

## 15.02.30 – BUSINESS ENTERPRISE PROGRAM

### 000. LEGAL AUTHORITY.

The Idaho Legislature, through the U.S. Secretary of Education, recognizes the Commission for the Blind and Visually Impaired (Commission) as the sole State Licensing Agency (SLA) under the provisions of the Randolph-Sheppard vending stand act pursuant to Section 67-5411, Idaho Code, and has given to the Board of the Idaho Commission the legislative power to establish a Business Enterprise Program (BEP) pursuant to Section 67-5407(c), Idaho Code, and promulgate rules by the provisions of Section 67-5407(e), Idaho Code. (3-15-02).

### 001. SCOPE.

These rules specify the conditions and standards under which the BEP facilities are operated. (3-15-02)

### 002. INCORPORATION BY REFERENCE

The following federal laws and regulations are incorporated by reference into the rules of this chapter and copies are available at the Commission's office.

01. 20 U.S.C Ch. 6A Randolph-Sheppard Act
02. 34 CFR 395
03. Section 67-5402, 67-5411, 67-5909, 67-6901, 67-6902, 67-6903, 67-6904, 67-6905 Idaho Codee

### 003. -- 009. (RESERVED)

### 010. DEFINITIONS.

The terms below are defined as follows: (3-1-93)

**01. Active Participation.** An ongoing process of negotiations between the SLA and the Idaho Blind Merchants Committee (IBMC) to achieve joint planning and approval of Program policies, standards, and procedures affecting the overall operation of the BEP, prior to being implemented by the SLA.

**02. Administrator.** The Administrator of the Commission. (3-15-02)

**03. Benefits.** Retirement or pension plans, health insurance contributions, and paid sick and vacation. (3-15-02)

**04. Certified.** Having successfully completed the Commission-approved training program established by the SLA as a requirement for licensing. (3-15-02)

**05. Contract.** An agreement with a government entity or other business for the operation of a cafeteria. (3-15-02)

**06. Facility.** In addition to section 67-6902(2), a vending enterprise defined as: (3-15-02)

**a.** A Vending Facility as defined in 34 CFR 395.1 (x) (3-15-02)

**b.** Any business that sells articles or services consistent with the policies, goals, and objectives of the Program. (3-15-02)

**07. IBMC.** Is comprised of licensed vendors currently operating a Facility. (3-15-02)

**08. Operating Agreement.** An agreement between the SLA and a Vendor or other qualified individual for the operation of a vending Facility or individual location.

**09. Probation.** A conditional status wherein the operation of a facility by a Vendor or Provisional

Licensee is being monitored for a specified period of time. (3-15-02)

**10. Property Manager.** The individual or entity in charge of issuing Contracts or Permits in buildings on behalf of federal, state, or local government or private entities. (3-15-02)

**11. Provisional Licensee:** A trainee who is operating a facility during a six-month probationary period prior to full licensing.

**12. Supervisor.** The BEP individual who administers the Program. (3-15-02)

**13. Suspension.** Temporary withdrawal, by the Supervisor, of privileges granted by a license or any agreement during which time a Vendor may not continue to operate a Facility. (3-15-02)

**14. Vendor.** A certified blind licensee who is operating a vending facility on Federal or other property.

**011. PURPOSE. SEE U.S. DEPARTMENT OF EDUCATION – RANDOLPH SHEPPARD VENDING FACILITY PROGRAM**

**012. -- 029. (RESERVED)**

**030. LICENSES.**

**01. Issuance of Licenses.** Licenses do not expire and are issued only to persons who are determined by the SLA to be blind, a United States Citizen, and certified. (3-15-02)

**02. Inactive License.** A license will become inactive if a non-vendor licensee fails to bid for a facility for more than one (1) year. (3-15-02)

**03. Reactivation.** A license can be reactivated upon written request to the Supervisor. The licensee may be required to repeat the certification requirements. (3-15-02)

**031. OPERATING AGREEMENTS.**

In order to operate a Facility an individual must enter into an Operating Agreement (OA) with the SLA that specifies the rights and responsibilities of each party as they relate to the operation of a Facility. (3-15-02)

**01. SLA Responsibilities.** In addition to the responsibilities stipulated by the OA and Idaho Code, the SLA will: (3-15-02)

**a.** Periodically audit, or cause to be audited, the Vendor's records and financial data to verify the accuracy of the set aside report; and (3-15-02)

**b.** Provide information or make available data in suitable format at the Vendor's request provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. . (3-15-02)

**c.** Make available to all Vendors each Location's signed OA.

**02. General Rights and Responsibilities.** (3-1-93)

**a.** The Vendor is encouraged to hire blind persons or persons with other disabilities when feasible. (3-15-02)

**b.** The Vendor shall report to the Supervisor any unresolved complaints of the Property Manager within one business day. (3-15-02)

**c.** The Vendor may, with written approval of the Supervisor, negotiate with Property Managers for

additional facilities. (3-15-02)

d. A vendor may purchase equipment for a facility only if the purchase is approved in advance, in writing, by the Supervisor. The SLA, in its sole discretion, has the first option to purchase from the Vendor any equipment purchased without advanced, written approval. (3-15-02)

SUPERVISOR..

**032. -- 039. (RESERVED)**

**040. TERMINATION AND SUSPENSION OF LICENSES AND/OR OPERATING AGREEMENTS.**

**01. Grounds for License Termination.** Except in emergency situations, probation occurs prior to termination. Licenses are subject to termination after fifteen (15) business days' notice if the SLA finds: (3-15-02)

a. That the Vendor engages in conduct or allows a condition to exist for which the Vendor has previously been placed on Probation, or which has previously led to the suspension of the license; (3-15-02)

b. That the Facility is not being operated in accordance with SLA rules, the terms and conditions governing the Permit, or the terms and conditions of any agreement; (3-15-02)

c. That the Vendor no longer meets the definition of blind person; (3-15-02)

d. That the Vendor has received a medically documented diagnosis that will result in their being incapacitated or unable to oversee the operation of a Facility for more than one year; (3-15-02)

e. That the Vendor has withdrawn from the Program by submitting written notification to the Supervisor; (3-15-02)

**02. Grounds for Agreement Termination.** Operating Agreements may be terminated if: (3-15-02)

a. The health and safety of the Vendor, the employees, or the customers are jeopardized; (3-15-02)

b. The Vendor jeopardizes the state's investment in the Facility by violating the terms of the Permit, OA, applicable federal, state, or local laws, rules, and regulations, or by placing the Facility in danger of being closed; (3-15-02)

c. The business and premises of the Facility are not covered by adequate insurance; (3-15-02)

**03. Grounds for License Suspension.** The Supervisor has the authority to suspend the license of a Vendor whose conduct may jeopardize a Contract, Permit or the Program. (3-15-02)

**04. Grounds for Agreement Suspension.** Any agreement may be suspended if: (3-15-02)

a. The Vendor has committed any of the acts enumerated in Subsection 040.02 of these rules; or (3-15-02)

b. The Property Manager requests the removal of the Vendor and documents the request in writing, and the SLA determines that immediate removal of the Vendor is in the best interest of the Program; or (3-15-02)

c. The Supervisor and the Vendor cannot agree on a plan to resolve violations and improve

performance.

(3-15-02)

**05. Notice of Termination or Suspension.** A written notice, in accessible format, will be provided to the Vendor that includes the specific grounds for termination or suspension and outlines a Vendor's right to pursue an administrative review and/or full evidentiary hearing within fifteen (15) business days following the issuance of this notice.

(3-15-02)

**06. Request for Review.** If the Vendor seeks an administrative review and/or evidentiary hearing, and prevails during the proceedings, all rights and benefits are restored to the Vendor including compensation for the period of time the license or agreement was terminated or suspended. Compensation is calculated at a weekly rate determined by averaging the net income of the Facility for a designated period prior to the notice of termination or suspension. The designated timeframes are:

(3-15-02)

- a. The prior federal fiscal year in the case of license terminations; or
- b. The eight (8) weeks prior to the notice of termination in the case of any terminated agreement; or
- c. The eight (8) weeks prior to the notice of suspension in the case of any suspended agreement or license.

**07. Termination.** The termination becomes effective following the fifteen (15) business day notice period unless the Vendor seeks an administrative review and/or evidentiary hearing, in which case the license may be suspended, and any OA may be terminated pending completion of the administrative review, full evidentiary hearing, and subsequent appeals.

**08. Suspension.** Suspension may continue up to one hundred eighty (180) calendar days. If the Vendor seeks an administrative review and/or evidentiary hearing, the suspension will continue until the administrative review, evidentiary hearing, and subsequent proceedings have concluded.

**09. Operating Agreement Cancellation.** An OA may be cancelled by the SLA at any time should the Facility cease to be a vending Facility by revocation of the Permit by the Property Manager. Cancellation under this Subsection will not affect licensure and does not give rise to a right to administrative review, evidentiary hearing, or other relief.

(3-15-02)

**10. License Probation.** The Supervisor has the authority to place a Vendor who is not in compliance with the terms of an OA on Probation. The Vendor is provided written notification of the Probation including the specific deficiencies and the timeframe to complete corrective action. A notice of termination will be issued if corrective action is not completed within the time frame..

(3-15-02)

**11. Improvement Plans.** If a Vendor's set aside report indicates that no profit has been realized during three (3) consecutive months or five (5) months in a fiscal year, a review will be initiated. The Supervisor and Vendor will determine a plan with measurable objectives and timetables for improvement and the Vendor will submit a (6) six-month business plan including areas of improvement they identify for themselves. Should the Facility not show a reasonable profit during the five (5) subsequent months the Supervisor will review the Vendors records and financial data to verify the level of improvement; and may issue a notice of termination, or the Facility may be operated under a temporary OA or closed.

(3-1-93)

**041. -- 049. (RESERVED)**

## **050. SELECTION OF VENDORS.**

**01. Notification of Opening.** Written notification of any Facility opening will be provided to all Vendors, Provisional Licensees and Trainees, Commissioners, and Counselors of the Commission. The notice includes the Facility location, application procedure, submission and deadline.

- 02. Qualification of Bidders.** A bidder for a Facility shall be: (3-15-02)
- a.** Fully or provisionally licensed in good standing by the SLA and be current with program payments, monthly set asides, and any other monies due to the Program. (3-1-93)
- 03. No Qualified Bidders.** If no applications are received from qualified bidders, the Supervisor may award a temporary Operating Agreement to any food service business with a registered EIN. . (3-15-02)
- 04. Application.** An application will be in the form of a written letter to the Supervisor and include a statement of qualifications and pertinent experience. (3-15-02)
- 05. Selection Panel.** A panel is appointed to review all applications and conduct interviews. (3-1-93)
- a** The panel includes the Supervisor serving as chair, a representative of the IBMC selected by the IBMC Chair, and one (1) person from field services who will be selected through active participation. No member of the selection panel will have a conflict of interest with the applicants. (3-15-02)
- b.** The panel reviews all written applications and conducts interviews of the candidates, using the same format and interview questions. All members of the panel must be present during the interviews. (3-15-02)
- c.** A weighted evaluation form is used by each panel member. Selection criteria will be consistent with the job requirements of that Facility. (3-15-02)
- d.** The Supervisor makes a final selection from the two (2) candidates with the highest total points. If the candidate with the highest score is not selected, the Supervisor will provide a written explanation with the documentation that supports the decision. (3-15-02)
- e.** If no bidder is awarded operation of the Facility, the Supervisor may grant a temporary OA to a licensee or other food-service provider with a registered EIN. (3-15-02)
- 06. Notification of Decision.** Written notification of final decision is provided to all applicants. (3-1-93)
- 07. Transfer and Promotion.** Licenses, OAs, and Contracts are not transferable and must go through the original selection process. (3-15-02)
- 051. -- 059. (RESERVED)**
- 060. ACCESS TO PROGRAM AND FINANCIAL INFORMATION. SEE 34 CFR 395.12** (3-15-02)
- 061. -- 069. (RESERVED)**
- 070. EQUIPMENT, INITIAL STOCK AND BUSINESS EXPENSES.**
- 01. SLA Responsibilities.** The SLA assumes full responsibility for providing each Facility established under the Program with adequate equipment and initial stock of merchandise. (3-15-02)
- 02. Initial Stock of Merchandise.** An initial stock of merchandise for a minimum of two (2) full weeks of operation is provided to the Vendor. . (3-15-02)
- 03. Insurance.** All Vendors must obtain general liability, product liability, and worker's compensation insurance and provide proof of insurance prior to the start of operation and within ten (10) days of the policy renewal

date. (3-15-02)

**071. MAINTENANCE AND REPLACEMENT OF EQUIPMENT. SEE 34 CFR 395.10**

The vendor must report any incident resulting in damage, breakage, theft, defacement, or malfunction of equipment or fixtures within three (3) days. Vendors may arrange for minor repairs or replacement of small equipment when the total cost does not exceed BEP Internal Controls. The SLA will not be responsible or cover the cost of repairs that are due to negligent actions of the Vendor or for equipment or fixtures not covered under an OA.

(3-15-02)

**072. VENDOR OWNERSHIP OF VENDING FACILITIES.**

The SLA does not vest title to equipment and stock in a Vendor.

(3-1-93)

**073. -- 099. (RESERVED)**

**100. SETTING ASIDE OF FUNDS. SEE 34 CFR 395.9**

(3-1-93)

**101. DISTRIBUTION AND USE OF INCOME FROM VENDING MACHINES OR FEDERAL PROPERTY. SEE 34 CFR 395.8**

**102. -- 119. (RESERVED)**

**120. VENDOR BENEFITS. SEE 34 CFR 395.8**

**01. Eligibility.** Only Vendors operating a Facility pursuant to an Operating Agreement are eligible to receive Benefits..

(3-15-02)

**02. Non-Fully Funded Benefits.** If funds are not available for full payment of Benefits, as voted by the IBMC, the SLA may pro-rate the payments from available funds, unless another method of disbursement of non-fully funded Benefits was voted by a majority of the licensed vendors operating a Facility.

(3-15-02)

**121. -- 149. (RESERVED)**

**150. TRAINING PROGRAM.**

**01. Certification.** An applicant becomes certified after completing the training program established by the SLA which is comprised of general non-visual skills training, a core curriculum, on-the-job training, and a six-month probationary period during which a trainee is issued a provisional license to operate a facility.

(3-1-93)

**02. In-Service Training.** The SLA provides each Vendor with regular and systematic assistance and in-service training to: promote maximum returns to the Vendor; maximum service to the clientele; maintenance of a clean and attractive place of business; utilization of sound business practices; and adherence to the SLA's rules, policies, and building management requirements.

(3-15-02)

**151. -- 159. (RESERVED)**

**160. IDAHO BLIND MERCHANT'S COMMITTEE. SEE 34 CFR 395.14**

**01. Active Participation.** The implementation of policies, standards, and procedures affecting the overall operation of the vending facilities program, agreed upon through active participation with the SLA, shall be subject to review by the IBMC.

(3-15-02)

**02. Bylaws.** The IBMC shall, by a majority vote, adopt bylaws, consistent with the Randolph-Sheppard Act, which govern the internal operation of the IBMC.

(3-15-02)

**161. -- 169. (RESERVED)**

**170. MEETINGS OF THE COMMITTEE.**

**01. Annual Meetings.** The IBMC shall hold at least one (1) regular meeting each calendar year. (3-15-02)

**02. Program Responsibilities.** The SLA will work with the IBMC Chair or designated representative to coordinate and participate in the regular meetings of the IBMC. (3-15-02)

**03. Expenses.** Allowable expenses of not more than two (2) regular meetings per calendar year may be paid out of Program monies. Allowable expenses include meeting rooms, lodging, per diem, and transportation. The transportation arrangements are determined by the Supervisor. Expenses for additional meetings of the IBMC may be paid by the Program at the discretion of the SLA . (3-15-02)

**04. Minutes.** See Idaho Code, 74.205. The Program will pay all reasonable costs for this service. (3-15-02)

**171. -- 179. (RESERVED)**

**180. ADMINISTRATIVE REVIEW.**

Administrative Reviews are optional and may be bypassed by a Vendor in favor of a Full Evidentiary Hearing.

**01. Request for Review.** A Vendor, who is aggrieved by any action or failure to act arising from the operation or administration of the Program, may ask for a review of the action by filing a written request with the Administrator. The written request for review, which may be filed by the Vendor or a designated representative of the Vendor, shall specify the matter to be reviewed and how the Vendor has been aggrieved. (3-15-02)

**02. Response.** Upon receipt of a request for administrative review, the Administrator will notify the Supervisor, who has fifteen (15) business days to file a written response to the request. A copy of the Supervisor's response will be sent to the Vendor or the Vendor's designated representative. (3-15-02)

**03. Filing Objections, Replies, and Decisions.** Upon receipt of the response from the Supervisor, the Vendor or the Vendor's designated representative has fifteen (15) business days in which to file any objections or make reply, after which time the Administrator will, in good faith, evaluate the materials submitted and issue a written decision within fifteen (15) business days. The Vendor or the Vendor's designated representative may request an evidentiary hearing in accordance with Subsection 190.01 of these rules if the decision issued by the Administrator fails to resolve the Vendor's grievance(s). (3-15-02)

**181. -- 189. (RESERVED)**

**190. FULL EVIDENTIARY HEARING.**

**01. Request.** The Commission will provide a Vendor an opportunity for a full evidentiary hearing. The Vendor or the Vendor's designated representative may request a Full Evidentiary Hearing following a filed complaint or the results of the Administrative Review if the Vendor chooses to pursue that option. The written request will be delivered to the Administrator, with a copy to the IBMC chair, within fifteen (15) business days of the aggrieved party's filed complaint or receipt of the administrative review outcome. (3-15-02)

**02. Time and Place of Hearing.** The evidentiary hearing will be held in the Commission headquarters at a mutually convenient time. (3-15-02)

**03. Time Limit.** The hearing procedure will be limited to ninety (90) calendar days, beginning on the date the request for hearing is filed by the Vendor. The time limit may be extended due to illness of the Vendor or delay in obtaining evidence because of circumstances beyond the control of the Vendor or the SLA. (3-15-02)

**04. Hearing Officer.** The Administrator will appoint a hearing officer to conduct the evidentiary hearing and issue a report. (3-15-02)

**05. Hearing Notice.** A notice of the hearing date will be provided to the Vendor at least twenty-one

(21) calendar days prior to the date set for the hearing. (3-15-02)

**06. Legal Counsel.** The Vendor may arrange to have legal counsel or other representation. Such counsel shall be at the expense of the Vendor. (3-15-02)

**07. Evidence.** The hearing officer shall make a reasonable effort to obtain the most credible evidence of fact in the case, and the rules of evidence do not apply. (3-15-02)

**08. Conduct of Hearing.** Each party will be given an opportunity to present its case, examine and cross-examine witnesses, present argument, and rebut evidence. (3-15-02)

**09. Transcripts.** A transcript of the proceedings will be made available to the parties upon request. The SLA will pay all transcript costs associated with the conduct of the hearing. (3-15-02)

**10. Report of Facts, Findings, Conclusion, and Recommended Decision.** (3-15-02)

**a.** The Hearing Officer shall submit a report to the Administrator within twenty-one (21) calendar days after the hearing. This report will include: the issues and relevant facts adduced at the hearing; applicable provisions of law, rules, and Commission policy; findings of fact and conclusions of law with respect to issues; and the reasons and basis thereof. (3-15-02)

**b.** The report will also set forth any action necessary to resolve the issue and a recommended decision. (3-15-02)

**11. Service of Report.** The report will be served on the Administrator and all parties to the hearing. (3-15-02)

**12. Written Comments, Arguments, and Exceptions.** Parties to the hearing may, within fifteen (15) business days of the date the report was received in the Administrator's office, file written comments, arguments, and exceptions to the report with the Administrator. Comments, arguments, and exceptions received in a timely fashion become a part of the record and will be considered by the Administrator in making a final decision. (3-15-02)

**13. Exclusive Record for Decision.** The transcript of testimony, exhibits, and all papers and documents filed will constitute an exclusive record for decision. (3-1-93)

**14. Decision.** The final decision of the Administrator will be mailed to the Vendor within thirty (30) calendar days of receipt of the hearing officer's report. (3-15-02)

**191. -- 199. (RESERVED)**

**200. ARBITRATION.**

If a Vendor is dissatisfied with a decision rendered after a full evidentiary hearing, the Vendor may request that an arbitration panel be convened by filing a complaint with the Secretary of the U.S. Department of Education in accordance with 34 CFR 395.13. (3-15-02)

**201. -- 209. (RESERVED)**

**210. EXPLANATION TO VENDORS OF RIGHTS AND RESPONSIBILITIES.**

The SLA will furnish to each Vendor copies of documents relevant to the operation of the Facility in an accessible format, including rules and procedures, a written description of the arrangements for providing services, the Operating Agreement and Permit covering the operation of the Facility, and will provide explanation of these documents upon request by the Vendor. (3-15-02)

**211. -- 219. (RESERVED)**

**220. -- 999. (RESERVED)**