notice was received by the manager as indicated on the signed receipt. The notice of probation shall contain the reasons for the probation, steps to be taken by the manager to be removed from probation, and the manager's right to appeal the SLA's action. The probationary period will be specified in the written notice of probation. In the event of an appeal, the probationary period shall be suspended until the appeal is resolved.

(2) Managers placed on probation pursuant to this section shall not lose seniority while on probation.

D. Grounds for reinstatement of terminated or suspended license.

(1) The manager must reapply for admittance into the program, according to the procedures outlined in Subsection 15.1.2 of this section [now Paragraph (2) of Subsection A of 9.4.5.15 NMAC].

(2) Based upon consultation with the VR counselor and the committee of licensed managers, the BEP manager will determine whether:

(a) reinstatement of the suspended license will be successfully utilized by the manager, and whether such reinstatement will benefit the BEP program;

(b) training or other related conditions should be made part of the reinstatement process; and

(c) after reinstatement, the licensed manager will be placed on probation for the first six months.

(3) Termination of a license shall occur upon the third suspension of the same license. A terminated license cannot be reinstated without approval of the SLA, the BEP manager, and consideration of the recommendation of the licensed managers committee. If so approved, the BEP manager may determine training or other conditions required for reinstatement of the terminated license.

E. Operation standards for licensed managers. The licensed manager is expected to operate in accordance with the established rules and regulations of the BEP, within the terms of the licensed manager's agreement with the SLA and the property manager's permit. The licensed manager may not act as an agent of the SLA. Specifically, the licensed manager will:

(1) work cooperatively with authorized representatives of the SLA in connection with his/her official responsibilities;

(2) operate the facility in accordance with all applicable health laws and regulations, safety regulations and other federal, state, county and municipality laws and regulations applicable to the facility;

(3) dress and maintain a level of personal hygiene that will convey a positive public image;

(4) supervise employees in an appropriate manner that promotes quality customer service and does not demean the employee;

(5) operate the BEP facility on a non-credit (cash) basis unless otherwise authorized by the SLA;

(6) arrange for continued operation of the enterprise in the case of absences;

(7) maintain daily records of gross receipts, merchandise purchased, cash on hand, and personal withdrawals from profits from the facility, etc.;

(8) complete and submit all required federal and state reports and payments for each business enterprise;

(9) comply with all regulations and laws governing the possession and/or use of firearms, weapons, alcohol and other drugs;

(10) maintain appropriate professional relationships with suppliers, customers, building officials and SLA staff.

(a) Relationships with suppliers/purveyors: The licensed manager is free to choose the suppliers from whom he/she is to make purchases, provided, however, that such suppliers are established and reputable.

(b) Relationships with customers: To serve the best interest of the public, the licensed manager and his/her employees must:

(i) provide prompt, cheerful and courteous service to all customers in a professional and neat atmosphere (e.g., no non-working children on premises during normal work hours). Accommodate, within reasonable limits, such other persons who may come to the business enterprise requesting change, information or other services;

(ii) operate on a cash basis;

(iii) the licensed manager will provide refunds to customers as needed who have lost money in vending machines where commissions are assigned to that licensed manager. If warranted, it is the licensed manager's responsibility to seek reimbursement from the purveyor.

(c) Relationships with building officials: Paragraphs (1) and (2) of this Subsection [now Items (i) and (ii) of Subparagraph (c) of Paragraph (10) of Subsection E of 9.4.5.15 NMAC] provide guidance in maintaining a productive relationship with building officials.

(i) The licensed manager must comply with all reasonable requests concerning the operation of a business enterprise that may be made by officials of the building in which the enterprise is located, provided that such requests do not conflict with the agreement and the rules and regulations issued by the SLA and contained herein.

(ii) If differences should arise between the licensed manager and building management, the licensed manager shall bring the matter to the immediate attention of the business consultant for appropriate action.

F. **Authority for establishing an elected committee of licensed managers** is found in Section 107-B1 of Chapter 6A of Title 20 U.S., commonly referred to as the Randolph-Sheppard Act.

(1) Functions of the organization of licensed managers include:

(a) actively participate with the SLA in the major administrative policy program development decisions affecting the overall direction and administration of the vending facility program;

(b) to receive and transmit to the SLA grievances at the request of licensed managers and serve as advocates for such managers in connection with such grievances;

(c) to sponsor, with the assistance of the SLA, semi-annual instructional conferences for licensed managers, the cost of which will be borne by the SLA. All licensed managers, including those on the ready-for-assignment list shall be invited to participate in the conferences;

(d) inclusion of all licensed managers in the program. The SLA shall provide for a biennial election of an elected committee of licensed managers consisting of seven (7) members, with a goal of providing for geographic proportional representation of licensed managers in the state.

(i) Officers of the committee shall be elected by the organization. The following positions shall be filled: chairperson, vice chairperson, secretary and treasurer.

(ii) The elected committee shall assume these responsibilities in addition to the functions listed above in items 15.6.1.A through D [now Subparagraphs (a) through (d) of Paragraph (1) of Subsection F of 9.4.5.15 NMAC]: review and comment on changes to BEP manuals; review lists of proposed equipment purchases for facilities to ensure cost-effective purchases on managers' behalf by the SLA; actively participate with the SLA in the development and administration of a state system for the evaluation of qualified applicants bidding on a new facility.

(e) In accordance with the committee bylaws, organization meetings shall be held at least twice per year. Between regular meetings the committee will carry on its functions through committees or subcommittees. Meetings will be held at the SLA's Albuquerque facility unless otherwise indicated in advance. Special meetings may be called by the chairperson or by a majority of the members of the committee, provided that notice of the time and place for any special meetings shall be given to all committee members at least five (5) days in advance. The notice requirement shall not apply in emergencies where the committee, by a majority, agrees that a special meeting is necessary.

(f) Eligible voters and nominees: A person must be licensed on or before the spring biannual meeting when nominations are taken. Only licensed managers can be nominated or can vote in the election.

(g) Nomination of committee members:

(i) In the *spring* of each odd-numbered year, the chairperson of the current committee shall call a general meeting of all licensed managers for the purpose of nominating a new committee and new officers. This general meeting shall be held at the SLA's Albuquerque facility, unless otherwise indicated in advance.

(ii) The SLA shall be responsible for sending notice to all licensed managers of the general meeting described in this section. Such notice shall include the date, time and place of the meeting and shall clearly state that the purpose of the meeting shall be the nomination and election of committee members and officers.

(h) A manager may nominate him or herself or another manager.

(i) Ballot system:

(i) Nominations shall be taken for the executive positions of: (1) chairperson, (2) vice-chairperson, (3) secretary, (4) treasurer, and the remaining positions of (5) sergeant of arms, (6) first member at large and (7) second member at large. The managers nominated will be placed on a paper ballot listed under the position that they were nominated for (See Appendix 18 in procedure manual). Managers can be nominated for more than one position.

(ii) The SLA will then send a ballot to each licensed manager with a self addressed and stamped envelope, within thirty (30) days after the nominations. Sixty (60) days after the nominations the SLA will call any manager who has not returned their ballot. The SLA will make arrangements with the manager to complete and return the ballot to the SLA thirty (30) days prior to the fall meeting.

(iii) The ballots will be held by the SLA, unopened, until the next biannual meeting in the fall.

(2) Election of committee members:

(a) At the fall biannual meeting immediately after the spring meeting when nominations were made, the SLA will give a roll call of all ballots received. These should equal the number of licensed managers that were licensed by spring biannual meeting when the nominations were taken. If a ballot is not received from a manager, the SLA will give a statement of the attempts to obtain the ballot from the manager. Any manager that fails to return their ballot to the SLA thirty (30) days prior to the meeting can not participate in the elections. The unopened ballots will be opened and tallied. For confidentiality, only the licensed manager's SLA number will appear on the ballot. The voter's identity on each ballot will not be announced. The ballots will be kept on record to be viewed upon request.

(b) Election to each position requires a majority vote; if no candidate receives a majority of votes a tie breaker shall be immediately conducted between the two (2) or more candidates receiving the highest number of votes. **Tie Breaker:** Numbers 1 through 10 will be placed in a container. Each tied candidate will pull one number from the container. The highest number pulled will win the election.

(c) No manager shall hold more than one position. If a manager receives the highest number of votes for more than one position, the manager will automatically accept the higher position and relinquish the lower position to the manager with the next highest votes in that position.

(d) Vacancies which occur on the committee between election years will be filled by selection of the remaining committee members.

G. **Committee participation in SLA policy making:** The SLA shall ensure that the committee has the opportunity for effective and constructive active participation in the development and administration of policy, as follows:

(1) The SLA shall provide advance written notice to the committee of policy matters within its purview that are being considered for decision.

(2) The SLA shall provide all appropriate subcommittees with requested and available information to their chairpersons as per their requests.

(3) The SLA shall provide the committee with the opportunity to initiate matters for consideration by it and the SLA, and provide the committee with the opportunity to make meaningful contributions to the vending facility program with its views and positions taken into careful and serious account by the SLA.

(4) The SLA has the ultimate responsibility for the administration of the BEP. If the SLA does not adopt the views, positions and/or initiatives of the committee, it will notify the committee in writing of the decision reached or action taken by the SLA and the reasons therefor.

[4/15/97, 4/30/99; Recompiled 10/01/01]

[Compiler's note: Item (i) of Subparagraph (i) of Paragraph (1) of Subsection F contains a reference to Appendix 18 in the procedure manual. There is no Appendix 18 in the procedure manual, now 9.4.7 NMAC.]

9.4.5.16 - 9.4.5.17 [RESERVED]

9.4.5.18 VENDING FACILITY EQUIPMENT AND INITIAL STOCK:

A. **Purpose:** The SLA is responsible for furnishing each vending facility with essential equipment, initial stocks of merchandise and petty cash necessary for the establishment and operation of such facility. The right, title to, and interest in the SLA furnished equipment in each vending facility used in the program will be vested in the SLA in accordance with the laws of the state.

B. **Disposal of acquired stock:** Acquired stock is that stock in which the manager has accrued equity and which the SLA, in conjunction with the manager(s) involved, has determined is suitable for use. Stock in

which the manager has not accrued equity remains the property of the SLA. When a manager leaves the program or transfers to a different vending facility he or she may:

- (1) keep acquired stock;
- (2) sell acquired stock to the SLA;
- (3) sell acquired stock to the incoming manager.

C. **Maintenance and replacement of SLA furnished equipment:** The SLA shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition, and shall replace (or cause to be replaced) worn-out or obsolete SLA furnished equipment as required to assure the continued successful operation of the facility. Determination of SLA equipment to be replaced under this section shall be determined by BEP staff.

(1) **Manager ownership of additional equipment:** The manager shall have the right to purchase additional equipment for his or her vending facility and to hold title in such additional equipment in his or her own name. Manager owned equipment, when reported in adequate detail to the SLA at the time of purchase, will be repaired by the licensed manager and reimbursed by the SLA. The original purchase price and repair cost (if assumed by manager) can be used as a business expense on the monthly report, with copies of the supporting invoices. This applies to equipment that is directly related to the operation of the facility.

(2) **Extended liability insurance for manager-owned equipment exceeding the standard coverage:** See Subsection 27.8 of this rule [now Subsection H of 9.4.5.27 NMAC]. The manager has the option of purchasing the additional amount of insurance needed to cover his or her equipment through the same carrier that the SLA is using or an insurance company of his/her choice.

(3) **Additional equipment purchased by the licensed manager is distinguished from the SLA furnished equipment referred to above for which title remains vested in the SLA.** Additional equipment belonging to the licensed manager shall be listed separately on the written agreement between the manager and the SLA and added to the agreement if purchased after initial start-up.

D. **Manager care of equipment:** Each manager shall take reasonable care of all equipment in his or her facility and carry out routine, day-to-day maintenance procedures. Upon the manager's failure to take responsibility for such maintenance procedures, the SLA may make arrangements for such day-to-day maintenance and charge the manager an equitable amount for providing such maintenance.

E. **Cleaning of facility during transfer:** Upon leaving a facility, it is the responsibility of the outgoing manager to fully clean the facility and its equipment. If the outgoing manager fails to comply, the SLA will hire a cleaning company to clean the facility at the outgoing manager's expense. The cost of the cleaning will be deducted from the inventory being purchased by the SLA. If the amount exceeds the amount of the inventory being purchased or if the outgoing manager takes his inventory, the balance forward must be paid prior to reinstatement into the program or transfer to another facility.

[4/15/97; Recompiled 10/01/01]

9.4.5.19 - 9.4.5.20 [RESERVED]

9.4.5.21 SET-ASIDE FUNDS:

A. **Purpose:** The SLA shall set-aside funds as described in "Sources of Set-Aside Funds" for purposes described in "Uses of Set-Aside Funds." The licensed managers have recommended a set aside fee of net proceeds, as indicated on the monthly report form (see Appendix 9, BEP Procedures Manual) [now 9.4.7.20 NMAC].

B. **Sources of set-aside funds:**

- (1) cash from application of a set aside fee against the net proceeds of each vending facility;
- (2) cash equal to the net income of facilities operated temporarily by the SLA;
- (3) cash from receipts of vending machines located on federal property and retained by the SLA;
- (4) cash from receipts of vending machines located on nonfederal property and retained by the SLA;
- (5) excess vending machine amounts determined under Section 9 of this manual;
- (6) interest earned on reserve funds.

C. **Uses of set-aside funds:** Set-aside funds may only be used for the following purposes:

- (1) maintenance of equipment in established vending facility locations;
- (2) replacement of equipment in established vending facility locations;
- (3) purchase of new equipment for established vending facility locations;
- (4) purchase of new equipment for new vending facility locations;

(5) management services;
(6) assuring a fair minimum return to managers;
(7) if it is so determined by a majority vote of the managers licensed by the SLA, after the SLA provides to each manager the information on all matters relevant to the purposes below, the establishment and maintenance of:

- (a) retirement or pension funds;
 - (b) health insurance contributions;
 - (c) paid sick leave;
 - (d) paid vacation time including displaced manager payments;
 - (e) workers compensation for the first year if funding permits;
- (8) initial operating costs funded only by income from vending machines located on nonfederal property and retained by the SLA and temporary operation of vending facilities on nonfederal property;
- (9) reserves necessary to accomplish the above purposes on an ongoing basis.

D. Application of set-aside sources to uses:

- (1) Source: set-aside fee assessed against the net proceeds of each vending facility. Uses:
- (a) maintenance and replacement of equipment;
 - (b) purchase of new equipment;
 - (c) management services;
 - (d) assuring a fair minimum return to vendors; or
 - (e) 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 licensed managers licensed by the SLA, after such agency provides to each vendor information on all matters relevant to such proposed purposes.
- (2) Source: temporary operation of vending facilities on federal property. Uses:
- (a) maintenance of equipment;
 - (b) replacement of equipment;
 - (c) purchase of new equipment;
 - (d) management services;
 - (e) fair minimum return;
 - (f) retirement or pension funds;
 - (g) health insurance;
 - (h) sick leave;
 - (i) vacation leave;
 - (j) reserves.
- (3) Source: retained vending machine income from vending machines on federal property. Uses:
- (a) maintenance of equipment;
 - (b) replacement of equipment;
 - (c) purchase of new equipment;
 - (d) management services;
 - (e) fair minimum return;
 - (f) retirement or pension funds;
 - (g) health insurance;
 - (h) sick leave;
 - (i) vacation leave;
 - (j) reserves.
- (4) Source: temporary operation of vending facilities on nonfederal property. Uses:
- (a) maintenance of equipment;
 - (b) replacement of equipment;
 - (c) purchase of new equipment;
 - (d) management services;
 - (e) fair minimum return;
 - (f) retirement or pension funds;
 - (g) health insurance;
 - (h) sick leave;
 - (i) vacation leave;

- (j) reserves;
 - (k) initial operating costs;
 - (l) general liability insurance.
- (5) Source: retained vending machine income from vending machines on nonfederal property. Uses:
- (a) maintenance of equipment;
 - (b) replacement of equipment;
 - (c) purchase of new equipment;
 - (d) management services;
 - (e) fair minimum return;
 - (f) retirement or pension funds;
 - (g) health insurance;
 - (h) sick leave;
 - (i) vacation leave;
 - (j) reserves;
 - (k) initial operating costs;
 - (l) general liability insurance.

E. Budgeting of set-aside funds and determination of set-aside rate:

(1) The SLA in consultation with the committee shall provide for the establishment of a set-aside schedule covering each of the purposes for which set-aside funds are intended to be used. The method of determining the set-aside rate shall be as follows.

(a) Prior to the beginning of each fiscal year, an estimate will be made of the amount and sources of funds which will be required for each of the purposes for which funds are to be set-aside during the ensuing fiscal year. The estimates of the amounts required as well as the purposes for which funds are to be set-aside during the fiscal year will be determined in consultation with the committee. The estimates will take into account expenditures made for each of the purposes during the preceding fiscal year and projections for the next fiscal year based on program needs and plans and funds available from other sources.

(b) After a determination has been made as to the amount of set-aside funds which will be required, a set aside rate to be levied against the net proceeds of each licensed manager shall be established to yield the required funds. The method of establishing the set aside rate shall be: Total budgeted uses - initial operating costs - total budgeted other resources = amount to be provided by set aside rate.

Total amount to be provided _____ = Set-Aside Rate
 Total net proceeds from 12 full months prior to calculation

(c) This methodology is designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required, with allowances for the retention of reasonable reserves necessary to assure that each such purpose can be provided on a continuing basis. This schedule of set-aside charges will be developed in consultation with the committee and shall be submitted for approval to the RSA commissioner. Any changes in the schedule of set-aside charges will likewise be submitted to the RSA commissioner for prior approval. The SLA will maintain adequate records to support the reasonableness of the charge for each purpose.

(2) Requirements for additional stock subsequent to provision of initial stock. In circumstances where additional initial stock is required for efficient operation of the facility, the set-aside fund may provide additional stock on a loan basis with an agreed upon payment schedule. The licensed manager accrues equity in this stock to the extent of his/her repayment of the advance.

[4/15/97; Recompiled 10/01/01]

9.4.5.22 - 9.4.5.23 [RESERVED]

9.4.5.24 LIMITATION ON AND DISTRIBUTION OF LICENSED MANAGER INCOME FROM VENDING MACHINES IN DIRECT COMPETITION.

A. Purpose - limitation on vending machine income (commissions):

(1) Vending machine income from vending machines on federal property, that has been disbursed to the SLA by a property managing department, agency or instrumentality of the United States under the vending machine income sharing provision in Section 395.32 of the federal regulations or vending machine income from vending machines on state or other property which has been disbursed to the SLA, shall accrue to each licensed manager operating a vending facility on such property in an amount not to exceed the average net income of the total number of managers within the state, as determined each fiscal year on the basis of each prior year's operation,

except that vending machine income shall not accrue to any manager in any amount exceeding the average net income of the total number of managers in the United States for the most recent federal fiscal year for which such information is available.

(2) No licensed manager shall receive less vending machine income than he/she received during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

(3) No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced and operated by a licensed manager.

(4) The SLA will retain vending machine income disbursed by a property managing department, agency or instrumentality of the United States or received from vending machines on state or other property in excess of the amounts eligible to accrue to licensed managers.

B. Distribution of vending machine income: The SLA will disburse vending machine income from machines in direct competition to licensed managers on at least a quarterly basis. Use of income: If it is so determined by a majority vote of the licensed managers, after each manager has been furnished information on all matters relevant to such purposes:

(1) vending machine income from federal properties retained by the SLA in excess of the amount remitted to the managers will be limited to the following uses:

(a) the establishment and maintenance of retirement or pension plans;

(b) health insurance contributions; and

(c) provision of paid sick leave and vacation time for managers, if it is so determined by a majority vote of licensed managers licensed by the SLA after such agency has provided to each licensed manager information on all matters relevant to such purpose;

(2) any vending machine income from federal properties not necessary for the purposes listed above shall be used for one or more of the following purposes:

(a) maintenance and replacement of equipment;

(b) purchase of new equipment;

(c) management services; and/or

(d) assuring a fair minimum return to licensed managers.

[4/15/97; Recompiled 10/01/01]

9.4.5.25 - 9.4.5.26 [RESERVED]

9.4.5.27 LICENSED MANAGER BENEFITS:

A. Purpose: Describe benefits available to qualified licensed managers in the state's business enterprise program. Rates for benefits described below are contained in Appendix R.

B. Health insurance: The SLA, in consultation with the committee of licensed managers, makes available to each manager and at the manager's option, his or her immediate family, a health insurance plan.

(1) A displaced manager remains eligible for the health insurance plan for 12 months, beginning with the month following displacement.

(2) Upon termination of a manager's agreement or a licensed manager's license, health insurance benefits will cease 30 days after the date of the termination.

Note: The COBRA plan may be available.

C. Sick leave: Managers with agreements effective on or before the beginning of each state fiscal year (July 1) shall accrue up to 80 hours of sick leave during that state fiscal year, at the rate of 6.666 hours per month. Sick leave balances can be carried forward to a maximum of 240 hours. Payment for sick leave will be made at a rate determined annually by joint decision of the SLA and the committee of licensed managers.

(1) Sick leave payment will be made upon receipt of a sick leave form along with proper doctor's release to return to work. Refer to procedures manual for form to be used.

(2) Sick leave balances are reduced to zero hours when the licensed manager leaves the program.

(3) A displaced licensed manager is not eligible for the sick leave benefit during the period of displacement. Sick leave balances of displaced managers are reinstated if the displaced manager enters into a new manager's agreement before the end of the displaced manager maximum period. If the displaced manager leaves the program at the end of the displacement period, the sick leave balance is reduced to zero.

(4) Sick leave may only be used due to manager illness or incapacity of the manager to operate the facility.

D. **Vacation pay:** Managers with agreements effective on or before the beginning of each state fiscal year (July 1) shall accrue up to 80 hours of vacation time during that state fiscal year, at the rate of 6.666 hours per month. Vacation disbursements will be made at the end of each state fiscal year. A displaced manager is not eligible for the vacation benefit during the period of displacement. Vacation leave balances of displaced managers are reinstated if the displaced manager begins a new operating agreement both before the end of the state fiscal year and before the end of the displacement period.

E. **Leaves of absence:** A manager may request, in writing, a leave of absence for a period not to exceed six months. A leave of absence may be taken only for the purposes of (1) training or (2) extended illness. During a leave of absence, the manager does not accrue additional seniority, however, he or she does not lose seniority acquired prior to the leave. The manager must notify the SLA 30 days in advance of returning to the program. At this time the SLA will reinstate the manager in his or her previous facility or a comparable facility. If the SLA is unable to place the manager in his or her previous facility or a comparable facility, then the manager will become a displaced manager. If the manager is offered his or her previous facility or a comparable facility and refuses it, the refusal will be considered as a resignation from the BEP.

F. **Death benefit:** In the event of the death of a manager, his/her family shall be permitted to operate the facility under the existing agreement until a licensed manager is appointed to the facility, provided that the family's operation of the facility is satisfactory as determined by the SLA.

G. **Displaced manager benefit:** A displaced manager is eligible for the displaced manager monthly benefit for 12 consecutive months beginning with the first full month that the manager is displaced. The displaced manager benefit amount is determined jointly by the SLA and the committee of licensed managers.

H. **Liability insurance benefit:** The SLA, in consultation with the committee of licensed managers requires each manager to maintain general liability insurance. The SLA purchases general liability insurance for each vending facility and bills each manager for the cost of insuring his/her facility. Funds permitting, premium costs for liability insurance are provided by income from vending machines on nonfederal property retained by the SLA and temporary operation of nonfederal vending facilities by the SLA.

(1) At the end of each state fiscal year, managers are notified as to whether the SLA has sufficient funds to provide general liability insurance for the next year or whether managers will be responsible for all or part of the premium costs of liability insurance.

(2) Failure of a manager to pay his or her portion of general liability insurance may result in suspension or revocation of the manager's license.

I. **Fair minimum return benefit:** Each manager whose monthly net proceeds are less than the fair minimum return amount determined by the SLA in consultation with the committee of licensed managers is entitled to a minimum fair return from the set-aside fund provided the manager has operated the facility with good business judgement, including controlling costs consistent with the costs of other similar facilities. The fair minimum return benefit is calculated as follows:

(1) Fair minimum return maximum benefit - Net proceeds (not less than \$0.00) = fair minimum return amount.

(2) No minimum return amount shall be disbursed until approval by the business enterprise program manager that the costs are reasonable and that the manager has conducted the operations of the facility in a business like manner.

J. **Workers' compensation benefits:** For licensed managers who have at least one employee, the SLA will pay workers' compensation insurance for the first year that manager is in operation. At the end of that period, it is the responsibility of the licensed manager to pay workers' compensation for the employee(s). Failure to maintain workers' compensation insurance coverage for employee(s) will be grounds for disciplinary probation or termination.

K. **Funding of benefits:** Funds supporting all benefits will be paid by the set-aside fund, given adequate resources in the set-aside fund.

[4/15/97; Recompiled 10/01/01]

9.4.5.28 - 9.4.5.29 [RESERVED]

9.4.5.30 ACCESS TO PROGRAM AND FINANCIAL INFORMATION:

A. **Purpose:** To provide reasonable access by each manager to program and financial data of the SLA relevant to the operation of the state vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable federal or state laws pertaining to confidential information.

In addition, the manager shall be furnished a copy of the rules and regulations, the manager's agreement, and the permit. Insofar as practicable, such data shall be made available in braille or recorded tape.

B. **Staff assistance:** At the manager's request, the SLA shall arrange for a staff member to assist the manager in the interpretation of such data at a time and place agreed upon by the SLA and the manager. [4/15/97; Recompiled 10/01/01]

9.4.5.31 - 9.4.5.32 [RESERVED]

9.4.5.33 **ASSIGNMENT, TRANSFER AND PROMOTION OF LICENSED MANAGERS:**

A. **Purpose:** To provide guidelines for the assignment of licensed managers to specific business enterprises.

B. **Ready-for-assignment list:**

(1) All blind persons who have successfully completed training and other requirements as stated in Subsection 12.2.6 of this rule [now Paragraph (6) of Subsection B of Section 9.4.5.12 NMAC], as determined by the SLA and recommended by the committee of licensed managers, shall be placed on a ready-for-assignment list.

(2) Persons on the ready-for-assignment list shall receive announcements of vending facility openings distributed in accordance with this section of the rules and regulations.

C. **Priority assignment:** A manager who has been displaced from a facility through no fault of his or her own may be given priority to a new or vacant facility, if the requirements of operating the facility and its potential or actual earnings are comparable to those of the facility from which the manager was displaced. The SLA may offer a facility with comparable earnings to the displaced manager without going through the bidding process.

D. **Manager selection:** When a new facility is established or when a vacancy occurs in an existing facility to which no manager is entitled to be given a priority assignment, all managers on the ready-for-assignment list, and managers already assigned to facilities will be notified in writing of the availability of the facility, its operating requirements (including any special or unusual requirements), the current or potential earnings, and the time period in which to request assignment to it (please refer to procedures manual). Managers who wish to be assigned, transferred or promoted to the facility shall notify the SLA in writing.

E. **Criteria for assignment, transfer or promotion to a business enterprise facility:** The following evaluation procedure has been developed by the SLA staff and committee of licensed managers and will be followed in completing the evaluation and selection of managers. Details on the procedure are contained in the procedures manual. Assignment, transfer or promotion of a manager to a business enterprise facility shall include consideration of seniority, provided that all of the specified criteria listed below are satisfactorily met:

(1) Ability to meet the requirements of operating the facility as specified in the Permit for the particular facility. This is demonstrated in managing previous BEP facilities and/or on-the-job training.

(2) Satisfactory work habits including demonstrated ability to maintain required hours of work and comply with applicable health regulations. This is demonstrated in managing previous BEP facilities and/or on-the-job training.

(3) Work attitudes including good customer relations, and cooperation with property management and SLA staff. This is demonstrated by managing previous BEP facilities and/or on-the-job training.

(4) Knowledge and application of sound business practices including: timely and accurate submission of all reports pertaining to the operation of the facility; prompt payment of set-aside fees; prompt payment of creditors and employees; control of labor and food costs to demonstrate ability to make a reasonable profit; demonstrated ability to provide good quality menu items; and demonstrated ability to supervise, schedule, hire and terminate employees. This is demonstrated by managing previous BEP facilities and/or on-the-job training.

F. **Method of selection:** The applicant's evaluations and contact reports prepared by the SLA staff shall be utilized to obtain information pertaining to the foregoing criteria referenced in 33.5.1.A-D [now Paragraphs (1) through (4) of Subsection E of Section 9.4.5.33 NMAC], above. All applicants for assignment, transfer or promotion, other than the applicant entitled to a priority assignment referenced above, shall be evaluated on the basis of the above criteria by members of the vending facility program staff and the evaluation committee. The evaluation committee will make its considered recommendations to the executive director, who shall make the final decision as to which applicant will be assigned, transferred or promoted to the new or vacant facility or whether it is advisable to rebid the facility. See the procedures manual for detailed instructions and forms.

G. **Temporary operation of vending facilities:** In some cases, the SLA may determine that it is in the best interest of the program for a facility to be operated on an interim basis prior to bidding the facility. There are two methods by which the SLA provides for the temporary operation of vending facilities:

- (1) The SLA may assign a licensed manager the operation of a vending facility for a period not to exceed six months without bidding the facility.
- (2) The SLA may assign SLA staff or hire temporary staff to operate vending facilities on an interim basis.

H. **Probation:** All applicants chosen to be assigned, transferred or promoted to new or vacant facilities will be on probationary status for six months in order to evaluate the applicant's performance in the new facility. SLA staff will closely monitor the performance of the manager by making monthly evaluations. Staff will document any deficiencies in performance and ways to correct these deficiencies in a "Plan for Improvement" (see procedures manual). The probationary manager will be given a copy of the "Plan for Improvement" during a conference in which the SLA staff discusses the deficiencies with the manager and ways to correct the deficiencies. In addition, the licensed manager may request additional training in his or her areas of deficiencies as outlined during the probationary period. If at the end of the probationary period, deficiencies have not been corrected, the licensed manager's probationary period may be extended or the licensed manager may be removed from the facility with two weeks notice that he/she will be terminated. A manager removed for unsatisfactory performance will not be considered a displaced manager. If at the end of the six month period the manager has performed satisfactorily, he or she will be on permanent status.

I. **Satellite program:**

(1) If a vending facility goes out for bid and receives no satisfactory bids from any licensed manager, the facility becomes eligible for consideration as a satellite operation. The satellite facility shall be bid in the same manner as other facilities. If no bid is received from managers, the satellite may be put out to bid to any qualified blind individuals (e.g., non-licensed managers) to be operated under contract with the SLA. The facility will be rebid for period of time to be determined by the SLA as a primary facility. If the facility is not awarded as a primary facility, it will be rebid as a satellite. If no bid is received for the satellite, it will be released for bids from any member of the qualified blind community.

(2) If a licensed manager leaves the vending facility program for any reason, all claims to the satellite will be forfeited.

J. **Manager rights and responsibilities.**

(1) Each manager shall be provided with copies of all documents relative to the operation of the vending facility to which he or she is assigned including these rules and regulations, the operating agreement, and the contract or permit with the property managing agency. The SLA encourages vendor participation in the negotiating process whenever possible. The BEP staff will maintain records indicating that the licensed manager acknowledges receipt of such documents.

(2) Each manager shall acknowledge in writing that a copy of the documents listed above have been received and explained to him or her by the SLA (see Appendix 15, Procedures Manual) [now 9.4.7.26 NMAC].

(3) Each licensed manager shall comply with the terms set in his or her operating agreement. See Appendix B [now 9.4.5.40 NMAC].
[4/15/97; Recompiled 10/01/01]

9.4.5.34 - 9.4.5.35 [RESERVED]

9.4.5.36 OPERATING AGREEMENT BETWEEN STATE LICENSING AGENCY AND LICENSED MANAGER:

A. **Purpose:** The SLA shall develop, with the active participation of the state committee of licensed managers, an operating agreement which shall be entered into between the SLA and each manager. The operating agreement (see Appendix B) [now 9.4.5.40 NMAC] shall contain the terms and conditions of the licensed manager's conduct of business in a location for which a permit or contract has been entered into by the SLA. The operating agreement at a minimum must specify:

(1) the duties of the licensed manager and the level of performance required for such duties in accordance with standards prescribed by the SLA (developed with the active participation of the committee of licensed managers), applicable health laws and regulations, and with the terms of the permit granted by, or the contract entered into with the federal, state or other agency or organization in control of the site of the vending facility; and

(2) the responsibilities of the SLA to provide management services to the licensed manager including assistance and supervision, and the ways in which such responsibilities are carried out.

B. **Frequency of use:** An operating agreement is to be used each time a manager is assigned to a facility and shall be dated and signed prior to or upon the first day of business at any facility (See Appendix B) [now 9.4.5.40 NMAC]. A complete inventory of all equipment, saleable merchandise and initial stock provided by the SLA will be furnished to the manager as part of the operating agreement within 30 calendar days of the first day of business at the facility.

For a current copy of Appendices A through D [now 9.4.5.39 through 9.4.5.42 NMAC], call the: New Mexico Commission for the Blind, PERA Building, Room #553, Santa Fe, NM 87503 (505)827-4479 Fax: (505) 827-4475 [4/15/97; Recompiled 10/01/01]

9.4.5.37 - 9.4.5.38 [RESERVED]

9.4.5.39 APPENDIX A: VENDING FACILITY PROGRAM LICENSE:

APPENDIX A

**STATE OF NEW MEXICO
COMMISSION FOR THE BLIND**

**VENDING FACILITY PROGRAM
LICENSE**

The New Mexico commission for the Blind as the State Licensing Agency for the Randolph-Sheppard Vending Facility Program hereby awards to

this license to operate a vending facility in the New Mexico commission for the Blind Vending Program, subject to the terms and conditions of an operating agreement and the rules and regulations of the New Mexico commission for the Blind Vending Facility Program.

Executive director

Date
[4/15/97; Recompiled 10/01/01]

9.4.5.40 APPENDIX B: OPERATING AGREEMENT:

APPENDIX B

OPERATING AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, _____ by and between the NEW MEXICO COMMISSION FOR THE BLIND (State Licensing Agency), hereinafter referred to as the COMMISSION and _____, licensed by the commission as a licensed manager under the Randolph-Sheppard Program, hereinafter referred to as MANAGER, WITNESSETH:

WHEREAS, the commission has been granted a permit by _____ for the operation of a vending facility by a licensed blind manager under the Randolph-Sheppard Program hereinafter referred to as PERMIT on the property located at

_____, a copy of which permit is attached hereto and made a part hereof; and

WHEREAS, the commission has offered the Manager the opportunity to operate the vending facility under the terms and conditions hereinafter set forth; and

WHEREAS, the Manager has agreed to undertake the operation of the vending facility under the terms and conditions hereinafter set forth; and

WHEREAS, the parties do not intend to derogate in any way from responsibilities and rights imposed and granted by applicable Federal, State, or local laws or regulations by this agreement;

NOW, THEREFORE, in consideration of the premises, it is mutually agreed as follows:

A. RESPONSIBILITIES OF THE COMMISSION:

1. The commission will equip the vending facility for carrying out the business authorized by the permit.
2. The commission will furnish initial stocks of merchandise and petty cash sufficient to enable the Manager to commence operating the business authorized by the permit. The commission will also furnish the Manager with a complete inventory of all equipment, initial stock, and petty cash provided.
3. The commission will maintain the equipment at the vending facility in good repair, and will replace obsolete and worn out equipment as necessary.
4. The commission will provide for substitute operation of the vending facility as may be necessitated by the Manager's absence because of an emergency. The salary of the person who substitutes for the Manager, or that of other emergency help, shall be charged to the vending facility where the service is performed.
5. The commission will provide, or will provide for, supervisory and management services necessary for the efficient operation of the vending facility.

B. RESPONSIBILITIES OF THE LICENSED MANAGER:

1. The Manager will be responsible for having the vending facility open for business on the days and during the hours specified in the permit.
2. The Manager will operate the vending facility business on a cash basis except for such credit accounts as may be established or authorized by the commission.
3. The Manager will be accountable to the commission for the proceeds of the business of the vending facility, and will handle the proceeds, including payments to suppliers and deposits of funds, in accordance with instructions from the commission.
4. The Manager will carry on the business of the vending facility in compliance with applicable health laws and regulations.
5. The Manager will take proper care of the equipment of the vending facility, and will make alterations or changes therein only with the written approval of the commission.
6. The Manager will notify the commission a reasonable time in advance of taking any voluntary leave from the vending facility, and as soon as possible with respect to any involuntary leave.
7. The Manager will keep such records and make such reports as the SLA shall require.
8. Proper professional attire and hygiene will be evidenced at all times.
9. Appropriate professional behavior towards Property Management, employees, customers and SLA will be expected at all times.

C. GENERAL:

1. The business to be carried on at the vending facility will be limited to that specified and authorized in the permit.
2. The right, title, and interest in and to the equipment of the vending facility, the stock in trade, and funds on hand are vested in the commission, and will be left at the vending facility or turned over to the commission on the termination of this agreement for any reason by either of the parties. In such an event the fair market value of the Manager's interest will be determined by the commission and paid to the Manager or to the Manager's heirs or assignees.
3. The monthly income of the Manager shall be the net profits of the business of the vending facility for the period in question, less the funds which must be set aside, as established in writing by the commission pursuant to 34 CFR 395.9. The net profits will be augmented by an amount necessary to bring the monthly income up to the fair minimum return.
4. Rebates, commissions, vending machine income disbursed by the SLA to the Manager, or bonuses received by the Manager from suppliers are, and must be accounted for as, income of the vending facility and subject to the set-aside fee. Under no circumstances are such funds to be treated as the separate, personal funds of the Manager.

Machine Income Sharing: The type and location of each vending machine located in this property and the specific income sharing provisions in 34 CFR 395.32 applicable to each such machine will be indicated in Attachment F. Vending machine income will be disbursed to the commission for the Blind on at least a quarterly basis, or as otherwise agreed.

Other Terms and Conditions: Both parties must comply with 34 CFR 395.35. Any additional terms and conditions applicable to this location are in Attachment G. This permit is issued for an indefinite period of time subject to suspension or termination for noncompliance by either party with any of the agreed upon terms and conditions of the permit. By mutual agreement, the commission for the Blind and the property agency/owner may terminate the permit after providing notice of the intended termination, including the reason for it and supporting documents, to the other party. Both parties must comply with all regulations issued in Title VI of the Civil Rights Act of 1964. The reason for denying the application must be sent in writing to the New Mexico Commission for the Blind.

Approving Property Official

Commission for the Blind

_____ Title	_____ Date	_____ Title	_____ Date
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<u>ATTACHMENT A</u>		
<u>SATISFACTORY SITE EXCEPTIONS</u>	PERMIT FOR VENDING FACILITY	Appendix C, Page 3
<u>ATTACHMENT B</u>		
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<u>ATTACHEMENT C</u>		
<u>TYPES OF ARTICLES AND SERVICES TO BE OFFERED</u>	PERMIT FOR VENDING FACILITY	Appendix C, Page 5
<u>ATTACHMENT D</u>		
<u>FIXTURES AND EQUIPMENT</u>	PERMIT FOR VENDING FACILITY	Appendix C, Page 6
<u>ATTACHMENT E</u>		
<u>VENDING MACHINES WHICH ARE PART OF THIS VENDING FACILITY</u>		
<u>Description:</u>	<u>Location:</u>	<u>Number:</u>
	PERMIT FOR VENDING FACILITY	Appendix C, Page 7
<u>ATTACHMENT F</u>		
<u>COMPETING VENDING MACHINES - INCOME SHARING (COMMISSIONS)</u>	PERMIT FOR VENDING FACILITY	Appendix C, Page 8

ATTACHMENT G

OTHER TERMS AND CONDITIONS

[4/15/97; Recompiled 10/01/01]

**9.4.5.42 APPENDIX D: PERMIT FOR VENDING FACILITY ON STATE PROPERTY:
APPENDIX D**

PERMIT FOR THE ESTABLISHMENT OF A VENDING FACILITY ON STATE PROPERTY AS AUTHORIZED BY SECTIONS 22-14-24 THROUGH 22-14-29 NMSA 1978:

This Agreement is between the commission for the Blind Vending Facility Program (hereinafter "CB"), the Property Control Division, General Services Department (hereinafter "PCD"), and _____ (hereinafter "User Agency") all of which are agencies of the State of New Mexico.

WHEREAS, the State of New Mexico has determined a need for the vending sales listed hereinafter and has determined that the space allocations described hereinafter are appropriate, and

WHEREAS, CB has determined that a sufficient CB vending facility program exists to fulfill the vending needs of PCD, the parties agree as follows:

Pursuant to Sections 22-14-24 to 22-14-29 NMSA 1978, PCD, which has responsibility for the Premises listed below, hereby grants to CB a permit to operate a vending facility on the said Premises subject to the following terms and conditions:

Name of licensed manager:

Tax ID Number:

1. In the event that the Licensed ceases operation, the Commission for the Blind will be responsible for providing PCD with the name of the new Manager and copy of the operating agreement.
2. Location of Premises (give building, street, city, and specify particular portions of the building, when appropriate):

PCD Building Number: (hereinafter the "Premises").

3. Term of Agreement:

Beginning Date:

Ending Date:

4. Hours of Operation (give days of the week and hours each day that the program will be operated):

Days of the Week:

Hours of Operation:

5. Goods Vended:

(A) PCD authorizes the sale of routine articles such as newspapers, periodicals, food, beverages and other routine and sundry items except as further required under Section 3 [5](B) of this Agreement and as required herein (list all requirements and restrictions):

Tobacco products will not be sold.

Require use of lids for coffee, soups, stews or other liquid products that may spill. Cups of ice and/or water shall be reasonably priced based upon the cost to the licensed manager.

(B) User Agency requires and/or restricts CB sales to products as follows:

6. Warranty: “CB” warrants that all goods vended shall be of marketable quality and handled, stored and sold in accordance with all applicable laws and regulations. “CB” shall notify User Agency in writing within fifteen (15) days prior to any substantial change in quantity or character of goods vended.

7. Costs: PCD and/or User Agency (as may be applicable) shall not charge any rent or other use fee to CB and shall provide CB with all appropriate utilities for operation of the vending facility pursuant to Subsection C of Section 22-14-27 NMSA 1978. CB and/or its licensees shall not be required to provide a performance bond to PCD.

8. Installation of equipment: CB shall pay for and install all fixtures and equipment needed for operation of the vending facility subject to approval of the director of PCD: List below all equipment to be installed by PCD or user Agency. List separately CB equipment specifically receiving the approval of the PCD director:

CB: see attached listing of equipment inventory

9. Competition: Check appropriate paragraph:

_____ No vendors, other than those under contract with CB, or other competing vending operations (such as employees’ social funds, coffee funds, etc.) shall be allowed to operate on the Premises.

_____ There are no vending machines or other competitive vending services offered at the Premises except as follows:

_____ Competitive vending services on the Premises shall be allowed as follows: (list type of service/product, areas of location, and restrictions on proximity of sales by CB as applicable):

10. Preference to CB: PCD and User Agency agree that CB shall be given a preference in the operation of its vending facility and that the non-CB vending operations specified herein shall not adversely impact CB’s ability to do business. PCD further agrees to limit non-CB vending contracts to two years in order to assure periodic review of the impact of such operations on CB sales. Should an adverse impact be established, PCD agrees to either not renew the non-CB vending contract or modify it upon renewal in a manner that is designed to eliminate the adverse impact.

11. Approval of Contracts: All non-CB vending contracts entered into by PCD shall receive the approval of CB before coming into force. Such approval shall not be withheld unreasonably and, in any event, shall not be withheld when CB cannot offer the vending sales called for in the contract.

12. Cleaning: CB shall provide routine janitorial services to all areas of the Premises (including equipment) where food preparation takes place. PCD or User Agency, as applicable, shall provide routine janitorial services to all remaining portions of the Premises, providing, however, that CB shall clean all fixtures and equipment in the serving areas, and shall clean all storage areas.

13. Permits: CB shall obtain all necessary permits required for vending facility operations and the facility shall be operated in compliance with applicable health, sanitation and building codes or ordinances.

14. Insurance: PCD, CB and User Agency are entities of the State of New Mexico and are only subject to liability insurance under the terms of the New Mexico Tort Claims Act. licensed managers are independent contractors and shall carry food purveyors and general liability insurance in an amount not less than one million dollars (\$1,000,000) to cover operations of this facility.

15. Nondiscrimination: CB shall take all actions necessary to assure that the licensed manager does not discriminate against any person or persons in the use and services of said vending facility on the basis of race, color, age, religion, gender, national origin or disability.

16. User Agency Representative: The User Agency will appoint a representative that will serve as the liaison between the User Agency and CB, in regard to matters involving the operations of the Vending Facility. The Representative will solicit input from staff of the User Agency and develop recommendations regarding the operations of the Vending Facility. The recommendations will be reviewed and approved by the User Agency administration before transmittal to CB. The User Agency Representative shall transmit such recommendations in writing directly to the commission for the Blind Vending Facility Program and shall *not* have the authority to unilaterally order any operation of the vending facility to be modified or terminated. The User Agency Representatives will focus on, but not be limited in their recommendations to, areas such as pricing of food and drink items, vending machine placement and pricing, menu items, and general operation of the vending facility.

17. Operation of Vending Facility: CB agrees to operate the vending facility through its licensees, by meeting the following minimum requirements:

(A) CB will provide a capable, licensed manager, acceptable to PCD and User Agency, and that all personnel employed will maintain good work ethics and shall maintain professional work standards.

(B) CB shall provide fixtures and equipment used in the service area (not otherwise specified in Section 8 of this Agreement) including, but not limited to, counters, display cases, refrigerators, coffee urns, steam tables, toasters, and ice cream cabinets.

(C) CB will provide all expendable items for snack bar or cafeteria operations, including, but not limited to, dishes, silverware, pots, pans, dish carts, cups, trays, and paper products such as towels and napkins.

(D) CB shall supervise and assist the Manager in management of the vending business, and in maintaining a working relationship with User Agency and PCD.

(E) CB shall provide User Agency with a price list of all items to be sold. This list shall be delivered to User Agency in writing prior to initiation of sales. CB shall not substantially change the prices or items on said list without first giving the User Agency 15 days written notice and obtaining the consent of User Agency. User Agency shall not unreasonably withhold its consent, and, in any event, consent shall not be withheld when due cause for the change is established by CB.

(F) licensed manager agrees to maintain the work area in a clean and sanitary manner per Paragraph 12.

18. Licensed managers: CB agrees to allow only properly licensed CB managers to use the Premises for sales, provided however, that CB may assign vending stand trainees to work on the Premises. It is further agreed that the Manager, duly licensed by CB, shall be entitled to hire non-licensed persons to assist him in sales operations and food preparation. It is further agreed that CB, through its licensees, may contract with private vendors and suppliers, distributors and producers of products for supplying product sales through the CB Vending Facility Program and in lieu of direct operation by a licensee, provided however, that solicitation for and selection and award of such sales shall be pursuant to a predetermined, written procedure requiring competitive proposals or sealed bids. This requirement does not apply to the purchase of goods and services used for vending facilities actually operated by a licensee on a full time basis, but rather only to vending facility operations contracted with private vendors. Proceeds of such sales shall be administered according to laws and regulations governing the CB Vending Facility Program. CB further agrees that all contracts between CB (and/or its licensees) and private vendors shall require the private vendor to provide a performance bond. CB shall thoroughly investigate any complaints regarding vending operations and revoke the license of any Manager of vending sales who fails to meet CB standards or the terms of this Agreement (permit).

19. Termination:

(A) The PCD director may terminate this Agreement with 60 days written notice to CB if any Agency space needs require the elimination of all space for all Concession Sales in the building and for other good cause shown, including but not limited to public health and safety.

(B) If partial elimination of concession sale space takes place, CB vending stand sales shall have priority for the remaining space available.

(C) Cancellation of this Agreement shall be based on certification by the User Agency or other state Agency that its space needs cannot include any type of concession sales and must be used for the operation of the Agency's business.

(D) CB may terminate this Agreement by giving the PCD director 60 days written notice in advance of the last day of operation of the vending facility which is to be closed.

20. Right of Entry and Inspection: The PCD director or his designee shall have the right to enter and inspect the Premises and equipment therein during normal business hours, as defined in Section Two of this Agreement, and at all times in the event of emergency. In the event of emergency, CB shall provide all keys necessary for entry to the Premises to the PCD director or his representative.

21. Agreement Constitutes Permit: This Agreement shall also constitute a Vending Facility Permit to CB.

22. Maintenance of Premises: It is agreed that normal maintenance of the premises will be the responsibility of the New Mexico General Services Department (User Agency). This shall include items such as lighting, doors, heating and cooling, etc. It is further agreed that maintenance of food service equipment will be the responsibility of the licensed manager and CB.

- Items: a.
b.
c.
d.

23. Telephones: User agency and Property Control director shall not be required to provide a telephone to licensed manager on the premises. licensed manager agrees to the responsibility of providing telephones.

24. Indemnification: CB shall defend, indemnify and hold PCD and User Agency harmless from all actions, proceedings, claims, demands, damages, costs, including but not limited to Attorney's fees, and all other liabilities and expenses of any kind from any source which may arise out of this Agreement or any amendment thereto, if caused by the tortuous act of CB and/or its licensees, employees, officers, or servants, and/or the employees, officers or servants of CB licensees.

This Agreement is entered into the dates below:

The Commission for the Blind

By: _____ Date _____
Name:
Title: Executive Director

Property Control division, General Services Department

By: _____ Date _____
Name:
Title: director GSD/PCD

User Agency

By: _____ Date _____
Name:
Title:

Responsible for Maintenance (Per Paragraph 22)

Copy of this Permit to be given to Licensed Manager.

Attachment: Operating Agreement Between CB and Licensed Manager

By: _____
Date: _____
General Services Department
Building Services division
Contact: _____

Attachments: Operating Agreement
 List of CB Equipment
 Copy of Liability Insurance
[4/15/97; Recompiled 10/01/01]

HISTORY OF 9.4.5 NMAC: [RESERVED]