

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

**CHAPTER 1240-06-10
FACILITY OPERATIONAL REQUIREMENTS**

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1240-06-10-.01 DAYS AND HOURS OF OPERATION.

- (1) It shall be the responsibility of the manager to comply with the terms of the permit and/or the bid announcement regarding the days and hours designated for the facility to be open for business. It is required that the manager be present at least four (4) days and a minimum of thirty (30) hours each week; however, it is not necessary for the manager to be present during all of the hours that the facility is open. Exceptions to this provision must be approved in writing by the appropriate Business Enterprises Supervisor. In the absence of the manager, it is essential that a qualified employee be on duty to insure that all customers' needs are being met and that the facility is otherwise being operated in compliance with all rules and regulations which govern its operation.
- (2) During periods when the manager is absent from the facility as a result of advanced training offered by the Agency, Upward Mobility seminars, annual vacations or short-term illnesses, the manager shall designate an employee to assume the responsibilities of the business . The manager shall advise the Agency of the person who has been selected to operate the facility.
 - (a) If it is anticipated or if the manager is absent from the facility for more than twenty (20) consecutive working days as a result of an illness or recently incurred disability, the manager must apply for medical sick leave and provide information as required by the Agency regarding the illness or disability.
 - (b) In the event the illness and/or disability are projected to be of a prolonged nature, the Agency shall grant up to a maximum of one-year sick leave. The maximum sick leave of one year is a total accrual during any five-year period of the licensed manager's tenure as a licensed manager, excluding minor illnesses which do not exceed twenty (20) consecutive working days. If, due to medical reasons, the manager wants to be relieved of the responsibilities of the facility and the manager's physician provides to the Agency medical documentation that the manager's illness and/or disability is so severe that (s)he will be precluded from managing the facility, the Agency shall relieve the manager of the responsibilities and upon request, place him/her on medical transfer status, at which time the Agency shall declare the facility to be ready to be announced for bid or place it under temporary management. Under these circumstances, the manager's transfer eligibility shall be valid for a period of two (2) years.

(Rule 1240-06-10-.01, continued)

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987. (Formerly numbered as 1240-6-9-.01). Repeal and new rule filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.

1240-06-10-.02 PERSONAL APPEARANCE, HYGIENE AND FACILITY CLEANLINESS.

- (1) It shall be the obligation and responsibility of the manager to, at all times, project the image of personal cleanliness, which includes being appropriately groomed and dressed appropriately in accordance with the environment of the facility location, any terms of the permit or contract, TBE's dress code, and/or any other dress code imposed by property management on its employees. The manager must assure that all employees adhere to the same standard. A violation of this rule by the employee shall be treated as a violation committed by the manager.
- (2) The Agency, with the active participation of the Committee, shall develop a standardized dress code for managers and their employees. A copy of the dress code will be included in the Operations Manual and will be strictly enforced.
- (3) Irrespective of the circumstances, the facility and all of its equipment must be kept clean and sanitary at all times. The manager will adhere to any standardized sanitation procedures developed by the Agency with the active participation of the Committee.
- (4) The Business Enterprises Consultant/Specialist shall conduct periodic inspections of the vending facilities in accordance with policies and procedures developed by the Agency, with the active participation of the Committee, to ensure compliance with this section.
- (5) All Health Department rules and regulations shall be observed in every respect.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987. (Formerly numbered as 1240-6-9-.01). Amendment filed March 10, 1989; effective April 24, 1989. Amendment filed September 28, 1993; effective December 13, 1993. Repeal and new rule filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005.

1240-06-10-.03 FACILITY MERCHANDISE.

- (1) The merchandise available for sale in a vending facility shall be in compliance with the terms and conditions of the permit. Substantial deviations from this approved merchandise shall not be made by the manager without first seeking consent of the Agency and property management. The merchandise available for sale may be prepared on or off-site, depending upon the facility equipment, the classification of the facility, and the Health Department rules to be observed. The merchandise may be sold manually and/or dispensed through the use of vending machines.
- (2) The Agency shall provide the initial stock for use by the manager. It is the obligation and responsibility of the manager to have the initial level of merchandise in the facility at all times and, if necessary to meet customers' demands, the inventory shall be increased by the manager in an amount sufficient to address the identified needs. It is required that the manager has sufficient quantity and variety of merchandise in the facility in order to satisfy the intent of this subsection. This includes properly stocking all vending machines in the facility.

(Rule 1240-06-10-.03, continued)

- (3) The value of the inventory is to be calculated at wholesale cost. Ownership of the initial stock or its current wholesale cash value shall be vested in the Agency. Ownership of all stock and/or cash above the initial inventory level shall be vested in the manager. If the TBE Consultant/Specialist suspects that the merchandise inventory is below the initial level, a complete inventory may be taken by the TBE Consultant/Specialist. The manager shall be given prior day notice of the inventory to be conducted.
- (4) At the beginning of each calendar year, the manager shall conduct an inventory of all merchandise and supplies in the facility and submit it to his/her TBE Consultant/Specialist on or before February 15th of each year. In the event that a financial analysis is deemed to be appropriate at some subsequent time prior to the next scheduled inventory, the previous record referred to above shall be used as a beginning point, so that the collection of other data will be meaningful when all of it is assembled for final review.
- (5) The Agency, with the active participation of the Committee, shall develop inventory control procedures, which shall be incorporated into the Operations Manual.
- (6) Managers who leave TBE for whatever reason are not relieved of their responsibilities to repay any inventory shortages. The Agency may use methods that it deems appropriate to collect any such indebtedness.
- (7) The manager shall determine the pricing of the merchandise to be sold in the facility provided that it is reasonably compatible with that of the vicinity competition. In some cases, pricing may be addressed in the permit and the manager is required to comply with any such provisions.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104; 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987. (Formerly numbered as 1240-6-9-.01) Repeal and new rule filed April 27, 1998; effective August 28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005.

1240-06-10-.04 STANDARDS OF PERFORMANCE.

- (1) The Agency, with the active participation of the Committee, shall establish standards of performance for all managers. These standards, along with procedures for addressing managers who do not meet the standards, shall be incorporated into the Operations Manual. The Agency shall provide periodic reports on how the manager is performing in relation to the established standards.
- (2) If a manager fails to meet any of the established standards, the TBE Consultant/Specialist and the manager will jointly develop a plan of action, with specified time frames, that will enable the manager to make the necessary improvements to meet the standards. It will be the responsibility of the manager to implement agreed upon action steps to improve performance. Failure by the manager to implement such action steps will result in disciplinary action.

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7(c). **Administrative History:** Original rule filed August 30, 1978; effective November 29, 1978. Amendment filed May 25, 1983; effective June 24, 1983. Amendment filed December 11, 1986; effective January 25, 1987. (Formerly numbered as 1240-6-9-.01). Amendment filed March 10, 1989; effective April 24, 1989. Repeal and new rule filed April 27, 1998; effective August

(Rule 1240-06-10-.04, continued)

28, 1998. Repeal and new rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.

1240-06-10-.05 PARTNERING WITH PRIVATE ENTITIES.

- (1) With prior approval from the Agency, managers may partner with private entities in order to meet TBE's obligations under the permit. This may include placing vending machines on full service pursuant to chapter 1240-6-8-.01(5). Additionally, a manager may choose to partner with a private company to provide other portions of the facility operation if prior approval is secured from the Business Enterprises Consultant/Specialist. The determining factors on whether or not such a request will be approved are profitability, the quality of the service, the availability of storage, and the desires of property management. A partnering arrangement does not relieve the manager of the responsibility to ensure that service is provided in accordance with these rules and regulations and the Operations Manual.
- (2) There may be facilities where the Agency, after consultation with the area representative(s) of the Committee, chooses to partner with a private entity to help it meet its obligations to property management. If the Agency has entered into such a partnering agreement with a private entity, any licensed manager who chooses to bid on the facility shall be obligated to work with the private entity in such a way as to ensure the provision of quality services.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395.7(c).
Administrative History: Original rule filed April 8, 2005; effective June 22, 2005.

1240-06-10-.06 PUBLIC RELATIONS WITH CUSTOMERS, SUPPLIERS, AND PROPERTY MANAGEMENT OFFICIALS.

- (1) The manager must be committed to the highest standard of honesty, integrity, and responsibility in the ethical conduct of the vending facility. The manager's conduct in all matters must reflect positively on TBE and blind persons in general. The manager shall not engage in any conduct that might bring TBE into disrepute. The Agency, with the active participation of the Committee, shall develop and incorporate into the Operations Manual an ethics statement that must be signed by a manager as a condition of licensing.
- (2) In addition to providing a high quality food service and as a means of promoting sales, it is the responsibility of the manager and his/her employees to create a pleasant and wholesome atmosphere in the facility for the customers. It is required that patrons of the business be served promptly and treated cheerfully and courteously. The manager shall accommodate, within reasonable limits, requests normally expected in any food service operation. This does not include extending credit to customers, although the manager may do so if (s)he wishes, but it must be realized that losses as a result thereof are those of the manager, and the Agency assumes no responsibility.
- (3) The manager is free to negotiate with any purveyors of merchandise and/or supplies. Under no circumstances may a manager purchase merchandise and/or supplies from a corporation, partnership or other legal entities if the manager and/or an immediate family member have an interest of any type in such organizations. Normally, managers are required to purchase merchandise and supplies from recognized wholesalers; however, an exception to this provision shall be made to allow managers to purchase from retailers when it is financially advantageous to do so, or to purchase from other managers when it is convenient, provided that in no event shall the manager reflect a higher merchandise cost than (s)he was actually charged.
- (4) Irrespective of the purveyor, the manager shall pay for the merchandise pursuant to the terms which are arranged with the supplier. Failure to do so shall constitute a violation of this subsection and result in a ten (10) days notice to the manager to liquidate the indebtedness. If

(Rule 1240-06-10-.06, continued)

the manager does not pay within the ten (10) day limitation, the Agency shall initiate disciplinary action.

- (5) The manager shall comply with all reasonable requests of property managing officials if the requests are within the ability of the manager to meet and not in conflict with these rules or the provisions of the permit. The manager is free to accommodate the property-managing officials in other areas if (s)he chooses to do so in order to promote good public relations. If differences arise between the manager and property-managing officials, the manager shall immediately contact his/her TBE Consultant/Specialist so that a resolution might be quickly achieved.
- (6) In the event that the Agency receives a complaint regarding the manager, his/her employees, and/or the operation of the facility, the TBE Consultant/Specialist will immediately investigate to determine the validity of the complaint and document the findings. If the complaint is found to be valid, the TBE Consultant/Specialist and the manager shall immediately formulate a plan of action to address the concern of the complainant.
 - (a) If the complaint is in writing, it shall be immediately given to the manager. If it is validated as correct, the manager shall have thirty (30) days to file a response with the Agency. Both the complaint and the response shall be placed in the permanent record for a period of one (1) year, after which time, it will automatically be purged from the record. This does not mean that the manager has thirty (30) days in which to correct problems that have been validated by the TBE Consultant/Specialist.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. §395.7(c).
Administrative History: Original rule filed April 8, 2005; effective June 22, 2005.

1240-06-10-.07 DRUG-FREE ENVIRONMENT.

- (1) The TBE vending facility is a drug-free environment. The manager shall not at any time participate in the use of illegal drugs. If there is reasonable evidence to suggest that a manager may be in violation of this section, the Agency may require that the manager undergo a drug screening at a location specified by the Agency and at the Agency's expense. If it is determined that the manager is using illegal drugs, an emergency situation may be declared pursuant to chapter 1240-6-6-.02.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. 395.7(c).
Administrative History: Original rule filed April 8, 2005; effective June 22, 2005.

1240-06-10-.08 NON-DISCRIMINATION.

The manager of a TBE vending facility shall not discriminate against any present or prospective customer, supplier, employee, or other individual who might come into contact with the vending facility on the basis of sex, age, disability, religion, color, creed, national origin, or political affiliation.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395.7(c).
Administrative History: Original rule filed April 8, 2005; effective June 22, 2005.

1240-06-10-.09 INSURANCE COVERAGE.

- (1) Each permanently assigned or temporarily assigned manager shall be required to obtain and maintain public liability and products liability insurance coverage with limits as specified by the permit (or as designated by the Agency) and naming property management as co-insured. In addition, the manager shall be required to obtain workman's compensation insurance if required by State law as a consequence of the number of employees. If a vehicle is required in the operation of the vending facility, the manager shall be responsible for ensuring that

(Rule 1240-06-10-.09, continued)

such vehicles are adequately insured. All expenses for insurance coverage are deductible as a business expense to the facility. Each manager is required to provide the Agency with certificates of insurance, validating that the protection is in force.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395.7(c).

Administrative History: Original rule filed April 8, 2005; effective June 22, 2005.

1240-06-10-.10 TAXES, PERMITS AND LICENSES.

- (1) The manager shall be responsible for paying all applicable state, federal, and local taxes in a timely manner and securing any necessary permits or licenses required for the operation.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395.7(c).

Administrative History: Original rule filed April 8, 2005; effective June 22, 2005.

1240-06-10-.11 RECORD KEEPING AND REPORTING.

- (1) It shall be the responsibility of each manager to establish, maintain, and retain financial, payroll, personnel, and operational records as required by law or by policies contained in the Operations Manual. The vending facility manager is required to maintain all such records for a minimum of four years. In addition, managers are expected to comply with record retention requirements of other governmental bodies.
- (2) Reports required by TBE policies developed with the active participation of the Committee shall be filed promptly with the Agency. The reports and supporting documentation will be periodically reviewed by the Agency and will be subject to examination, analysis, and/or audit at any time by Fiscal Services, Internal Audit, or TBE staff. All examinations, analysis, and audits will be conducted in accordance with generally accepted auditing procedures. This provision shall not be construed to restrict any audit required by other entities of government and authorized by federal or state laws.
- (3) The manager must open a separate banking account in which sufficient funds are maintained to conduct the business of the vending facility.
- (4) Each vending facility manager must immediately report to the Agency, in writing, any findings resulting from a governmental audit, either state or federal, or any citation for critical violation of any health regulations or any state law related to the operation of the vending facility.
- (5) Any bankruptcy action filed by the manager which directly or indirectly affects the Agency or creditors of the facility, must be reported to the Agency, in writing, within five days of filing.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395.7(c).

Administrative History: Original rule filed April 8, 2005; effective June 22, 2005. Amendments filed May 25, 2017; effective August 23, 2017.

1240-06-10-.12 BUSINESS PLAN.

- (1) Each manager will be required to develop and submit to his/her TBE Consultant/Specialist a business plan no later than Feb. 15 of each year. This plan shall set sales and profit targets for the year and strategies for achieving those targets and for meeting all performance standards. The plan shall be submitted in the format jointly developed by the Agency and Committee. Once received, the TBE Consultant/Specialist will meet with the manager to review, revise, and finalize the plan. Failure to submit or make reasonable efforts to adhere to the business plan may subject the manager to disciplinary action.

(Rule 1240-06-10-.12, continued)

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7. **Administrative History:** New rule filed May 25, 2017; effective August 23, 2017.

1240-06-10-.13 PERFORMANCE BOND.

- (1) In certain types of facilities as determined by the Agency, the manager will be required to maintain on account funds that have been given to him/her to prepay for products. An example would be an inmate commissary where the manager maintains the inmate trust fund. In such cases the manager shall be required by the Agency to secure a performance bond to protect these funds in the event the manager leaves the facility without turning over the balance of funds to the Agency or incoming manager.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.7. **Administrative History:** New rule filed May 25, 2017; effective August 23, 2017.