

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
TENNESSEE BUSINESS ENTERPRISES**

**CHAPTER 1240-06-01
GENERAL RULES**

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1240-06-01-.01 NECESSITY AND FUNCTION.

- (1) The Department of Human Services, Services for the Blind and Visually Impaired, has responsibilities to administer the vending facility program for blind managers. The program shall be known as Tennessee Business Enterprises (TBE). The Department shall administer TBE in accordance with the Randolph-Sheppard Act, as amended, and T.C.A. § 71-4-501 et seq. T.C.A. §§ 71-1-105 and 71-4-203 empower the Department of Human Services to comply with any requirement that may be imposed by federal law or regulation.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-4-501 et seq., and 71-4-604(c); 20 U.S.C.A. § 107 et seq.; and 34 C.F.R. § 395 et seq. **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed May 25, 1983; effective June 24, 1983. Repeal and new rule filed April 8, 2005; effective June 22, 2005.

1240-06-01-.02 DEFINITIONS.

- (1) Active Participation – an ongoing process of negotiations between the state licensing agency and the Committee to achieve joint planning and approval of program policies, standards and procedures affecting the overall operation of the vending facilities program, prior to their implementation by the Agency. The implementation of agreed-upon policies, standards and procedures affecting the overall operation of the vending facilities program, shall be subject to review by the Committee. It is understood that the Agency bears final authority and responsibility for the administration and operation of the vending facilities program, including the assurance of continuing, active participation with the Committee.
- (2) Agency – the Tennessee Department of Human Services.
- (3) Area Representative – a manager or managers who are elected to the Committee of Blind Vendors by his/her peers on a regional basis.
- (4) Blind Person – a person who, after examination by a physician skilled in the diseases of the eye, has been determined to have not more than 20/200 control visual acuity in the better eye with correcting lenses, or 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 twenty (20) degrees.
- (5) Cafeteria – 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 himself 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.
- (6) Certification – issued by the Agency to licensed managers indicating the categories of facilities which the manager is eligible to operate.

(Rule 1240-06-01-.02, continued)

- (7) Committee of Blind Vendors (Committee) – an officially constituted body within State government, functioning as an integral part of the State's vending facility program. The Committee shall be fully representative of all licensed managers elected biennially and established, constituted, and maintained in accordance with 34 C.F.R. § 395.14.
- (8) Demotion – reassignment of a licensed manager to a vending facility with projected sales of no more than eighty-five percent (85%) of the manager's present facility. The decision to demote a manager rests solely with the Agency and is based upon the manager's inability to effectively manage his/her present facility after making a good faith effort to do so.
- (9) Instrument of Facility Assignment (IOFA) - a document which shall be executed by the Agency and the manager, covering the duties and responsibilities of each party.
- (10) Internship – facility based training supervised by a qualified licensed manager as part of the entry-level training requirements.
- (11) License – a written certificate issued by the Agency to a qualified blind person to operate a vending facility.
- (12) Management Staff – TBE personnel who work under the immediate supervision of the Director of Services for the Blind and Visually Impaired in carrying out the statewide goals and objectives of TBE.
- (13) Manager – a qualified blind person licensed by the Agency to operate a vending facility on federal or other property.
- (14) Net Proceeds – net sales of a facility, less merchandise purchased and other allowable expenditures, plus any commissions, vending machine income, rebates, and/or commissions paid to the manager.
- (15) Operations Manual – developed jointly by the Agency and the Committee, it contains the policies and procedures for the day-to-day administration of TBE and specific requirements for the operation of vending facilities.
- (16) Permit – an agreement between the Agency and property management that prescribes the terms and conditions for operating a vending facility.
- (17) Post employment services – vocational rehabilitation services for which a client is eligible after being placed into employment and the Vocational Rehabilitation Counselor has closed the case.
- (18) Priority – the right of first refusal, exercised in the sole discretion of the Agency, on behalf of licensed blind vendors to operate any and all vending facilities on public properties in Tennessee.
- (19) Promotion – assignment of a licensed manager to a vending facility by competitive bid process.
- (20) Public Property – all property owned or leased by the State of Tennessee, or by any county, municipality, or any other entity created by act of the General Assembly to perform any function. Primary and secondary schools, and entities created under title 42, and their operation are specifically excluded from this definition. Institutions governed by the University of Tennessee System or the State University and Community College System and their operations are also specifically excluded from this definition except that the vending facilities presently in operation at such institutions on April 29, 1996, shall continue to operate at their present locations or, if necessary, at a location comparable in terms of potential patronage, with the priority established by T.C.A. § 71-4-501. Moreover, the existing priority shall extend

(Rule 1240-06-01-.02, continued)

- to any new structures on any of the campuses governed by the University of Tennessee or the state university and community college system and the priority shall also extend to the establishment of at least one (1) vending facility on any new campus which is developed either by the University of Tennessee system or the state university and community college system.
- (21) Ready-for-Employment List - a list of all currently licensed managers who are not permanently assigned a facility. The ranking of these managers shall be based upon the accrual of seniority, or in the absence thereof, listed in the order in which they were certified by the Agency as eligible to receive a license.
 - (22) Set-aside Funds - funds which accrue to the Agency from an assessment against the net proceeds of each vending facility and any income from vending machines on property which accrues to the Agency.
 - (23) State Agency - the Agency designated by the Commissioner of the U.S. Rehabilitation Services Administration to issue licenses to blind persons for operation of vending facilities, and to implement the operation thereof.
 - (24) TBE Consultant – an Agency staff person who is assigned to work directly with the manager to ensure the effective and efficient operation of the vending facility.
 - (25) TBE Director – the Director of Services for the Blind and Visually Impaired may delegate responsibilities as specified in these rules to a TBE Director. The Committee of Blind Vendors shall actively participate in the selection process of a TBE Director.
 - (26) TBE Specialist – functions as a TBE Consultant; however, this individual has additional responsibilities not necessarily related to specific facility operations.
 - (27) TBE Supervisor – management staff who provide direct supervision to TBE Consultant/Specialists and who have additional statewide responsibilities.
 - (28) Temporary Manager - one who manages a facility temporarily until such time as a permanent assignment can be made.
 - (29) Tennessee Business Enterprises (TBE) – the name given to the vending facility program for the blind in Tennessee.
 - (30) Transfer - lateral reassignment of a licensed manager to a vending facility where the annual gross sales are projected to be within a range of 15% of the annual gross sales of the manager's previous facility.
 - (31) Unassigned – A vending facility that is managed by a third-party vendor who pays a commission to the Agency.
 - (32) Upward Mobility – Annual training required of all managers as a condition for maintaining their certification.
 - (33) Vending Facility – a location, structure, or space which may sell foods, beverages, confections, newspapers, periodicals, tobacco products, and other articles and services which are dispensed automatically by a machine or manually by sales personnel or attendants and which may be prepared on or off premises in accordance with applicable health laws. A vending facility may consist of automatic vending machines, cafeterias, snack bars, catering services, food concession vehicles, cart services, shelters, counters, and any appropriate equipment necessary for the sale of articles or services described above, and may encompass more than one building on a public property.

(Rule 1240-06-01-.02, continued)

- (34) Vending Machine Income - net proceeds from vending located on federal and other property which is paid directly to licensed managers or disbursed to the Agency for use as required by federal and state law.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), 71-4-502, 71-4-604(c), and 71-4-702; 32 C.F.R. § 260 et seq.; 34 C.F.R. § 395 et seq., 34 C.F.R. 395.4; 34 C.F.R. § 395.1(c),(i)(s),(x) and (z), and 34 C.F.R. § 395.7. **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed June 9, 1981; effective August 18, 1981. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed November 6, 1985; effective December 6, 1985. Amendment filed December 11, 1986; effective January 25, 1987. Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.