**12 DEPARTMENT OF LABOR**

**150 DIVISION FOR THE BLIND AND VISUALLY IMPAIRED**

**Chapter 15:** **RULES GOVERNING THE BUSINESS ENTERPRISE PROGRAM**

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**SUMMARY:** This chapter outlines the procedures and standards governing the licensing by the Division for the Blind and Visually Impaired of blind persons as vending facility managers, pursuant to Title 34 CFR Section 395 and 26 M.R.S. §§ 1418-F to 1418-M.

**SECTION 1: DEFINITIONS**

1. For purposes of the Business Enterprise Program, the following definitions apply:
   1. BLIND PERSON: A person who has:
      * 1. Not more than 20/200 central visual acuity in the better eye after correction: or
        2. A limitation in the field of vision in the better eye such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees.
        3. Such blindness shall be certified by a duly licensed ophthalmologist and/or optometrist.
   2. BUSINESS ENTERPRISE PROGRAM (“BEP”): The program administered by the State Licensing Agency (“SLA”), also known as the “Randolph-Sheppard Program,”
   3. BUSINESS ENTERPRISE LAW OR BEP LAW: 26 M.R.S § 1418 and1418-F to 1418-M.
   4. CAFETERIA: A food dispensing facility capable of providing a broad variety of prepared food and beverages (including hot meals) primarily through the use of a line where the customer serves themselves from displayed selections. A cafeteria may be fully automatic, or some limited service may be available and provided within a cafeteria and table or booth seating facilities are always provided.
   5. DEPARTMENT: The Department of Labor.
   6. DIVISION: The Division for the Blind and Visually Impaired.
   7. EQUIPMENT: Items characterized by having a relatively long life and capacity, to be used repeatedly.
   8. FEDERAL BUILDING OR 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 U.S. Postal Service), or any instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States.
   9. INITIAL STOCK: All types of merchandise necessary for the establishment of the new business. In a major expansion or change in the nature of the facility, new items not previously carried but now considered necessary, or desirable, can be considered initial stock.
   10. LICENSE: A written instrument issued by the State Licensing Agency to a blind person authorizing such person to manage a vending facility on federal or other property
   11. MANAGER: A blind person who has been licensed by the SLA, is self-employed, and is actually managing a vending facility on federal, state, county, municipal or other property.
   12. PROPERTY MANAGER OR MANAGEMENT: means the officer, board or other authority in charge of a \*\*State\*\* building or property.
   13. STATE BUILDING OR PROPERTY: Means a building or land owned, leased or occupied by a department, agency or authority of the State or a county or a municipality of the State. This includes University, College, Community and Junior Colleges, the Maine Turnpike Authority and excludes other educational institutions such as elementary and High Schools.
   14. RANDOLPH-SHEPPARD ACT: 20 U.S.C. §§ 107-107f and accompanying regulations, 34 C.F.R. § 395.
   15. SATISFACTORY SITE: An area fully accessible to vending facility patrons and having:

(1) Effective on March 23, 1977 a minimum of 250 square feet available for the vending and secure storage of articles necessary for the operation of a vending facility; and

(2) Sufficient electrical, plumbing, heating and ventilation outlets for the location and operation of a vending facility in accordance with applicable health laws and building codes.

* 1. SET-ASIDE: Funds collected from managers to cover program costs as set forth in 34 CFR §395.9.
  2. STATE LICENSING AGENCY (“SLA”): State agency designated to oversee the Randolph-Sheppard Program. In Maine the State Licensing Agency is the Division for the Blind and Visually Impaired, Department of Labor.
  3. VENDING FACILITY (“FACILITY automatic vending machines, cafeterias, snack bars, cart services, shelters, counters, and such other appropriate auxiliary equipment, including but not limited to shelving, displays, wall cases, refrigerating apparatus, which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, food, beverages, lottery tickets and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws. Cafeterias, snack bars, cart services, shelters and counters may also include a restaurant, Micro Markets, food trucks, a vending machine for food and beverages and goods and services customarily offered in connection with a restaurant, including the specific cafeteria in the State Office Building in Augusta.
  4. VOCATIONAL REHABILITATION: Program that assists eligible individuals who have a visual impairment prepare for, secure, retain, advance or regain an employment outcome.

**SECTION 2: SELECTION AND PLACEMENT OF INDIVIDUALS ON ROSTER**

ELIGIBILITY

A. The SLA shall maintain a roster of persons who are eligible for licensing as managers. To be eligible for inclusion on the roster, the applicant must meet the following criteria:

(1) Must be a citizen of the United States;

(2) Must be blind, as defined in this Chapter;

(3) Must be at least eighteen years of age;

(4) Must meet health qualifications of applicable state and federal codes related to food handling in relationship to the transmission of infectious or communicable diseases to others. This standard is applicable to all persons who are eligible for licensing as managers. Confirmation is evidenced by the submission of a medical report;

1. Must be capable of performing either with or without accommodations, the essential job functions and have strong customer service skills as observed through on-the-job training or other training activities;

(6) Must have basic math skills as identified in written evaluations;

(7) Must successfully complete the BEP evaluation and training requirements, including the sanitation certification and on-the-job training, if applicable;

(8) Must submit to a background check when required in order to operate a specific BEP facility; and

(9) Must submit to a credit check. Poor credit rating will result in requirement to attend credit counseling.

B. Individuals interested in becoming a BEP Manager, all other qualities being equal, the person having seniority in placement on the roster will be selected.

C. Preference will be given to the individual with the skills, abilities and personal qualifications especially suited to the vending facility where a vacancy exists.

D. Needs of the BEP, such as existing vacancies shall be given top consideration with input from licensed managers as validated by the SLA.

**SECTION 3: ISSUANCE AND CONDITIONS OF LICENSES**

1. PROBATION
2. There shall be a six-month probationary period once an individual is assigned to a facility. At successful completion of a six-month probationary period, a permanent license will be issued for an indefinite period of time subject to conditions set forth in this chapter. A License shall be signed by the facility manager and the SLA upon completion of the probationary period. All individuals assigned to a facility will enter into an Operations Agreement with the SLA for that specific location.

B. Probationary period may be extended by the SLA when training or other requirements in BEP Rules have not been completed satisfactorily and documented as such.

C. If an individual fails to complete a probationary period satisfactorily, a permanent license may be denied, and written notice thereof will be provided. The SLA and Individual may develop an action plan including timeline to obtain licensure.

2. LICENSING AND SENIORITY

A. A licensed manager who resigns from their position or leaves the BEP in good standing will retain seniority minus time away from BEP if they return to the program. Seniority will resume effective at the time they are assigned to a BEP facility.

B. Individuals will be expected to participate in the BEP training curriculum and satisfactorily complete requirements of BEP.

C. Individuals may request an accelerated training program. Also, a licensed manager who resigns from the program with a letter in good standing and returns within two (2) years of their departure may have training curriculum participation waived, provided they meet the requirements for management and operations of specific type of facility.

D. If an individual is terminated from the BEP, all seniority which they have accumulated and the rights to that license will be forfeited.

**SECTION 4: PREFERENCE**

1. Application of the Preference. This applies to State property only. The property manager shall adopt policies and take actions necessary to ensure that blind persons are given preference in the establishment and the operation of vending facilities on property under its jurisdiction. The preference must be broadly construed consistent with the intent of the Randolph-Sheppard Act and BEP law, namely, to provide economic opportunities to blind persons.
2. Vending machines. The property manager shall allow the Division to place vending machines in a building where a vending facility operated by a manager would not be feasible. The Division must be permitted the opportunity to place vending machines in such circumstances as a right of first refusal.
3. The Division shall have the authority to select a third-party vendor to provide vending services.
4. The Division may elect to allow the property manager to issue a request for competitive bidding if the purposes of the BEP Law and these Rules are satisfied.
5. Direct Competition. Arrange for the assignment of the income derived from vending machines that are located in reasonable proximity to and direct competition with a vending facility to accrue to the Division’s account. The Division, in its sole discretion, may elect to share revenue from vending machines operated by a third-party vendor with the property management. Such an income sharing may be time limited and affect pricing of vending products.
6. Cafeterias. Application of the preference may be through invitation by the property manager for the Division to assign a manager to operate the facility or to respond to a request for competitive bidding. The scoring for any such competitive bidding must recognize the preference consistent with the purposes of the BEP Law. A mere tiebreaker in scoring the bids shall not be sufficient to satisfy the preference. Cost alone, including the prohibition against charging the SLA or a manager for rent, electricity or heat, may not be a factor to defeat the preference.
7. Other Vending Facilities. The property manager may not contract with any third-party entity before affording the SLA or manager a preference in operating a vending facility other than vending machines and cafeterias.
8. Rental fees are prohibited. Property management may not require the Division or the manager to pay rent, electricity or heat as a condition of operating any vending facility except as expressly permitted by 26 M.R.S. § 1418-K (2). A fee for rent, electricity or heat is not permitted if the public building is a workplace for public employees, even if members of the public also use the public building.
9. Direct Competition. Property management may not operate or allow the operation of any vending machine or vending facility, whether on an ongoing, intermittent, or temporary basis, on the same premises as a vending facility operated by a manager, except as follows:
10. Vending machines or vending facilities may be 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 blind vendor.
11. The Division may consult with property management as to logistical matters related to the vending facilities, including building access and security issues, product type, and similar matters.

**SECTION 5: ASSIGNMENTS OF LOCATIONS**

1. In authorizing vending facilities or other businesses on state property, the Division for the Blind and Visually Impaired SLA shall give preference to persons who are blind and who are licensed by the SLA in order to enlarge the economic opportunities of persons who are blind and visually impaired by providing remunerative employment opportunities.

For the purpose of assisting blind persons to become self-supporting, the SLA is hereby authorized to carry on activities to promote the employment of eligible blind persons, including the licensing and establishment of such persons as operators of vending facilities on public property. Blind licensees shall be given the first opportunity to participate in the operation of vending facilities on all state properties when such facilities are operated under the supervision of the Division for the Blind and Visually Impaired SLA.

2. When a location for a new facility has been established or a vacancy in an existing location is created, the facility manager will be assigned according to the following procedure:

A. All licensed managers will be notified of the vacancy. As much information as possible about the potential of the business shall be included.

B. Interviews shall be held for all qualified managers who request to be a candidate for the new location and who have been trained or hold a certificate for type of facility i.e., snack bar, cafeteria, vending or Micro Market.

A representative of the SLA, along with at least one licensed manager will be on the selection panel. Factors to be considered by the panel when making the selection will be:

(1) Managerial and other skills and abilities demonstrated by the candidates, as they fit the type of available facility, including handling labor needs, complexity of financial requirements, food preparation and customer relations.

(2) Previous records of the candidates under consideration, including submission of required reports in an accurate and timely fashion, customer satisfaction, improvements in profits or number of customers as a result of the manager’s abilities, safety and sanitation inspections, fee and bill payment history, attendance at training meetings, and past evaluations by the SLA.

(3) Seniority of eligible candidates when all other qualities are equal.

1. For managers who wish to transfer to the new or vacant site on a

permanent basis, the SLA and manager will work to ensure the least

amount of disruption between the old and new site.

3. When new seasonal locations become available, managers already assigned to a seasonal location shall be given preference when it creates full year employment. When opening the additional facility, the manager must continue to operate the current facility and allow no more than one-week break in service between the old and new site.

4. A manager transferring to a new location is responsible for the cleanliness of the current facility upon departure. SLA shall inspect and determine if the facility is properly cleaned using an inspection checklist. If not, arrangements will be made for the facility to be cleaned, and the exiting manager shall be charged accordingly.

5. TEMPORARY LOCATIONS

A. If circumstances require, the SLA may place a facility under temporary management.

(1) If a manager wishes to retain primary site and temporarily cover vacant site, they will notify the SLA and a decision/selection will be made with consideration given to the following: displaced managers whose facilities are closed or have low profitability due to size and location may be given first opportunity. Other considerations include availability and ability to operate more than one facility based on performance with primary facility.

(2) All sales, expenses, and income records derived from a temporary assignment shall be maintained and reported separately from those incurred in a manager’s permanent facility.

(3) Individuals selected for a temporary assignment shall be in good standing with BEP.

(4) All temporary managers must sign a standard temporary operating agreement. The temporary operating agreement will clearly define the responsibilities of the SLA and the manager with respect to the terms and conditions governing the effective and efficient operation of the facility. A copy of the initial inventory will be provided. All temporary managers must abide by and comply with the rules and regulations governing the BEP.

(5) A temporary agreement will be in effect until a permanent manager is assigned. A temporary agreement shall extend for an initial period of not greater than six (6) months unless it is determined by the SLA with input from the Committee of Blind Managers, that it is in the best interest of the BEP to extend the temporary agreement for an additional 6 months. Review will take place for each site prior to the expiration of Agreements.

(6) At each semi-annual Committee of Blind Manager meeting, the SLA shall provide a list of all BEP facilities being operated on a temporary basis to the Committee.

**SECTION 6: TERMINATION OF LICENSES**

1. A license shall be issued to an individual for the operation of a vending facility for an indefinite period of time while actively managing a BEP facility. This license may be subject to suspension or termination if, after affording the manager an opportunity to participate in a corrective action plan and for a full evidentiary hearing, the SLA finds any of the following:

A. Failure of the manager to operate the BEP facility according to the operating agreement between the facility manager and the SLA and other rules and regulations of the SLA;

B. Failure to operate the facility according to health and sanitation laws;

C. Failure to maintain equipment in good repair;

1. Failure to file required financial and other records with the SLA or preserve them for a specified time and/or refusal to permit a review or audit or records by SLA;
2. Failure to consistently pay suppliers;
3. Defrauding any agency of the government (including SLA) or any supplier regarding any financial obligation or delinquency in paying taxes, fees, or assessments to any governmental agency, including the SLA;
4. Misconduct by the facility manager in the operation of the facility, including but not limited to the use of alcoholic beverages, or illegal drugs on the premises;
5. Operation of a BEP facility in such a way that the SLA’s investment is obviously endangered as a result of fraud, waste and abuse;
6. Sexual harassment of employees, customers, or those under the facility manager’s direction;
7. Determination by the SLA that the facility manager no longer has the skills and abilities to perform essential functions necessary to manage a BEP facility;
8. Use of the facility to conduct unlawful activities;
9. Failure to maintain the required insurance coverage;
10. Failure to personally operate and manage the vending facility;
11. Inability of the manager to maintain a positive working relationship with building management.
12. Failure to participate in Manager semi-annual meetings and upward mobility training without an excused absence for more than 3 consecutive occurrences.

2. Written notice shall be given in an accessible format or manager’s preferred method of communication to any manager who is in jeopardy of having their license suspended or terminated. The reason for the possible suspension or termination shall be stated, and the manager shall be informed of their right to an administrative review and/or full evidentiary hearing. All such reviews or hearings shall be held in accordance with the provisions contained in this Chapter.

3. Managers may be afforded a corrective action period beginning with a probationary letter provided in an accessible format or preferred method of communication outlining specific violations, the length of the probationary period, the remedy required and the consequences of inaction. This probationary letter shall be reviewed with the manager and BEP staff, with both parties signing the probationary agreement plan. Failure to reach agreement could result in action leading to the manager’s license revocation.

4. Individuals who do not qualify for the program because of improvement in vision rendering them not legally blind, shall be required to submit a resignation.

**SECTION 7: VENDING FACILITY EQUIPMENT AND INITIAL STOCK**

1. The SLA or Vocational Rehabilitation shall provide adequate initial stock when the vending facility is established. The dollar value of the initial stock will be recorded and charged to the manager. The manager will be expected to reimburse SLA within the first year of operation unless an agreement is already in place for the manager to leave an inventory equal in value when they terminate their association with the facility.

1. The SLA shall provide suitable equipment when the vending facility is established. Costs for replacement or repairs of worn out and obsolete equipment shall be paid by the SLA with set-aside funds. Each manager shall take reasonable care of equipment and maintain it in operating condition. A $200 per item deductible for repairs of equipment shall be paid by the manager. This cost may be deducted under “miscellaneous expense” on the weekly report form. The SLA will be kept apprised of repairs and arrange for the removal of equipment to be replaced.
2. Any equipment to be purchased by a manager must be approved in advance by SLA if reimbursement is expected. If equipment is purchased with this approval, equipment shall become part of the equipment inventory of the facility and will remain at the facility upon departure of the manager. The manager will notify the SLA if they intend to purchase equipment and retain ownership, in which case the manager is responsible for maintaining this equipment. Upon departure from the facility, manager will be responsible for the removal or transfer of this equipment.

4. The SLA shall furnish initial petty cash sufficient to enable the manager to commence operation of the business. Upon termination of the facility operation, the manager shall return the same amount of cash to the SLA.

5. The rights and title to equipment shall remain with the SLA.

**SECTION 8: ASSISTANCE AND IN-SERVICE TRAINING PROVIDED TO MANAGERS**

1. The SLA shall provide each manager with assistance and in-service training necessary for obtaining the maximum financial return and to ensure that the operation of the business will provide good service to the public and preserve the employment opportunities for successive blind persons. Such programs may include upward mobility training in accordance with 34 CFR §395.11. The State Committee of Blind Managers will actively participate in the development of training programs for managers. All licensed managers must participate in one SLA training program or its equivalent per year offered by the SLA in order to be in good standing for promotion. The SLA and the Committee of Blind Managers will identify equivalent training for the purposes outlined in this section.

2. The SLA shall provide in-service training to managers in the keeping of accounts, selection and purchase of merchandise, maintenance of clean, attractive facilities and adoption and use of sound business practices and methods and any other training that the SLA and Committee of Blind Managers determine to be of benefit to managers.

**SECTION 9: RESPONSIBILITIES OF LICENSED FACILITY MANAGER**

1. The manager is responsible for having the facility open for business on the days and during the hours specified in the operating agreement. Hours of operation shall be set by joint agreement of the facility manager, SLA and the agency in charge of the buildings where the business is operated.

2 The manager shall operate the facility business on a cash basis, except for such supplier credit accounts as may be established or authorized by the SLA.

3. The manager shall be accountable to the SLA for the proceeds of the business and shall handle the proceeds, including payments to suppliers and deposits of funds, in accordance with instruction from the SLA. Discounts received for prompt payment of invoices shall be treated as a reduction of the cost of merchandise purchased.

4. The manager shall carry on the business of the facility in compliance with applicable health laws and regulations.

5. The manager shall maintain a neat, business-like appearance while working at the facility and will operate the facility in an orderly, business- like manner.

6. The manager shall make alterations or changes to the location only with written approval of the SLA.

7. SLA must be notified prior to any closing of the facility other than what is outlined in the operations agreement.

8. The manager shall provide for substitute operation of the facility as may be necessitated by the manager’s absence for illness, vacation, or other absence. The salary of the person who substitutes for the manager, or that of other emergency or temporary help, shall be paid as an operating expense of the facility.

9. The manager shall maintain a positive working relationship with management and customers of the location wherein the facility is located.

10. The manager shall maintain an inventory of equal or greater value than the initial inventory in order to ensure continuation of service and maintenance of a viable business operation. Retail price of merchandise at each facility shall follow the general price pattern prevailing in the immediate locality. A price listing must be submitted to the SLA by February 1 of each year.

11. The manager shall operate the facility in a manner, which will maintain the minimum annual net profit margin, which is negotiated and documented in the operations agreement.

1. Merchandise shall be fresh and clean. Unsaleable items shall be removed from the facility.
2. The manager shall not extend credit to customers.
3. The manager shall not permit loitering by any persons in the area of the facility.
4. In all instances in which licenses are issued for the operation of automatic vending machines as part of the facility, the manager shall be responsible for maintaining sanitary conditions. Machines and the surrounding area must be cleaned on a regular basis.
5. The manager shall observe sanitation regulations regarding personal activities such as smoking, eating, and drinking within the facility area.
6. The manager shall not be under the influence of intoxicating substances during business hours and shall avoid any actions that interfere with the maintenance of good health and the performance of duties.
7. The manager shall not take part in or allow gambling activities or games of chance in or about the premises of his/her facility. Selling of state lottery tickets shall be allowed if so licensed.
8. The manager shall not be liable for any monthly electrical utility costs associated with the facility.
9. Each Manager shall be required to complete, on approved forms, a weekly report detailing daily business activities. These forms shall be forwarded once a month so that the SLA receives them by the 15th of the following month.
10. The facility shall display a sign provided by the SLA indicating sponsorship.
11. Each manager shall be required to participate in biannual meetings sponsored by the Committee of Blind Managers.
12. As part of manager performance reviews, each Manager will be expected to participate in upward mobility training which include semiannual trainings, nationally sponsored Randolph-Sheppard trainings (virtual or live), webinars and other professional development opportunities.

**SECTION 10: SETTING ASIDE OF FUNDS**

1. The SLA shall establish in writing the extent to which funds are to be set aside from the net proceeds of vending facilities; and, to the extent applicable, from vending machine income under 34 CFR §395.8(c).

2. Funds may be set aside under this section only for the purposes of:

A. Maintenance and replacement of equipment;

B. Purchase of new equipment;

C. Management services;

D. Fair minimum return to managers; or

E. Establishment and maintenance of retirement or pension funds, health insurance contributions, paid sick leave and vacation time, if it is determined by a majority vote of managers and those who are licensed and authorized to operate a facility after the agency provides each manager information on all matters relevant to the proposed purposes.

3. Adequate records shall be maintained to support the reasonableness of the charges for set-aside referred to this section.

4. Set-aside may be established, with the active participation of the State Committee of Blind Managers and subject to the approval of Rehabilitation Services Administration (RSA).

5. Determination of the net proceeds shall be made by subtracting all expenses including, but not limited to, merchandise purchased for resale, insurance(s), and wages, but shall not include pay to the manager or set-aside payments.

6. During any monthly period when net proceeds are less than an amount equal to the current federal minimum wage rate multiplied by the number of hours the manager was present in the vending facility (maximum of 40 hours per week) and during which the facility was open for business, the requirement to pay the set-aside assessment may be waived.

7. Charges for the items listed in Section (2) above shall be determined in the following manner:

A. Equipment shall be replaced or repaired at the discretion of the SLA in the manner which is most cost effective while maintaining the facility’s current capabilities.

B. The purchase of new equipment shall be at the discretion of the SLA and in a manner that will maintain the facility’s current capabilities or enhance future profits to the location.

C. Prior to purchase of management services other than those provided by the program, the SLA shall verify whether such charges are reasonable in comparison with fees charged for like services throughout the area in which service is to be performed. Management services are generally limited to necessary supervisory and inspection services, merchandising and bookkeeping assistance, display and other business techniques, and practices to improve the operation of the vending facility.

8. The purpose of fair minimum return is to ensure an equitable financial return to the manager when the net proceeds of the site fail to do so. When a fair minimum return is established, the SLA, in its discretion, may augment the net proceeds by an amount necessary to bring the monthly income of the manager up to the fair minimum return. Wages paid to family members may not exceed one and one half (1 ½) times the prevailing minimum wage for 40 hours per week if fair minimum return is requested.

Fair minimum return is defined as an amount equal to the current federal minimum wage multiplied by the number of hours during which a manager was present in the vending facility (up to a maximum of 40 hours per week) and during which the facility was open for business; fair minimum return is computed by averaging the net proceeds for the number of weeks in the monthly reporting period. Since inventory change and other operating expenses can affect net proceeds, such factors shall be considered when calculating fair minimum return. If the business is seasonal in nature and like businesses normally would not provide the established minimum return, then the fair minimum payment shall not apply.

9. Managers may use checking accounts for receipts and disbursements pertinent to the operation of the facility. Such accounts will be used exclusively for the fiscal affairs of the facility, and the manager will not co-mingle personal or other funds in this account except to the extent that such funds represent equity in the business.

10. It is the responsibility of the manager to make certain that the rate of cash withdrawals does not exceed the rate of net profit to the facility. It is also the manager’s responsibility to provide cash reserves for contingencies such as vacation and sick leave or other purposes as may be necessary for the proper operation of the facility.

**SECTION 11: DISTRIBUTION ANDUSE OF INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY**

The distribution and use of income from vending machines on federal property shall be made in accordance with 34 C.F.R. §395.8

**SECTION 12: EMPLOYEES**

1. Each manager shall determine if it is necessary to hire employees. The manager shall review need with SLA. If it is determined that there is not sufficient need (based upon number of customers and size of facility), wages paid to an employee shall not be allowed as an operating expense for the business. Factors considered include disability related accommodations, change in facility size or customer base. When possible, such employees shall be blind. All facilities will operate as competitive integrated worksites. The manager shall not depend on the goodwill or friendly services of the employees of the building to operate the facility during any absence.

2. Each manager shall locate and train at least one substitute for vacation, during illness or any period when an emergency substitute is necessary. The manager shall provide SLA with the name, address and telephone number of substitutes.

**SECTION 13: ELECTION, ORGANIZATION AND FUNCTION OF STATE COMMITTEE OF BLIND MANAGERS**

1. All facility managers are members of the State Committee of Blind Managers. The State Committee shall meet at least twice a year and at any other time deemed necessary by the SLA or the facility managers. Attendance at all meetings shall be one measure of good standing for transfer or promotion. Between regular meetings of the State Committee, functions can be carried on through sub-committees or individual members designated by the Committee Chair for that purpose.

2. The SLA shall provide for the biennial election of an Executive Committee which, to the extent possible, shall be fully representative of all managers in the program on the basis of geography and facility type with a goal of providing for proportional representation of managers on federal property and managers on other property. Participation by any manager in any election shall not be conditioned upon the payment of dues or any other fees.

3. The State Committee of Blind Managers shall:

A. Actively participate with the SLA in major administrative decisions; policy and program development decisions affecting the overall administration of the State's Business Enterprise Program, including the set-aside rate;

B. Receive and transmit to the SLA grievances at the request of managers and serve as advocates;

C. Actively participate with the SLA in the development and administration of a system for the transfer and promotion of managers;

D. Actively participate with the SLA in the development of training and retraining programs for managers; and

E. Sponsor, with the assistance of the SLA, meetings and instructional conferences for managers within the State.

**SECTION 14: ADMINISTRATIVE REVIEW, EVIDENTIARY HEARING, ARBITRATION OF MANAGERS’ COMPLAINTS**

1. Administrative Review. A facility manager or their designee (who may be a member of the State Committee of Blind Managers) may request administrative review of a state agency action arising out of the operation or administration of the vending facility program with which the manager is aggrieved. This request must be made in writing within fifteen (15) days of the occurrence of the SLA action.

A. The administrative review shall be held at a time and place convenient to the manager requesting such review within fifteen (15) days of receipt of the request for review unless the manager requests a postponement. The administrative review shall be conducted by a member or members of the DBVI staff who did not in any way participate in the agency action at issue.

B. If the manager makes a written request reasonably in advance of the review and if the SLA determines it is necessary to ensure full participation by the manager in the review, transportation, reader, or other communication services shall be arranged for the manager by the SLA.

C. The SLA shall include in its administrative record the request for review, any documentation offered by the manager in support of their claims, and its written decision rendered after administrative review.

D. If the manager is dissatisfied with the administrative review decision, they may request a full evidentiary hearing within fifteen (15) days of receipt of the administrative review decision. The request must be made in writing, either hard copy or electronically.

2. Evidentiary Hearing.

A. A manager or their designee may request an evidentiary hearing instead of an administrative review within thirty (30) days of the SLA action complained of or as an appeal from an unfavorable administrative review decision within fifteen (15) days of receipt of such unfavorable review decision.

B. The manager shall have the opportunity:

(1) to examine all documents and records used at the hearing, either at the time of hearing or, if they so desire, 3 days prior to the hearing;

(2) at their option to present their case for themselves or with the aid of others, including legal counsel;

(3) to bring witnesses;

(4) to establish all pertinent facts and circumstances;

(5) to advance any arguments without undue interference; and

(6) to question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

C. The evidentiary hearing shall be conducted by a board (“Hearing Board”), which shall consist of three persons, one to be appointed by the Division, one to be chosen by the manager who requested the hearing, and the third to be chosen by the other two members. The decision of the Hearing Board shall be final except that the manager may file a complaint with the Secretary of Education as provided in this Chapter.

D. All evidentiary hearings shall

(1) be conducted privately and open only to the manager, friends, witnesses, legal counsel or others whom the manager wishes to be present or to members of the SLA staff or others selected by the Hearing Board for their planned participation in the hearing;

(2) be conducted informally without technical rules of evidence, even though the requirements of due process shall be met in accordance with the Maine Administrative Procedures Act, 5 M.R.S. §9057 and witnesses shall be sworn;

(3) be opened by the Hearing Board's spokesperson who shall make a statement of points at issue, give all participants an opportunity to present oral or written testimony or documentary evidence and to offer rebuttal, question witnesses, examine all evidence presented at the hearing and establish competency of witnesses offering subjective or technical opinions;

(4) be recorded by stenographic or mechanical recording of proceedings which shall be either transcribed for filing or filed by tape or disk in a State office, to be available to members of the Department, to the manager or to their representative, (if authorized by the manager in writing to act for them) together with all documentary evidence submitted as exhibits at the hearing;

(5) be concluded when the Hearing Board, the manager and/or their representative, and the SLA representative are satisfied that all available evidence has been introduced and properly examined; and

(6) result in a decision based exclusively on evidence or testimony presented at the hearing.

E. If the manager makes a written request for a reasonable accommodation in advance of the hearing and if the Hearing Board determines it is necessary to ensure full participation by the manager in the hearing, transportation, reader or other communication services shall be arranged for the manager by the SLA.

3. Arbitration. This applies to Federal property.

A manager or their designee may request arbitration by the U.S. Secretary of Education if they are dissatisfied with any action taken or decision rendered as a result of an evidentiary hearing. The manager’s complaint shall be accompanied by all available supporting documents, including a statement of the decision that was rendered and the reasons in support thereof, and must be filed with either the SLA or the Secretary. The arbitration process will be controlled by the provisions of 20 U.S.C. §§ 107d-1, 107d-2 and 34 C.F.R. §395.13.

**SECTION 15: DISPUTE RESOLUTION**

A. INTERAGENCY

In instances of interagency conflict, the process and procedures as outlined in this section are to ensure services and opportunities outlined in State statute and these Rules are neither delayed nor denied due to the conflict. These conflicts may include issue of compliance with federal and State statutory and regulatory expectations.

The following steps shall be taken to resolve an interagency dispute:

(1) All attempts should be made to resolve disputes at the lowest operational level. This may include the BEP Administrator, Division Director, Facility point of contact or other Persons.

(2) When disputes cannot be resolved at the lowest operational level in a reasonable time, they shall be referred in writing to the Bureau of Rehabilitation Services Director.

(3) If resolution is not achieved within thirty (30) calendar days of receipt, the matter shall be referred to the Commissioner of the Department of Labor, or equivalent, and the State Agency and the entity responsible for the public property, for resolution.

(4) In lieu of or in addition to, any of the above steps, the parties may mutually agree to engage in alternative dispute resolution, including mediation or arbitration.

B. CONTINUATION OF SERVICES DURING DISPUTE RESOLUTION.

(1) A licensed manager shall be allowed to continue operations during a dispute resolution process.

(2) The SLA will not enter into a new permit with a licensed manager until the dispute resolution process is resolved, unless the parties agree that the permit may proceed notwithstanding the dispute.

**SECTION 16: ACCESS TO PROGRAM FINANCIAL INFORMATION**

The SLA shall provide access to all financial data relevant to the operation of the Business Enterprise Program, including quarterly and annual financial reports, if such disclosure does not violate applicable federal or state laws pertaining to the disclosure of confidential information. All information including program data, insofar as is practicable, shall be transmitted to licensed vendors in Braille, tape or their desired media format.

**SECTION 17: EXPLANATION TO MANAGER OF RIGHTS AND RESPONSIBILITIES**

The SLA will furnish to each manager copies of documents relevant to the operation of a vending facility, including the rules and regulations and operations agreement in an accessible format, during the initial exploration phase of BEP as their employment goal.

**SECTION 18: FAMILIARITY WITH SITE REQUIREMENTS**

1. Before a manager is issued a license to operate a vending facility, the SLA shall review policy and procedures contained herein, and all applicable regulations and standards of the agency having charge of the building where the business is located, shall be read and explained to the facility manager. The facility manager shall be given ample opportunity to understand the relationships, which shall exist between him/her and the SLA.

2. After becoming familiar with all the regulations and standards, the facility manager shall attest to this fact in writing. This statement shall be made in duplicate in an accessible format.

**SECTION 19: STATE SALES TAX**

State sales tax is to be collected in accordance with State of Maine Sales and Use Tax Law and regulations issued by Maine Revenue Services. Facility managers are required to submit the amount of sales tax collected under their tax number in accordance with Maine law.

**SECTION 20: VACATION**

The vacation period of facility managers will be by joint agreement with the manager, building manager and the SLA. Generally, arrangements should be made for the facility to be open during the individual manager’s vacation period, except when specific arrangements are made with the parties involved. No vacation request shall be unreasonably or arbitrarily denied.

**SECTION 21: INSURANCE\***

1. In order to safeguard the interest of the facility manager and the public, liability insurance is required for all locations. Minimum coverage recommended is coverage of personal injury on the premises, product liability and medical payment as a result of an accident occurring to members of the public on premises. Minimum limits shall be pursuant to the state regulations. No other liability insurance shall be mandated to the manager unless required by law.

2. It shall be the duty of the facility manager to report in writing as soon as practicable, to insurer and to SLA the occurrence of any accident or if a claim or suit is brought against the manager.

**SECTION 22: MANAGER EVALUATIONS**

1. Each facility manager shall be evaluated, using a written evaluation form, by a representative of the SLA at least one time per year after the probationary period. Areas of evaluation may include sanitation, merchandising, customer relations, personal appearance, sales technique, accuracy of monthly reports, profit margins, and general efficiency. The purpose of this evaluation is to assist managers in areas of their business which need improvement. Evaluations may also serve as a basis for termination of license or as a basis for promotion to other facilities. Facility managers shall receive a copy of the evaluation; the original shall be kept on file by the SLA.

2. The SLA, at any time, may review all financial information relative to the location. This may include, but not be limited to, merchandise receipts, payroll records, and sales tax payments.

3. The SLA has the right to close any facility that operates at a loss for a period of six months or longer.

**SECTION 23: CIVIL RIGHTS**

No person participating in the Business Enterprise Program shall be subjected to discrimination by the SLA on the basis of race, color, religion, gender, age, national origin, physical or mental disability, or sexual orientation, political affiliation and in compliance with the Maine Human Rights Act.

STATUTORY AUTHORITY: 26 M.R.S.A. §§1418-F through 1418-M.

EFFECTIVE DATE:

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NON-SUBSTANTIVE CORRECTIONS:

August 20, 1997 - correction of agency names, minor spelling and formatting, correction of header.

November 10, 1997 - corrections to agency names, statutory citations; chapter moved to Division of Blind and Visually Impaired.

January 22, 1998 - corrected unit number on first page from 152 to 150.

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