

BUSINESS ENTERPRISE PROGRAM

RULES AND REGULATIONS

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I. DEFINITIONS

- A. "THE ACT" means the Randolph-Sheppard Vending Stand Act (Public Law 74-732), as amended by Public Law 83-565 and 93-516, 20 U.S.C. Chapter 6A, Section 107.
- B. "BLIND PERSON" means a person having not more than 20/200 visual acuity in the better eye with best correction or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision to such a degree that its widest diameter subtends an angle of no greater than 20 degrees. Such blindness shall be certified by a licensed physician who specializes in diseases of the eye.
- C. "BUSINESS ENTERPRISE PROGRAM" (BEP) means the program administered by the Commission which provides self-employment opportunities for blind persons to operate its vending facilities. It is established under the provisions of ORS 346.510 to 346.570.
- D. "COMMISSION" means the Oregon Commission for the Blind which is the agency of the state of Oregon which provides rehabilitation services for legally

blind persons within the state. It is also the licensing agency assigned to administer the Act.

- E. "DIRECTOR" means the director of the Oregon Business Enterprise Program.
- F. "FEDERAL PROPERTY" means any building, land or other real property owned, leased or occupied within the state by any department, agency or instrumentality of the United States or other instrumentality wholly owned by the United States.
- G. "LICENSE" means a written instrument issued by the Commission authorizing a qualified blind person to operate a vending facility.
- H. "LICENSEE" means a person who has been issued a license and is eligible to apply for any vending facility.
- I. "MANAGER" means a person currently assigned to a vending facility and working under an operating agreement.
- J. "MANAGERS' COMMITTEE: BUSINESS ENTERPRISE CONSUMER COMMITTEE" (BECC) means a group of managers that work with the Commission to

help determine policies for the administration of the BEP.

- K. "NET PROCEEDS" means the amount remaining from the sale of articles or services of vending facilities, and vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges).
- L. "NET PROFIT" means Net Proceeds minus set-aside payment.
- M. "OPERATING CONTRACT" means the agreement between the manager and the Commission stating specific terms of operation for a particular vending facility.
- N. "PERMIT" means the agreement between the Commission and the agency, person or entity having care, control or custody of the property authorizing the establishment of a vending facility.
- O. "SET-ASIDE FUNDS" means those funds paid by managers to the Commission from the net proceeds of the operation of a vending facility.
- P. "STATE PROPERTY" means any building,

land or other real property, owned, leased, or occupied by any state department or agency, or any of its political subdivisions except public elementary and secondary schools.

- Q. "TEMPORARY MANAGER" means a person assigned to a vending facility for up to 90 days, while operating under temporary agreement.
- R. "VENDING FACILITY" means a manager-operated cafeteria, snack bar or dry/wet facility, or vending machine route which may sell newspapers, confections, tobacco products, foods, beverages and other articles or services dispensed from automatic vending machines or manually.
1. "CAFETERIA" means a food dispensing facility providing a broad variety of foods and beverages prepared on the premises, including hot meals.
 2. "SNACK BARS" means a facility selling limited lines of refreshments and some prepared foods.
 3. "DRY/WET FACILITY" means a manual dispensing facility selling prepackaged refreshments.

4. “VENDING MACHINE ROUTE” means a series of vending machines in various locations directly operated by a manager. A manager may put a part of the vending route on full service with the director’s approval.

II. ISSUANCE AND CONDITIONS OF LICENSES

A. ELIGIBILITY REQUIREMENTS

1. A blind person will be accepted into the BEP training program if there is a reasonable expectation that such person will complete the program and meets all of the following criteria:
 - a. Is a citizen of the United States
 - b. Is a blind person as defined in I.B of these Rules and Regulations
 - c. Is certified by the Commission’s Rehabilitation program as qualified to operate a vending facility.

B. TRAINING PROGRAM

1. An evaluation will be conducted at an existing BEP unit, in order to assess the trainee’s strengths and weaknesses relative to working in a vending facility.
2. Each trainee will complete a training

course consisting in all aspects of vending facility operation and including an on-the-job-training program conducted at existing BEP units.

3. A final exam will be administered upon completion of the training program.

C. LICENSING

1. A license will be issued upon successful completion of the BEP training program and final exam, for an indefinite period but subject to suspension or termination if, after affording the manager an opportunity for a full evidentiary hearing, the Commission finds that the vending facility is not being operated in accordance with these rules and regulations, the terms and conditions of the permit, or the terms and conditions of the written agreement with the manager.
2. A license will be issued to a former blind manager moving from another state only after the following items have been completed:
 - a. An information release has been signed for all states where rehabilitation services have been received. Applicant must have no past debts with other rehabilitation

- agencies.
 - b. An evaluation with a manager has been completed.
 - c. A final exam has been successfully completed.
 - d. The director is satisfied with the person's knowledge and skills to be a qualified manager. Further training may be required on an individual basis.
3. A license will be issued to former Oregon managers if the following criteria have been met:
- a. The person owes no past due set-aside payments or other past debts to the BEP.
 - b. The person has successfully completed the final exam.
 - c. The director is satisfied with the person's knowledge and skills to be a qualified manager. Further training may be required by the director.
4. When BEP has grounds for termination or suspension of a license, BEP shall give written notice to the manager of the intent to either terminate or suspend a license. A notice from the director will include a date of suspension or termination and specify the grounds.

- a. Termination shall take place within 30 days of receipt of written notice
- b. Manager will have 15 days to file an appeal. The termination date will then be set by the appeal process
- c. The director may immediately suspend or refuse to renew a manager's license if there is a serious danger to public health or safety. In this event, an emergency suspension order shall be issued as provided under OAR 137-03-010 of the Attorney General's Model Rules of Procedure. This provision will be used by the director when it is determined that the health and safety of the manager, the employees or the customers is at stake, or when the actions of the manager places the Commission in jeopardy of losing the facility because of non-compliance with the permit or operating agreement

5. The following are reasons for termination or suspension of a manager's license:

- a. Manager ceases to meet eligibility requirements
- b. Licensee or manager resigns from the BE Program
- c. Manager abandons the vending facility, which is defined as: two (2) days in which the manager is absent and no service is provided to customers
- d. The vending facility is not being operated in accordance with the law, these rules and regulations, the permit or the manager operating agreement
- e. Any willful or malicious destruction of equipment furnished by BEP or the agency named in the permit
- f. Conduct of the manager interferes with any aspect of the operation. Such conduct includes but is not limited to the following:

- 1. Fraud
- 2. Intoxication or a drugged state while on duty
- 3. Inexcusable neglect of duties
- 4. Embezzlement
- 5. Making false reports
- 6. Failure to submit to a medical exam when

- requested by BEP
7. Failure to pay taxes, fees, or debts arising from operation of the vending facility
 8. Failure to pay set-aside charges, scheduled repayments, or penalties for more than ninety (90) days. Also, late reports and/or set-aside payments more than three (3) times in a calendar year
 9. Failure to maintain required insurance coverage
 10. Failure to personally manage the facility
 11. Failure to provide records or financial reports when requested
 12. Any other action or behavior which would seriously jeopardize the vending facility service
 13. Operation of a motor vehicle by a manager while on duty or while traveling to or from a vending facility

consultation with the Business Enterprise Consumer Committee (BECC).

3. Topics covered in the in-service training sessions will include refresher training on recurring issues and on new topics, problems, products, procedures and interests.

B. RETRAINING

1. In the event that a manager requires retraining, whether it is due to medical problems, inadequate initial training, new technology, or any other reason, the Commission will arrange for such retraining as soon as is mutually convenient.
2. Participation in such retraining will be dependent upon the manager being currently in good standing, which is defined as being in compliance with all of the provisions of these rules and regulations.
3. Post employment services shall be provided

as

vocational rehabilitation services as necessary to assure that the maximum vocational potential of such licensees is achieved and suitable employment is maintained within the State's vending facility program.

(34 CFR 395.11)

IV. VENDING FACILITY EQUIPMENT AND STOCK

A. COMMISSION'S RESPONSIBILITY

1. The Commission is responsible for furnishing each vending facility with adequate, suitable equipment and initial stocks of merchandise necessary for the establishment and operation of such facility.
2. Generally, the right, title to, and interest in the equipment of each vending facility used in the program and the stock will be vested in the Commission.
3. The Commission will provide the initial stock and supplies and a change fund upon opening of each unit. This initial inventory level is the minimum that must be maintained by the manager.
4. Need for equipment for established facilities shall be determined by BEP staff in consultation with the manager assigned to the unit.

B. MANAGERS' RESPONSIBILITY

1. Upon termination of the operating agreement, the manager shall surrender all equipment to the Commission.
2. Equipment shall be maintained in good condition by the manager while using it in the vending facility.
3. New managers will pay back the amount of the initial stock plus change fund beginning six (6)

months after taking over the facility, at a rate of 5% of initial balance per month. Transferred managers will begin payment immediately at the above rate.

4. Upon leaving the facility, the manager will receive any overpayment after all late fees, health insurance, liability insurance and set-aside payments have paid.

C. MANAGER PURCHASE OF EQUIPMENT

1. Manager purchase of equipment may be done only with BEP staff written approval. The terms for payment and the manager's deduction of costs will be contained in a written agreement between the manager and the Commission.
2. The purchased equipment must be maintained and kept in clean and workable order by the manager, as determined by BEP staff.
3. When the manager leaves the facility, the Commission retains first option to purchase the equipment, at fair market value.
4. It should be noted that this section applies only to manager purchase of additional equipment for the facility. The right, title to and interest in the equipment purchased initially to establish the vending facility will be vested solely in the Commission.

V. MAINTENANCE AND REPLACEMENT OF EQUIPMENT

A. COMMISSION'S RESPONSIBILITY

1. The Commission shall maintain (or cause to be maintained) all vending facility equipment in good repair and attractive condition, and shall replace (or cause to be replaced) worn-out or obsolete equipment as required to assure the continued successful operation of the facility.
2. Repairs required during the first six (6) months for a new piece of equipment will be the responsibility of the Commission.
3. Repairs required during the first three (3) months for used equipment transferred into a facility will be the responsibility of the Commission.
4. Repairs required during the first thirty (30) days for equipment in a facility with a newly-promoted or transferred manager.
5. Repairs required during the first six (6) months for a manager new to the program.
6. The cost of a repair call in excess of an amount negotiated annually with the BECC, up to two calls per piece of equipment per year. The Commission will pay for additional repairs or replace the equipment at its discretion.

B. MANAGERS' RESPONSIBILITY

1. The manager shall maintain equipment in good condition while it is in use in the facility.

2. The cost of a repair call up to the amount negotiated annually with the BECC, up to two calls per piece of equipment per year.
3. If the damage is caused by manager neglect, that manager will assume the full repair cost.
4. Upon termination of the operating agreement, the manager shall surrender all equipment to the Commission.
5. Repairs may be authorized by a manager and service completed for any repair that costs up to the amount negotiated annually with the BECC. Any repair that costs more than that amount must be approved by BEP staff, unless an emergency situation exists and BEP staff is not available for approval. An “emergency” is defined as a situation that could cause loss of resale inventory, bodily harm to facility employees and/or customers, or a harmful effect on the environment.
6. Managers are responsible for insuring that the Commission is not involved in repair payments for equipment that is not owned by the Commission.

VI. TRANSFERS AND PROMOTION OF VENDORS

A. NOTICE AND ELIGIBILITY

1. When a vacancy becomes available at a vending facility, an announcement will be sent to all licensees and managers. Such

announcement will provide pertinent information regarding the facility, including the available equipment, the kinds of food currently sold, the sales figures and net proceeds for the past three (3) years (or the projected annual net proceeds for new facilities), and any other available information that might assist licensees and managers in deciding whether or not to apply.

2. All eligible licensees and managers may apply for any vacancy. The term “eligible” is defined as:
 - a. Having no past due indebtedness to the Commission
 - b. Having been assigned to the current facility for at least six (6) months
 - c. Having attended at least three (3) BECC meetings per year, unless excused for a valid reason. “Valid reason” is defined as a documented medical excuse, a death in the family, or a family emergency.

B. SELECTION

1. A selection committee will be formed, consisting of at least one representative of each group listed below:
 - a. A BEP staff member as a facilitator
 - b. Up to two members of the managers’

- committee (BECC)
- c. Up to two management persons from the building where the facility is located
2. Personal interviews will be conducted at the facility site. The committee will grade all applicants in four areas:
 - a. Past record as a manager
 - b. Education/training
 - c. Other experience
 - d. Interpersonal skills
 3. Personal interviews will be limited to five (5) applicants. If more than five persons apply for that facility, the director will select the top five candidates for an interview, using the above four criteria.
 4. If only one applicant applies, the director may make the selection without going through the formal selection process.
 5. It should be noted that this transfer and promotion process was developed with the active participation of the BECC.

VII. VENDING MACHINE INCOME ON FEDERAL PROPERTY

A. Direct Competition Machines:

1. Direct Competition Machines are those

machines located on the same property as the location of the vending facility

2. Income will be distributed to the manager operating such facility, not to exceed the average net income of all managers in Oregon (as determined each fiscal year on the basis of each prior year's operation), or the average net income of the total number of vendors in the United States, whichever is less
3. The Commission will retain vending machine income disbursed by a property managing department, agency or instrumentality of the United States in excess of the amounts eligible to accrue to managers

B. Non-Direct Competition Machines:

1. Income collected by the Commission from vending on Federal property, which is not distributed to a manager, shall be used for the establishment and maintenance of a retirement plan, for health insurance contributions and for paid sick leave and vacation
2. The use of vending machine income will be determined by a majority vote of the managers, after the Commission has

provided relevant information to all managers.

3. No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a manager
4. The Commission will disburse vending machine income to managers on at least a quarterly basis
5. Any vending income not needed for these purposes shall be used by the Commission for set-aside purposes of the Business Enterprise Program. Any assessment charged to the managers shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

VIII. EVIDENTIARY HEARINGS AND ARBITRATION OF VENDOR COMPLAINTS

A. ADMINISTRATIVE REVIEW

1. Any licensee may file a written complaint with the director concerning any BEP staff member or the operation of the program, except when the director has given notice

of intent to suspend or terminate the licensee's license. In that situation, the licensee may request a hearing as provided under Paragraph B.

2. If the director's response is not considered to be satisfactory, a request for an administrative review must be submitted to the Administrator of the Commission.
3. A time and place for a review will be assigned and the licensee will be notified in writing. A review will be conducted as soon as is practical.
4. The review will be informal and the licensee will have adequate opportunity to ask questions and discuss the problems, which gave rise to the complaint. The Administrator will mail a written decision within fifteen (15) days of the review.
5. A full evidentiary hearing may be requested if the informal review does not resolve the dispute.

B. Fair Hearing:

1. A licensee may request a hearing in response to a notice of intent to suspend or terminate the licensee's license or if the licensee is dissatisfied

with the decision of the administrative review panel discussed under Paragraph A (5). A written request for a fair hearing must be submitted to the Administrator within fifteen (15) working days of receiving the notice of intent to suspend or terminate the license or of the administrative review panel decision.

2. The hearing will be conducted as a contested case hearing under the procedures set forth in ORS 183.413 to 183.497.
3. In the event a licensee is dissatisfied with the results of the fair hearing, an arbitration panel may be requested by filing a complaint with the Secretary of Education as authorized by Section 107 (d)1 of the Randolph-Sheppard Act, and 34 CFR 395.13 (a) of the regulations issued pursuant to the Act.

IX. ACCESS TO PROGRAM AND FINANCIAL INFORMATION

A. REPORTS

1. Each licensee shall be provided access to all program and financial

data of the Commission relevant to the operation of the BE Program, including quarterly and annual financial reports, to the extent that such disclosure does not violate applicable federal and state laws pertaining to disclosure of confidential information

2. Insofar as is practicable, such data will be made available in braille or recorded tape.

3. At the request of a licensee, the Commission will arrange a convenient time to assist in the interpretation of such data

X. **EXPLANATION OF RIGHTS AND RESPONSIBILITIES TO VENDOR**

A. DOCUMENT COPIES

1. The Commission will furnish to each manager copies of documents relevant to the operation of the vending facility, including the rules and regulations, a written description of the arrangements for providing services, and the agreement and permit covering the operation of the vending facility

2. Each manager may request an explanation of these documents by written request to the director, who will arrange for such explanation as soon as is practical

XI. EXTENT OF SET-ASIDE FUNDS

A. ASSESSMENT

1. The Commission will assess each vending facility a monthly charge against the net proceeds of that facility. In concert with the managers' committee, the current charge has been established at eleven (11) percent of the net proceeds of each facility.
2. This set-aside charge has been determined to be necessary to provide adequate maintenance and growth of the BE Program.

XII. PURPOSES OF SET-ASIDE FUNDS

A. LIST OF PURPOSES

1. The Commission, in concert with the managers' committee, has determined that set-aside funds may only be used for the following purposes:

- a. Maintenance and repair of equipment
- b. Purchase of new equipment
- c. Management services
- d. Assurance of a minimum return to managers
- e. Establishment of a retirement or pension plan, and vacation, sick leave or health insurance contributions

XIII.

STATE COMMITTEE OF BLIND VENDORS

A. DUTIES OF MANAGERS' COMMITTEE

1. The Business Enterprise Consumer Committee (BECC) is a group of elected managers who actively participate with BEP staff in major administrative decisions and policy and program decisions affecting the overall administration of the program, including:

- a. The development of policies which govern duties, supervision, transfer, promotion, and financial participation of the managers; and
- b. Setting out the method of

- determining the set-aside charges to be levied against the net proceeds of the managers
 - c. Receive and transmit to the Commission grievances at the request of licensees and serve as advocates for such licensees in connection with such grievances
 - d. Actively participate with the Commission in the development of training and retraining programs for licensees, and
 - e. Sponsor, with the assistance of the Commission, meetings and instructional conferences for licensees within the state
 - f. Meet at least bimonthly and more often if necessary
2. If recommendations of the State Committee of Blind Vendors are not accepted, the Commission will provide
- a written explanation, including the reasons for the decision reached or the action taken, in a timely manner

A. ELECTIONS

1. Elections will take place at the fall in-service BECC meeting
2. Managers will hold two-year terms and may be re-elected to that seat
3. The committee shall be representative, to the extent possible, of all licensees within the BEP on the basis of factors such as geography and vending facility type, and, as a goal, proportional representation of managers on federal and other property
4. Participation by any licensee in any election shall not be conditional upon the payment of dues or any other fees

APPENDIX A
OPERATING AGREEMENT

This agreement is between the Oregon Commission for the Blind Business Enterprise Program and

_____,
for unit # _____ located at _____
_____.

It is a one-year agreement that will begin _____
and will end _____.

Commission's Responsibility:

1. The Commission will purchase and replace all BEP-owned equipment in the unit. Repairs will be paid in full by the BEP with the manager paying the first \$70 of each repair call, up to two calls per year, per equipment, per year, then the BEP will pay for further repairs or replace the equipment at the BEP's discretion. If damage is caused by manager neglect, then manager assumes full repair cost.
2. A quarterly review will be sent to all vendors. It will include all operating percentages.
3. An invoice will be sent each month to the

vendor listing required payments for liability insurance, set-aside payments and any other associated payments due.

4. The Commission will publish a vacancy announcement whenever a unit becomes available. Actual sales, gross profit and net proceeds for the unit for the last three (3) years will be published in these announcements.
5. The Commission will oversee all requirements of the permit. If requested by permit agency, the Commission will terminate this agreement and will install a temporary manager until vacancy can be filled by the required selection process.
6. A copy of the rules and regulations governing this program has been delivered to the vendor on this date _____/_____.
(mgr. initials)

Manager's Responsibility:

1. Manager will open unit at _____ and will remain open until _____ each day except holidays.

2. Manager is responsible for monthly payment of business liability insurance through the Commission for the Blind.

3. After receipt of the monthly invoice, the monthly profit and loss report and the set-aside invoice payment must be postmarked by the fifteenth of each month unless the fifteenth falls on a weekend or legal holiday, then must be postmarked by the first working day following the fifteenth.

4. Enrollment and payment of an adequate Worker's Compensation policy with an approved carrier. *Applicable to those units requiring one or more employees.

Applicable _____ Non Applicable _____
 Policy # _____ Carrier _____

5. The vendor shall obtain and maintain all necessary state and local licenses, permits and other legally required documents.

6. Will refer all questions relating to policy to the Commission and abide by its decisions in such matters.

7. Will not purchase any equipment without prior consent of BEP staff. BEP will not pay on any unauthorized invoices.

8. Manager must fulfill **ALL** requirements of permit and BE Rules and Regulations Manual. Failure to do so may result in cancellation of the agreement and removal from the unit. Such requirements may include, but are NOT limited to, the following:
 - A. Payment and responsibility of all bills and/or debts incurred in the operation of this facility.

 - B. Any/all payroll and income taxes incurred in the operation of this facility.

 - C. Current payment of any/all state, county, and local business and restaurant licenses and fees required to operate this facility.

 - D. Any/all janitorial and maintenance requirements called for by building management and the Commission for the Blind on unit # _____.

E. Manager is responsible for remaining current on any rent on facility space charged by the building management.

\$ _____ rental charge = _____/month
Payable to: _____

9. Vendor compensation during this agreement will be the net proceeds of the unit less the set-aside payment due (in accordance with 34 CFR 395.1(k) and liability insurance payment.

Termination of Agreement:

1. Upon a request from the permit agency, the Commission may cancel the operating agreement without notice.
2. Manager may resign from the unit at any time during the year by giving a thirty (30) day notice. The agreement would be terminated and an inventory taken on the manager's last day in the unit.
3. The Commission may cancel the agreement if a manager has not been fulfilling the terms of this agreement, by delivering a thirty (30) day written notice to the manager. The agreement would be

terminated and an inventory taken thirty (30) days from the date of notice.

_____/_____
Administrator Date
Commission for the Blind

_____/_____
Vendor Date

_____/_____
Director, BEP Date
Commission for the Blind