

RHODE ISLAND GOVERNMENT REGISTER

PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Human Services

DIVISION: Office of Rehabilitation Services

RULE IDENTIFIER: 218-RICR-50-00-3 ERLID #9768

REGULATION TITLE: Business Enterprises Program Regulations

RULEMAKING ACTION: Proposed Rulemaking

TYPE OF FILING: Adoption

TIMETABLE FOR ACTION ON THE PROPOSED RULES:

Date of Public Notice: 4/19/18

End of Comment Period: 5/18/18

SUMMARY OF PROPOSED RULE:

In accordance with the Administrative Procedures Act, the Department of Human Services is advertising for promulgation of the following amended DHS rules. This rule is being repealed, and reformatted into three parts in compliance with state and federal law and good practice.

In accordance with Rhode Island General Laws (RIGL) 42-35, notice is hereby given that the Department of Human Services, Office of Rehabilitation Services, proposes to **REPEAL: OFFICE OF REHABILITATION SERVICES POLICY MANUAL;** and **ADOPT** the following rules:

VOCATIONAL REHABILITATION PROGRAM REGULATIONS
SERVICES FOR THE BLIND AND VISUALLY IMPAIRED - SOCIAL
SERVICES/INDEPENDENT LIVING UNITS; AND
BUSINESS ENTERPRISES PROGRAM REGULATIONS.

Summary of Proposed Changes:

Office of Rehabilitation Services Policy Manual – being repealed and reformatted into three sections.

218-RICR-50-00-1 – Vocational Rehabilitation Program Regulations

1.4 Definitions

Definitions section created to consolidate definitions throughout the regulation into one section.

1.8 Order of Selection (OOS)/Waitlist

Revisions include: the change in number of functional limitations an individual must have to be classified as Priority Category I.

1.17.3 Post-Secondary Education and Vocational Rehabilitation Training

Revisions include: the expectation that eligible individuals utilize the “Promise Grant” while program is in effect; funding limits set and requirements shown for funding of tuition, room and board, and books, materials and tools. Other information carried over from Section 115.28 of ORS Policy Manual.

1.17.9 Occupational Tools, Licenses, Equipment, Initial Stock and Supplies

New provision includes maximum dollar limit set, other information carried over from Section 115.20 of ORS Policy Manual.

1.17.11 Transition and Pre-Employment Transition Services

Revisions include: providing requirements of Pre-Employment Transition Services based on the 2014 Workforce Innovation and Opportunity Act.

1.17.13 Adaptive Housing Services

Language carried over from Section 115.26 of ORS Policy Manual with revisions detailing property requirements and stating ORS may establish maximum dollar limits for adaptive housing services.

1.17.14 Motor Vehicle Modification Services

Language carried over from Section 115.23 of ORS Policy Manual with revisions detailing requirements for motor vehicle modifications, and stating ORS may establish maximum dollar limits for these services.

1.17.15 Self-Employment Services

New section created to explain services available to clients in order to achieve self-employment as an employment outcome.

1.19 Individuals in Extended Employment, 14(c), and Other Employment under Special Certificate Provisions of the Fair Labor Standards Act

New section created to explain the new limitations prohibiting employers from paying subminimum wage to persons with disabilities under section 14(c).

218-RICR-50-00-2 – Services for the Blind and Visually Impaired – Social Services/Independent Living Services

No new provisions, section reformatted and rephrased from Section 118.1 of ORS Policy Manual.

218-RICR-50-00-3 – Business Enterprises Program Regulations

No new provisions, section reformatted and carried over from Section 115.13 of ORS Policy Manual.

These proposed changes are available for public inspection on the RI Secretary of State website, (<http://sos.ri.gov/ProposedRules/>), the DHS website (www.dhs.ri.gov), the Office of Rehabilitation Services website (www.ors.ri.gov/Proposed%20Rules.html) in person at 40 Fountain Street, Providence, RI, or requested by email at Sharon.dipinto@ors.ri.gov, or available in hard copy upon request by calling Sharon DiPinto at (401-462-7818 or 711).

In accordance with R.I. General Laws § 42-35-2.8, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) days of this notice.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Friday, May 18, 2018 to Sharon DiPinto, Sr. Human Services Policy & Systems Specialist, Office of Rehabilitation Services, 40 Fountain Street, Providence, RI 02903, Sharon.dipinto@ors.ri.gov.

Date Notice was Posted: 04/19/2018

SUMMARY OF NON-TECHNICAL CHANGES

PROPOSED REGULATION FOR ADOPTION

218-RICR-50-00-3
Title 218 – DEPARTMENT OF HUMAN SERVICE
Chapter 20 – Office of Rehabilitation Services
Subchapter 00 – N/A
Part 3 – Business Enterprise Program

This regulation is a consolidation (adoption with an associated repeal). ORS is repealing the ORS Policy Manual and replacing it with a new adoption, the sections are outlined below.

3.1 Purpose

Language is updated to show the requirements for implementation of the Business Enterprises Program based on Federal regulations, State statutes, and Department policy.

3.2 Authority

No new provisions, existing state statutes.

3.3 Incorporated Materials

No new provisions, federal regulations are now properly incorporated and enforceable pursuant to R.I. Gen. Laws § 42-35-3.2 in accordance with Secretary of State formatting guidelines.

3.4 Definitions

Definitions section created to consolidate definitions throughout the regulation into one section.

3.5 Referral/Application

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.6 Training

No new provisions, section rephrased from Section 115.13 of ORS Policy Manual.

3.7 Licensure

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.8 Selection of Vendor

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.9 Facility Assignment

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.10 Awarding of Vending Facilities

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.11 Vending Facility Equipment and Initial Stock

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.12 Maintenance and Replacement of Equipment

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.13 Operation

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.14 Corrective Action Plan (CAP) and Suspension

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.15 Distribution and Use of Income Vending Machines on Federal Property

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.16 Election, Organization, and Functions of State Committee of Blind Vendors

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.17 Administrative Review, Evidentiary Hearings and Arbitration of Vendor Complaints

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.18 Access to Program and Financial Information

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.19 Explanation of Rights and Responsibilities of and to Vendors/Licensees

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

3.20 Non-Discrimination

No new provisions, section carried over from Section 115.13 of ORS Policy Manual.

218-RICR-50-00-3

TITLE 218 – DEPARTMENT OF HUMAN SERVICES

CHAPTER 50 – OFFICE OF REHABILITATION SERVICES

SUBCHAPTER 00 - N/A

PART 3 – Business Enterprises Program

3.1 PURPOSE

A. The Office of Rehabilitation Services/Services for the Blind and Visually Impaired (SBVI), as the designated state unit, has the authority to act as the "State Licensing Agency" or "S.L.A." for the purpose of establishing vending facilities in order to carry out its full responsibilities under the Randolph-Sheppard Act to provide employment to qualified persons who are blind. These regulations are designed to assure that priority is given to blind persons in the operation of vending facilities on State and Federal property, and wherever feasible, one or more vending facilities are established on State and Federal property. These regulations will:

1. define required conditions for applicant to be considered a qualified applicant
2. define standards for selection of licensed vendors
3. define selection, transfer, and promotion system for vendors
4. specify facility bid/assignment criteria and process
5. specify review, hearing, and arbitration of vendor complaints
6. specify factors for termination

3.2 AUTHORITY

These rules and regulations are promulgated pursuant to R.I. Gen. Laws §§ 42-12-8 through 17 and 22; and 29 U.S.C. §§ 721-722.

3.3 INCORPORATED MATERIALS

A. These regulations hereby adopt and incorporate the following, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

1. The Randolph-Sheppard Act, P.L. 74-732, as amended by P.L. 83-565 and P.L. 93-516; 20 U.S.C. § 107 et seq (1974).
2. 34 C.F.R. Part 395 Vending Facility Program for The Blind on Federal and Other Property (2011).
3. 2 C.F.R. Part 3474—Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards (2014).
4. The Education Department General Administrative Regulations (EDGAR) as follows:
 - a. Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-profit Organizations, with respect to subgrants to entities that are not State or local governments or Indian tribal organizations, 34 C.F.R. Part 74 (2014);
 - b. State Administered Programs, 34 C.F.R. Part 76 (2014);
 - c. Definitions that Apply to Department Regulations, 34 C.F.R. Part 77 (2014);
 - d. Intergovernmental Review of Department of Education Programs and Activities, 34 C.F.R. Part 79 (2014);
 - e. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 34 C.F.R. Part 80 (2014);
 - f. General Education Provisions Act - Enforcement, 34 C.F.R. Part 81 (2014);
 - g. New Restrictions on Lobbying, 34 C.F.R. Part 82 (1990);
 - h. Implementation of the Nondiscrimination and Equal Opportunity provisions of the Workforce Innovation and Opportunity Act, 29 C.F.R., Part 38 (2015);
 - i. Drug and Alcohol Abuse Prevention, 34 C.F.R. Part 86 (2014);
 - j. Protection of Human Subjects, 34 C.F.R. Part 97 (1991);
 - k. Student Rights in Research, Experimental Programs, And Testing, Part 98 (1984);
 - l. Family Educational Rights and Privacy, 34 C.F.R. Part 99 (1988).

5. 2 C.F.R. Part 180, OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted in 2 C.F.R. Part 3485 (2012).

3.4 DEFINITIONS

- A. For the purpose of these regulations, the following terms have the following meanings:
1. "Acceptable vending company" means a company who provides automatic vending machine services and who agrees to send to the ORS/SBVI proceeds from the operation of any automatic vending machine on State property as determined and agreed upon pursuant to a contract awarded by the Division of Purchases.
 2. "Agency-operated facility" means a facility with no manager: This will typically be a facility that was placed on bid to all eligible Vendor/licensees, and no Vendor/licensee bid to operate the facility. As a result, the S.L.A. may directly manage the facility while seeking placement of a replacement blind Vendor/licensee.
 3. "Automatic vending machine" means any machine which automatically dispenses for money, goods, such as, but not limited to, soda, candy, lottery tickets, food, coffee, newspapers, sundries, etc.
 4. "Blind vendor/licensee" means an individual who has been licensed to operate a vending facility by the State Licensing Agency, and is actually operating a vending facility, pursuant to a written agreement to operating a vending facility and who has successfully completed all training and a six-(6) month probationary period. The license which an operator receives shall be issued pursuant to the following rules and regulations.
 5. "Coffee plus" means the trade name which the State Licensing Agency (S.L.A.) and the RI State Committee of Blind Vendors (RISCOBV) have adopted, which is to be used to describe and market vending facilities at all locations.
 6. "Corrective Action Plan" means a written plan developed with the cooperation of the vendor identifying the problems leading to the determination that retraining or other intervention, is necessary and contains the necessary actions/activities to address and resolve the identified issues/deficits. A CAP is established for a reasonable time period and must contain a start and completion date, unless the matter is deemed ongoing (for example – failure to maintain hours or adhere to proper sanitation practices – the expectation is that the correction will be “ongoing” and not limited to a period of time).

7. "Legally blind" means visual acuity found to be 20/200 or less in the individual's better eye with best correction, or visual acuity of better than 20/200 if the widest diameter of the field of vision subtends an angle no greater than twenty degrees (20°).
8. "Operating hours" means the hours that the Blind Vendor or Probationary Graduate is required to be on site and/or directly engaged in tasks directly related to the business. Operating hours are specified in a particular permit, but generally consist of a minimum of forty (40) hours weekly.
9. "Performance standards" means the results of the semi-annual reviews conducted at each licensed vendor's facility.
10. "Primary facility" means a facility that a Vendor/licensee operates as a main facility and will remain assigned to the Vendor/licensee as per the terms of the Operating Agreement and Permit/Contract. To the extent possible, all eligible Vendor/licensees in the program will have a primary facility.
11. "Probationary graduate" means an individual who has successfully completed the training and orientation program, and is operating a facility but is not yet issued a formal Vendor License. A probationary graduate who does attain transfer seniority, however, is not eligible to bid on available facilities until the successful completion of the six- (6) month probationary period. A graduate achieves full vendor/licensee status upon successful completion of a six- (6) month probation period in operation of a vending facility.
12. "Proceeds" means the vending machine income generated from the operation from an automatic vending machine on State property.
13. "Promotion" means the advancement of a Probationary Graduate to the status of Blind Vendor.
14. "Satellite facility" means a vending facility bid as a satellite and which a Vendor/licensee operates in addition to their primary location. (Such as a vending-only site). Satellites will be awarded according to the standard bidding protocol. A Vendor/licensee must be under an effective operating agreement for a primary facility in order to submit a bid for another facility as a satellite location. No Vendor//licensee will be allowed to assume more than one satellite until all other eligible Vendor/licensees have had the option to assume a satellite.
15. "Secondary facility" means a vending facility bid under the standard protocol, but that is awarded as a secondary site – given there are no Vendor/licensees interested as a primary. Secondary sites are operated in addition to their primary location. (Such as a satellite). A Vendor/licensee must be under an effective operating agreement for a

primary facility in order to submit a bid for another facility as a secondary location. No Vendor/licensee will be allowed to assume more than one facility until all other eligible Vendor/licensees have had the option to assume a facility.

16. "Semi-annual review" means a formal management evaluation of Vendor/licensee's operation which assesses the individuals' performance, presentation, facility appearance, and cleanliness, marketing efforts, menu/food pricing, and health and food safety, as well as data keeping, set aside obligations and record submission.
17. "Seniority" or "transfer seniority" means the length of time a Vendor/licensee has been active in the BEP; (active is defined as working under an active operating agreement.) Seniority is applied as criteria during a bidding cycle, at which time Vendor/licensees may be competing to be awarded a facility. Seniority begins accruing to a Vendor/licensee who is a probationary graduate and who has completed the training process.
18. "State licensing agency" or "S.L.A." means the designated state unit, Office of Rehabilitation Services/Services for the Blind and Visually Impaired, whose purpose is to establish vending facilities in order to carry out the full responsibilities under the Randolph-Shepard Act.
19. "State property" means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality wholly owned by the State, unless, with respect to any building, land, or other real property leased or rented by the State, the lease or rental agreement shall prohibit the establishment of such vending facilities.
20. "Suspension" means a temporary discontinuation (usually thirty (30) calendar days) of the Operating Agreement resulting in the vendor's relinquishing control of the vending facility and leaving and/or remaining away/absent from the facility (or off-site) for the period of suspension. The Operating Agreement will be reinstated when the reason for the suspension has been remedied. If the reason(s) for suspension cannot be remedied, the operating agreement will be revoked, after a full evidentiary hearing.
21. "Transfer" means the assignment or re-assignment of a Blind Vendor to a new or vacant facility. Transfer will not include the move of an existing vending facility to a new location if the population (entity) to be served at the new location is substantially the same.
22. "Vending facility" means a site that has been determined to meet the criteria of a satisfactory site as defined in 34 C.F.R. § 395.1(x) revised 7/2010 and is operated under a permit. Vending facilities are categorized

as Dry/Wet/Vending Only; Primary, Secondary and Satellite. Includes but is not limited to cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment necessary for the sale of newspapers, periodicals, tobacco products, foods, beverages, and other articles or services dispensed manually and prepared on or off the premises in accordance with all applicable health laws based on RI Food Code, 216-RICR-50-10-1, and including the vending or exchange of chances for any lottery which may be located on public or private property.

3.5 REFERRAL/APPLICATION

- A. Qualified applicants referred to the Business Enterprises Program (BEP) by Vocational Rehabilitation must meet the following additional requirements:
1. The VR Counselor, in consultation with the VR Supervisor, must submit a referral to the BEP Administrator providing pertinent information about the client and requesting consultation/record review for the potential candidate. Electronic Mail (e-mail referrals are acceptable.)
 2. The referral must include such information as the clients' VR status, IPE goal progress, brief education and employment history overview, current evaluations or assessments which document the applicants' visual acuity, U.S. citizenship, a current BCI (Criminal Background Check) report, and a signed release of information to allow a case file review. Referrals lacking a current BCI report and signed release of information form will be automatically rejected.
 3. Following the file/client review, prospective BEP candidates will submit to an interview with the BEP Administrator and VR Counselor in order to evaluate a client's overall presentation, degree of interest and motivation, as well as capacity and potential for success as a future vendor/Licensee. The interview also serves as a means to provide the referral with a greater explanation of the expectations and general outcomes of the BEP. Upon completion of the interview process, the BEP Administrator will issue written notification of denial or acceptance in the BEP training process.
 4. Accepted candidates will participate in an on-site evaluation at a designated vending facility. During this process, applicants will be evaluated to ensure that they meet the additional requirements listed in § 3.5(B) of this Part. This will include an assessment of the need for adjustment training, mobility orientation/instruction, rehabilitation teaching, assistive technology, focused-task oriented training, outside training in specialized areas, and/or other support services.
 - a. Based upon the findings of the onsite evaluation, additional training and education needs may be identified specific to the individual outcomes and candidates' respective performance.

- b. The Vocational Rehabilitation (VR) Counselor must assure that the candidates will be provided with the appropriate tools needed to assure independent and successful performance during the evaluation and training process. Tools (other than those general to the business environment) includes but is not limited to high-tech and low-tech assistive technology for the identification of money, merchandise, for safe food handling and physical mastery of the environment – such as mobility aides and rehabilitative teaching.

B. Additional Requirements

1. Possess skills or have the potential capacity to travel independently.
2. Possess and demonstrate sufficient capacity to learn and/or perform basic applied mathematics operations and other business management/business skills in order to effectively engage in proper operation of a business including proper and accurate recording and maintenance of business and sales records.
3. Demonstrate consistent stable personality traits to enable proper interaction with the public.
4. Demonstrate consistent due care in daily personal cleanliness and grooming.
5. Demonstrate the ability to communicate effectively, professionally and appropriately with the general public, the S.L.A., host entities, and suppliers.
6. Demonstrate the ability and desire to be responsible for the daily operations of a business enterprise.
7. Demonstrate basic knowledge of any and all State and Federal requirements for operating a business – including compliance with all applicable State and Federal Labor, Wage, and Tax Laws.
8. Demonstrate the desire to be actively and personally involved in day-to-day business operations, including (but not withstanding) any physical demands associated with the operation of the business enterprise.
9. Demonstrate the ability to perform simple and routine care of the vending facility equipment.
10. Obtain and maintain any necessary certifications or trade licenses required to engage in a (food service) business operation according to State Law.

11. Make proper use of any and all necessary and available assistive technology, so as to assure maximum independence in the operation of the business enterprise.
12. Be willing to and demonstrate the ability to work under the supervision of the BEP management staff.

3.6 TRAINING

- A. The S.L.A. will provide for the training of blind individuals in accordance with the requirements of 34 C.F.R. § 395.11, and for the development thereafter, with the active participation of the Rhode Island State Committee of Blind Vendors (RISCOBV), of training and re-training programs. The basic component requirements of such programs include:
1. Personal and vocational adjustment training, including books, tools and other training materials and related expenses as provided under the VR Program of the S.L.A.
 2. Work experience training and practice in the trial and actual operation of a vending facility, including specialized training preparatory to the conduct and maintenance of financial data, purchasing and fiscal procedures and financial status reports, food preparation, food safety management and certification, sanitation, customer service, business management, and operation.
 3. The training program will generally be as follows:
 - a. Work experience in a designated vending facility (unpaid) for a minimum of 4 weeks (unless waived by BEP Administrator), during which the BEP supervisors conduct orientation and on-site instruction to the trainee regarding general facility operation. This on-the-job training may include public relations, facility layout and atmosphere, merchandising, purchasing, inventory, ordering, cooking, pricing, equipment maintenance, and book/record keeping expectations; and
 - b. Successful completion of an approved RI Certified Food Manager Curriculum and subsequent RI Certification pursuant to the R.I. Gen. Laws Chapter 21-27 and "Certification of Managers in Food Safety", 216-RICR-50-10-2; and
 - c. Successful completion of an approved Food Service/Culinary Training Curriculum in the absence of substantial prior experience in the field; or demonstrated mastery during the onsite evaluation period; and

- d. Successful completion of the HADLEY SCHOOL (online) and NABM- Randolph Sheppard Certificate of Excellence online training programs.
4. Community-based training facilities and resources will be used to augment the vending facility training program. Examples include the Genesis Center, Generations, the National Restaurant Association, the RI Hospitality Association, Johnson & Wales University, The RI Small Business Development Center, and The Carroll Center for the Blind. Trainees will be required to participate in management and other training from such local resources as needed. Training may also include course work in management, marketing, sales, customer relations, and advertising.
5. The S.L.A. will provide for upward mobility, or continued training for the advancement, or re-training of vendors, including, as necessary, provision of post-employment services to assist vendors in their adjustment to their work assignment and assure the application of their maximum vocational potential as vending facility managers, and re-training pursuant to any corrective action warranted. Such training and services may be provided in conjunction with the VR Counselor.
 - a. The S.L.A. will also provide direct or indirect mandatory periodic training on matters the S.L.A. deems necessary or beneficial. This training is intended for the improvement of specific individuals and/or the BEP in general.

3.7 LICENSURE

- A. The license which an operator receives will be issued pursuant to the rules and regulations of the Business Enterprises Program (BEP) and include the following requirements.
 1. The applicant must be legally blind. "Legally blind" means visual acuity found to be 20/200 or less in the individual's better eye with best correction, or visual acuity of better than 20/200 if the widest diameter of the field of vision subtends an angle no greater than twenty degrees (20°).
 - a. Blindness will be determined by a physician skilled in the diseases of the eye and certification thereof will be made by the ophthalmological consultant at the Services for the Blind and Visually Impaired.
 - b. Legal Blindness is certified every five (5) years.
 2. The applicant must be a citizen of the United States.

3. The applicant must be certified by the BEP Administrator of the S.L.A. as qualified to operate a vending facility.
4. An applicant must be in need of employment.

B. SUSPENSION AND REVOCATING

1. Immediate suspension: Grounds for immediate suspension of a license shall exist when any activity, policy or conduct of a Blind Vendor presents a serious or imminent hazard to the health, safety, civil rights, and well-being of the public.
2. Suspension for cause: A vendor/licensee is subject to suspension for the following reasons, including, but not limited to:
 - a. The Blind Vendor/licensee is in violation of the regulations and/or laws of a governmental agency; or
 - b. The Blind Vendor/licensee demonstrates total unfitness or inability to operate a business enterprise in compliance with any of the requirements of these regulations and any applicable Federal and State law, including:
 - (1) Willfully defrauding a private vendor or any agency of government of any taxes or other money due;
 - (2) Jeopardizing the S.L.A.'s permit for the facility as a result of building management complaint and request for removal; or
 - (3) Abandonment of the business enterprise; or
 - (4) Indictment for or conviction of, a crime.
3. The Blind Vendor/licensee shall be notified of the reason(s) for any suspension in writing on the effective day of the suspension, if not earlier. The suspension becomes effective on the date and at the time specified in said notice. The notice must offer the operator an opportunity to show compliance with all lawful requirements for retaining her or his license. In addition, the vendor/licensee has appeal rights as outlined in Section 1.9 of this Subchapter. The vendor/licensee is entitled to all grievance procedures afforded by state and federal law, including an Administrative Hearing.

C. TERMINATION OF LICENSES

1. Any license given to an individual Blind Vendor/licensee for the operation of a vending facility on Federal or other property will be terminated for any of the following reasons:

- a. No longer eligible under the criteria in §§ 3.7(A) and 3.8(A) of this Part, for example, improvement of vision so that the vendor no longer meets the definition of blindness.
 - b. Withdrawal by the vendor/licensee from the program with or without (i.e. abandonment) his or her written notification to the S.L.A.
2. All licenses will be issued for an indefinite period of time but are subject to termination if, after affording the Blind Vendor/licensee an opportunity for a full evidentiary hearing, the S.L.A. finds that the vending facility to which that Blind Vendor/licensee is assigned is not being operated in accordance with the rules and regulations set forth herein, the terms and conditions of the permit, or the terms and conditions of the written agreement between the S.L.A. and the Blind Vendor/licensee.

3.8 SELECTION OF VENDOR

- A. The S.L.A., with the active participation of the State Committee of Blind Vendors, hereby establishes a selection, transfer, and promotion system for vendors which will be uniformly applied to all vendor vacancies that develop or occur in the vending facilities program.
- B. General Standards for Selection of Licensed Vendor: To be eligible for appointment as a Licensed Vendor, the following basic requirements must be met:
 1. An applicant must have successfully completed the specialized training program for Blind Vendors as provided by the S.L.A. or a training program of equal scope and requirements.
 2. An applicant must have acquired sufficient knowledge and skills necessary to the successful performance of all the tasks or processes which enable the proper operation of a vending facility.
 3. Successful trainees will advance to Probationary Graduate Status for a period of 6 months, during which time he/she will operate a designated vending facility under the direction and supervision of the BEP Supervisory staff. Ongoing evaluations will be conducted during said probationary period.
- C. General Standards for the Promotion of Probationary Graduates and Transfer of Blind Vendors and Active Probationary Graduates
 1. In order to ensure the continuous and orderly coverage of all vending facilities, the following requirements will be basic to the eligibility for transfer and promotion:

- a. The Blind Vendor/licensee must have demonstrated his or her ability to successfully operate and manage a vending facility.
- b. The Blind Vendor/licensee must have adhered to these rules and regulations and operating rules of the Vending Facilities Program during the immediate past assignment(s).
- c. The Blind Vendor/licensee must be current with any and all set aside obligations or have adhered to a payment schedule to repay any debts incurred during previous assignment(s) if applicable.
- d. The Blind Vendor/licensee must consider, explore, and be prepared to assume certain obligations which may occur as a result of accepting assignment of a facility such as: relocation of residence, transportation to and from a facility and assumption of duties and responsibilities which may or may not vary from the previous assignment(s) such as payroll expenses or managing employees, or purchasing insurance.
- e. The Blind Vendor/licensee must be prepared to accept specialized or advanced training prior to or after transfer or promotion.

D. Conditions for Transfer of Blind Vendors/licensees and Active Probationary Graduates

1. In accordance with the standards outlined in § 3.8(B) of this Part above, the transfer/assignment of Blind Vendors/licensees to a Vending facility will be made on the basis of transfer seniority as well as consideration of the Vendor/licensee's status within the program – i.e. good standing. Transfer seniority is defined as the length of time that a Blind Vendor/licensee has been licensed and actually operated a vending facility located in Rhode Island pursuant to a written Agreement for Operation of a Vending Facility. Transfer seniority will not accrue to Vendor/licensees during periods of suspension that result from performance issues. "Ties" in seniority accrual of this of those Vendors/licensees competing for a vacant facility who are otherwise equal on all other criteria may be decided by a lottery process.
2. The State Licensing Agency will maintain a Transfer Seniority List.
3. Transfers will also be based on performance standards related to the Vendor/licensee's education and experience in operating a business successfully. Factors that will be considered include but are not limited to:
 - a. Overall performance/evidence of good standing;
 - b. Creative marketing;

- c. Appropriate use of employees;
- d. Inventory management;
- e. Quality of customer service;
- f. Willingness to learn;
- g. Ability to handle increased responsibility;
- h. Payment of all set aside and other known payables due; and
- i. Appropriate engagement with BEP staff and Host entity personnel.

3.9 FACILITY ASSIGNMENT

- A. Whenever there will be a facility available either as a Primary, Secondary, or Satellite facility, the State Licensing Agency will provide written notice to each active blind vendor/licensee, who is in good standing.
- B. The bid announcement will contain at least the following information:
 - 1. Date facility is available
 - 2. Type of facility
 - 3. Financial data for current fiscal and preceding year to include: gross annual sales, vending income, total facility proceeds, purchases and payroll
 - 4. Facility personnel: number of current or projected
 - 5. Building population
 - 6. Hours of operation
 - 7. Holidays
 - 8. Public transportation
 - 9. Miscellaneous information
 - 10. Program contact person and current manager
 - 11. Cut-off date and time for submitting application. A minimum of two weeks will be allotted for submission of applications/bids
- C. Attachments to the Bid Announcement

1. Bid Response Form: The Vendor/licensee may submit an application to bid for the available facility as primary or satellite. The final assignment classification will be based on the highest order selected.
2. Minimum Assignment Criteria which are specific to the facility to be assigned.
3. Other information as needed.

D. Withdrawal of Bid

1. A Vendor/licensee may withdraw their bid at any time prior to bid award.
2. A Vendor/licensee may only withdraw from an awarded bid with 30-days' notice to the S.L.A. to allow the S.L.A. to select the next eligible bidder.

E. Assignment/Award Criteria

1. In order to be assigned any vending facility, the applicant must:
 - a. Meet the specific criteria established for that facility;
 - b. Meet the following general criteria:
 - (1) Satisfy all financial obligations incurred from the operation of the current facility or past facilities;
 - (2) Be in good standing with BEP;
 - (3) Receive overall passing score on recent management evaluations, have demonstrated proper business management and customer service practices, be current with all weekly financial reports, tax obligations, Vendor/licensee payments, current with set aside and not otherwise under any corrective action plans.

3.10 AWARDING OF VENDING FACILITIES

A. PRIMARY VENDING FACILITIES

1. Generally: A Vendor/licensee operating a primary vending facility who bids on, is awarded and accepts a new primary facility automatically relinquishes their current primary facility.
2. Primary Sites will be awarded according to the assignment criteria.
3. If a Vendor/licensee who is operating a secondary is suspended from a primary location, the Operating Agreement for the Secondary may be

terminated. When the Operating Agreement for the site is terminated, the facility will be subject to the normal bid process.

4. The successful applicant may continue to run his/her current facility if there are no eligible Vendor/licensees awaiting placement. The S.L.A. will make every effort to reassign the current facility as soon as possible.
5. In the event that the Vendor/licensee selected refuses to accept the facility, the next senior and qualified Vendor/licensee applicant will be assigned the facility.

B. SECONDARY VENDING FACILITIES

1. If there are no applications for a facility as a primary facility, any applications for the facility as a secondary facility will be reviewed. First priority in assignment will be given to the most senior qualified applicant who can demonstrate the capacity to efficiently run the facility and is available to be present at the secondary site routinely.
2. Secondary sites will be awarded to Vendor/licensees for a minimum period of six (6) months under an operating agreement for secondary sites. If at any time an unassigned qualified Vendor/licensee in the BEP is in need of assignment – secondary sites will be surrendered.
3. As long as there are no unassigned Vendor/licensees awaiting placement, the Vendor/licensee who currently holds it may continue to operate it.
4. Any Vendor/licensee currently operating a secondary location will go to the bottom of the seniority list in terms of awarding any additional locations. Priority for award will be to the Vendor/licensee who has the fewest number of locations.
5. If a Vendor/licensee who is operating a secondary is suspended from a primary location, the Operating Agreement for the secondary may be terminated. When the Operating Agreement is terminated, the facility will be subject to the normal bid process.

C. SATELLITE VENDING FACILITIES

1. A satellite is a vending facility bid as a satellite and which a Vendor/licensee operates in addition to their primary location (such as a 'vending only' site). Satellites will be awarded according to the standard bidding protocol. A Vendor/licensee must be under an effective operating agreement for a primary facility in order to submit a bid for another facility as a satellite location. No Vendor/licensee will be allowed to assume more than one satellite until all other eligible Vendor/licensees have had the option to assume a satellite.

2. No Vendor/licensee will operate more than one satellite while there are other interested Vendor/licensees awaiting placement for either primary or secondary locations.
3. Vendor/licensees who operate satellite locations will be responsible to maintain and submit separate records concerning the operation of each facility to the S.L.A., as well as the payment of the set aside fee payment by separate checks.
4. If a Vendor/licensee who is operating a satellite is suspended from a primary or secondary location, the Operating Agreement for the Satellite may be terminated. When the Operating Agreement for the satellite is terminated, the facility will be subject to the normal bid process.

D. Available Facilities Receiving No Applications

1. If, after the bid process has been exhausted, no Vendor/licensee has bid to operate a facility as a primary or secondary or satellite, it may be closed or operated at the discretion of the S.L.A.
2. If after a secondary bid process yields no interested Vendor/licensees, and there is no reasonable belief that new Vendor/licensees will be entering BEP, then the S.L.A. in consultation with the RISCOBV may elect to surrender the location.

E. Facility Surrender or Relinquishment/Reassignment

1. All Vendor/licensees operating a facility under an operating agreement - whether primary, secondary, or satellite must operate said facility for a minimum of thirty (30) days.
2. All Vendor/licensees wishing to surrender a facility must provide thirty (30) days' notice to the S.L.A.
3. Exceptions will be made at the discretion of the S.L.A. for extenuating circumstances such as documented medical emergencies, substantial changes impacting the building population such that documented business proceeds are significantly reduced.
4. All conditions for surrender seeking exception to the thirty (30) day rule require documentation.

3.11 VENDING FACILITY EQUIPMENT AND INITIAL STOCK

- A. The S.L.A. is responsible for furnishing each vending facility with adequate initial stocks of merchandise, suitable equipment, and petty cash if necessary for the establishment and operation of such facility.
- B. The right, title to, and interest in the equipment, stock, and petty cash of each vending facility will be vested in the S.L.A. in accordance with the laws of the State of Rhode Island, and, the S.L.A., as the duly authorized agency to administer the Vending Facilities Program, will safeguard all such equipment, stock, and petty cash, using same for program purposes only.
- C. Expenditures for the purchase of vending facility equipment and initial stock, petty cash, and expenditures for major repairs to vending facility equipment, will be made in accordance with purchasing and disbursement procedures of the State of Rhode Island.
- D. Disposition of Equipment, Merchandise, and Petty Cash
 1. Upon termination of a vending facility assignment by a vendor, the Blind Vendor will be permitted to engage in an inventory of all equipment, merchandise, and petty cash, but the S.L.A. will be responsible to take the inventory as soon as practicable following such termination. The S.L.A. will, within a reasonable period of time, submit a Profit and Loss Statement to the vendor or his or her heirs, and either pay any remaining profits to him, her or them, or, make demand upon him, her, or them in the event of debt(s) outstanding at such facility.
 2. All equipment and merchandise will remain at the subject vending facility, excepting perishables and petty cash, until the final inventory is completed.
 3. The petty cash will be returned to the S.L.A. upon termination of assignment and added to the value of final inventory.
 4. Equipment and stock will be appraised at current fair market value, then sold for such value, or retained for the continued operation of that facility by another vendor, or stored for future use.
 5. Proceeds from the sale of any and all equipment and merchandise, will be deposited in and credited to the accounts from which they were drawn and apportioned in accordance with the matching ratio in effect at the time of their purchase.
- E. All equipment and permanent stock as purchased by the S.L.A. will be labeled according to fixed asset tracking rules.
 1. A complete inventory of all such goods will be maintained by the S.L.A..

2. Equipment and permanent stock which is not the property of the State of Rhode Island may be inventoried at the discretion of the S.L.A. for the purpose of determining worth/value in the event of unexpected loss, i.e., theft, fire, etc.

3.12 MAINTENANCE AND REPLACEMENT OF EQUIPMENT

- A. The S.L.A. will maintain, or cause to be maintained, all vending facility equipment in good repair and in attractive condition, and the S.L.A. will replace or cause to be replaced, worn out, or obsolete equipment as required to assure the continued successful operation of the facility.
- B. If there is equipment present at any vending facility the full title of which is not vested in the S.L.A., the latter hereby declares no responsibility or obligation for its maintenance, repair, and replacement.
- C. Vending facility equipment in need of repair or replacement will be reported to the S.L.A. without delay. Subsequent to such report, the S.L.A. will determine the costs of repair/replacement. These costs must be verified by written documentation from an appropriate licensed repair person.
- D. Each vendor will take reasonable care of the equipment assigned to his or her facility, and perform routine, day-to-day cleaning and maintenance procedures.

3.13 OPERATION

A. Setting Aside of Funds

1. The S.L.A. will set aside, or cause to be set aside, the net proceeds of the operation of all vending facilities under the program and vending machine income, a sum of money which will be based upon a fixed percentage, which shall apply equally to each vending facility without regard to any vending facility or vending machine as set forth in 34 C.F.R. § 395.9.
 - a. The method by which the S.L.A. shall cause funds to be set aside from the net proceeds of all vending facilities and locations is as follows:
 - (1) Set aside rate- The set aside rate will be considered on an as needed basis depending on the program's projected expenses as determined by the S.L.A. and RISCOBV Executive Board, Vendor/licensees shall remit to the S.L.A. the set aside fee assessed of their facility net proceeds, at least once annually, at the conclusion of the Federal Fiscal Cycle consistent with the reporting period set forth in 34 C.F.R. § 395 – RSA-15 – Report of Vending Facilities Program.

(2) The S.L.A. shall prepare and submit to the Vendor/licensee a compiled profit and loss summary based on sales reports submitted by the Vendor/licensee which identifies the individual set aside obligation.

b. Funds will be set aside only for the purposes of:

(1) Maintenance and replacement of equipment;

(2) Purchase of new equipment;

(3) Management services;

(4) Assuring a fair minimum return to vendors;

B. Vending Facilities Other Than Automatic Vending Machines

1. Vending facilities other than automatic vending machines may be located on public or private property and shall be operated by a licensed blind vendor pursuant to the rules and regulations of the ORS/SBVI Business Enterprises Program.

C. Automatic Vending Machines

1. In accordance with the rules and regulations of the Business Enterprises Program, vending machine income obtained from the operation of all automatic vending machines on state property shall accrue to:

a. The Licensed Operator operating the vending facility, and

b. In the event that there is no Licensed Operator operating a vending facility on the property, to the S.L.A. for use in the support of the administration of the Business Enterprises Program.

D. Leave of Absence

1. Vendor/licensees are expected to assure continuous operation of a facility during normal business hours. In the event a vendor/licensee must be absent from a facility for any period of time, in particular extended absences due to illness, vacation, or other extended leave, the following applies:

a. When a Blind Vendor/licensee Probationary Graduate in good standing wishes a short-term leave of absence for any reason, he/she shall request such leave at least two (2) weeks prior to the beginning of the time period. The Vendor/licensee is responsible for finding and paying the replacement employee. The Blind Vendor/licensee Probationary Graduate must adhere to all rules

pertaining to the use of labor and provide the S.L.A. the name, contact information, and BCI report for the individual who will operate the facility during his/her absence if not previously vetted by the S.L.A. Further, those whose facilities engage in the preparation and sale of food, shall assure all replacement individuals have taken the approved food safety course, preferred to hold a food safety managers license. All rules of the BEP and those pertinent to the facility operation and responsibility to the S.L.A. apply.

- b. Any absence for a period of three (3) calendar months shall cause suspension of the operating agreement.
- c. Any agreement that remains suspended for twelve (12) months shall be terminated according to § 3.14(B)(1)(b) of this Part.

3.14 CORRECTIVE ACTION PLAN (CAP) AND SUSPENSION

- A. Corrective Action Plan: If it is determined by the S.L.A. that re-training or other intervention is necessary due to a vendor's performance problem, a Corrective Action Plan (CAP) may be completed.
 - 1. Performance problems resulting in the determination that re-training or other intervention is necessary and development of a Corrective Action Plan include, but are not limited to:
 - a. Incidence of unprofessional behavior, e.g., use of profanity or loud, abusive language or behavior, poor customer service, inappropriate dress; and/or
 - b. Cleanliness problems, inappropriate hygiene, failure to adhere to safe food handling requirements; and/or
 - c. Bookkeeping issues, such as failure to file weekly reports to the S.L.A. in a timely manner, non-payment of set-aside, failure to obtain current worker's compensation insurance for employees, failure to make required tax deposits and payments, failure to file required local, state or federal tax forms; and/or
 - d. General management issues including inappropriate use of labor, low inventory levels, failure to use cash register, improper recording of receipts, inappropriate use of the telephone, cable, or lottery equipment, and other problems related to operating the facility in a business-like manner; and/or
 - e. Failure to adhere to operating hours; and/or
 - f. Failure to comply with local, state, and federal laws; and/or

- g. Personal issues, e.g., substance abuse, excessive tardiness, and excessive absences as determined by the S.L.A.; and/or
 - h. Failure to pass the Semi-Annual Review.
2. Determination of Need for Intervention and/or Corrective Action Plan
 - a. The S.L.A. may become aware of performance problems through the results of the semi-annual reviews, regular supervisory visits, building managers, Department of Health inspections, or any other valid source of information. Verbal reports will be accepted but written reports of misconduct are preferred and will be requested of the complainant(s).
 - b. Upon S.L.A.'s notification of a performance problem, BEP Administrator will meet with the reporting party(ies) (if applicable and/or possible) and the vendor/licensee to discuss and determine the validity and seriousness of the complaint and, if valid, determine if a Corrective Action Plan should be developed and implemented to correct the problem(s).
 3. A Corrective Action Plan is developed with the cooperation of the vendor and identifies the problems leading to the determination that re-training or other intervention is necessary, and contains the actions/activities required to address and resolve the identified issues/deficits.
 - a. The developed CAP is reviewed with the Vendor/licensee and signed by both the Vendor/licensee and BEP Administrator. Accessible copies are provided to both parties.
 - b. The vendor/licensee must show a good faith effort in cooperating and participating in the activities outlined in the CAP until the end date stated in the CAP.
 4. Non-cooperation with Corrective Action Plan (CAP)
 - a. Any vendor/licensee who does not participate in the development and implementation of a Corrective Action Plan (CAP) will cause her/his Operating Agreement to be suspended. Moreover, if the S.L.A. determines that the vendor/licensee is not making a good faith effort to participate in the CAP, or upon conclusion of the CAP end date, if no real remedy to the original problem(s) is exhibited, the vendor/licensee will be subject to suspension as described below.
 - b. Such suspension shall result in the vendor's relinquishing control of the vending facility and leaving and/or remaining away/absent from the facility for the period of suspension.

- c. The vendor/licensee is deemed to be “not in good standing”, and therefore ineligible to bid on any other facility (see § 3.8(C) of this Part above) until the problems/deficits are resolved through a CAP.
- d. The vendor/licensee's license to operate a vending facility may be (either suspended or) terminated due to non-cooperation.
- e. Recurrent performance problem(s) identified in a CAP which a Vendor/licensee fails to substantially correct may be cause for termination.

B. Suspension

- 1. Any operating agreement issued to a vendor/licensee may also be suspended for the following reason(s):
 - a. Extended absence due to vacation or illness resulting in prolonged incapacity or inability of the vendor/licensee to operate a vending facility in a manner consistent with the needs of the location, rules and regulations of the program, and/or be accountable to the S.L.A. for the operation of the business enterprise.
 - b. Any agreement that is suspended for twelve (12) calendar months shall cease, and the S.L.A. may terminate the agreement. The Blind Vendor/licensee may then be placed on an inactive vendor/licensee list according to seniority.

3.15 DISTRIBUTION AND USE OF INCOME VENDING MACHINES ON FEDERAL PROPERTY

- A. Vending machine income from vending machines on Federal property which has been disbursed to the State Licensing Agency by a property managing department, agency, or instrumentality of the United States under the vending machine income sharing provisions in 34 C.F.R. § 395.8 will accrue to each blind vendor/licensee operating a vending facility on such Federal property.
- B. Any vending machine income not disbursed to vendor(s) will be retained by the S.L.A. as and used for one or more of the following:
 - 1. Maintenance and replacement of equipment; purchase of new equipment; management services, and assuring a fair minimum return to vendors.

3.16 ELECTION, ORGANIZATION, AND FUNCTIONS OF STATE COMMITTEE OF BLIND VENDORS

- A. The S.L.A. shall provide for the biennial election of a State Committee of Blind Vendors, the functions of which are:

1. Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;
2. Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;
3. Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors/licensees;
4. Actively participate with the State licensing agency in the development of training and re-training programs for blind vendors/licensees and;
5. Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors/licensees within the State.

3.17 ADMINISTRATIVE REVIEW, EVIDENTIARY HEARINGS AND ARBITRATION OF VENDOR COMPLAINTS

- A. The S.L.A. hereby adopts, with certain modifications, and incorporates herein, the procedures set forth in 34 C.F.R. 395.13, Evidentiary Hearings and Arbitration of Vendor Complaints.

3.18 ACCESS TO PROGRAM AND FINANCIAL INFORMATION

- A. The S.L.A. shall, upon request, within a reasonable period of time, provide to each blind vendor/licensee access to all program and financial data of the S.L.A. relevant to the operation of the vending facility program.
- B. Insofar as practicable, such data shall be made available in Braille, large print, electronic format, and/or on recorded tape, upon request.
- C. At the request of the vendor/licensee, the S.L.A. will arrange a time convenient to both parties during normal work hours to assist in the interpretation of such data.

3.19 EXPLANATION OF RIGHTS AND RESPONSIBILITIES OF AND TO VENDORS/LICENSEES

- A. The S.L.A. shall furnish to each vendor/licensee copies of documents relevant to the operation of an assigned vending facility including the following:
 1. The agreement for operation of the vending facility
 2. A copy of these Program Rules and Regulations.

3.20 NON-DISCRIMINATION

- A. In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 200d et seq.), Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) and Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), the US Department of Health and Human Services implementing regulations (45 C.F.R. Parts 80 and 84) and the US Department of Education implementing regulations (34 C.F.R. Parts 104 and 106), the Rhode Island Services for the Blind and Visually Impaired (RISBVI), Department of Human Services (DHS), does not discriminate on the basis of race, color, national origin, handicap or sex in acceptance for or provision of services, employment or treatment, in its educational and other programs and activities. Under other provisions of applicable law, RISBVI does not discriminate on the basis of age, creed or political belief.
- B. For further information about these laws, regulations, and RISBVI's grievance procedures for resolution of complaints of discrimination, contact DHS at 600 New London Avenue, Cranston, Rhode Island 02920, telephone number (401) 462-2130. The Community Relations Liaison Officer is the coordinator for implementation of Title VI; and the Vocational Rehabilitation Placement Supervisor is the coordinator for implementation of Title IX and Section 504. The Director of DHS or designee has the overall responsibility for RISBVI's civil rights compliance.
- C. Inquiries concerning the application of Title IX and 34 C.F.R. Part 106 to RISBVI may also be made directly to the Assistant Secretary for Civil Rights, US Department of Education, Washington, DC 20202 or the Office of Civil Rights, US Department of Education, Region I, Boston, Massachusetts, 02109.