

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

**CHAPTER 1240-06-13
PRIORITY FOR THE ESTABLISHMENT OF VENDING FACILITIES**

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1240-06-13-.01 PRIORITY FOR THE ESTABLISHMENT OF VENDING FACILITIES ON PUBLIC PROPERTIES IN TENNESSEE.

- (1) Pursuant to T.C.A. § 71-4-501 et seq., any properties owned or leased by the State, or properties owned or leased by political subdivisions of the State such as county or municipal governments, must recognize the priority granted to the Agency. The Agency must be permitted to conduct surveys of public properties to determine the feasibility of establishing one or more vending facilities on a particular property. This priority is exclusive and unconditional except for cafeteria service. With respect to cafeteria operations, the Agency must submit a bid to compete to provide the service and will have priority if its bid is within the competitive range when considered with all other bids.
 - (a) For purposes of determining the competitive range, the Agency's bid must be within two (2) percentage points of the bid deemed to be the winning bid. This means that if the commission of the would-be winning bid is eight (8) percent; the Agency's proposal must offer at least six (6) percent. At its sole discretion, the Public Property may elect to enter into direct negotiations with the Agency in lieu of the above. If the results of the survey substantiate that the establishment of a vending facility is feasible, property management shall take all necessary steps to insure that the installation occurs, and that the space and the utilities required are provided (at no cost to the manager) for the operation, except telephone service. The agency shall provide the necessary alterations, plumbing and equipment, merchandise, a licensed manager, and the appropriate supervision of the manager.
 - (b) In the event that existing buildings are purchased or leased or new buildings are constructed by any of the entities referred to above, written notice shall be given to the Agency in ample time to afford the Agency an opportunity to make plans to provide the service.
 - (c) All vending facility operations, except those relating to cafeteria service, shall be governed by an agreement between the Agency and property management, known as a permit. The permit shall include the location, type of facility, space available, all necessary equipment and the operating hours of the facility. For a cafeteria service, a contract between the Agency and property management will be executed which may impose certain requirements upon the manager regarding the operation, including costs for which the manager shall be responsible. In the negotiation process between the Agency and property management regarding either the terms and conditions of an occupancy permit or a contract, the area representative(s) of the Committee shall have an opportunity to participate with the Agency in making final determinations with respect to the terms and conditions of an occupancy permit or contract. The terms and

(Rule 1240-06-13-.01, continued)

conditions of the permit may be changed after consultation with the manager for purposes of soliciting his/her input. Once the changes have been made, the revised document shall be provided to the manager. The absence of an executed permit does not relieve a manager of his/her responsibilities to otherwise comply with these rules and regulations and/or to provide effective management of the vending facility.

- (d) Public Property management may not require the payment of rent, utilities, or commissions as a condition for operating a vending facility on Public Property except as provided for in 1240-06-13-.01(1) above. However, the Agency, at its discretion and with the active participation of the Committee of Blind Vendors, may negotiate less restrictive agreements that do require such payments. If such payments are negotiated and are included in the permit agreement, the licensed manager will be obligated to make such payments; however, no subsequent priority is waived either expressly or by implication.
- (e) In the event that any dispute between the Agency and property management regarding the granting of the priority, or the establishment or the continued operation of the facility shall be resolved in accordance with T.C.A. § 71-4- 507.

Authority: T.C.A. §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), 71-1-501, 71-4-507, 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.30. **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 1240-6-12-.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.

1240-06-13-.02 PRIORITY FOR UNASSIGNED VENDING MACHINE LOCATIONS

- (1) Any public property that desires vending services is required pursuant to 1240-06-13-.01 above to notify the department so that a survey can be conducted. If the results of that survey suggest that the location should not be assigned to a blind vendor, the department will arrange for the service to be provided by a third party vendor. Such locations shall be referred to as “unassigned” locations. When making a decision as to whether or not to assign a blind vendor, the department will consider the following factors:
 - (a) Sales volume,
 - (b) Budgetary/revenue needs of TBE,
 - (c) Cost of installing any equipment,
 - (d) History of the location,
 - (e) Availability of a licensed blind vendor,
 - (f) Any other factors the department deems pertinent relative to the specific location.
- (2) The department shall have the authority to select the third party vendor to provide the desired vending services and shall execute an agreement with the third party vendor authorizing said vending services. The department may consult with any entity affected by the selection of the vendor. If a third party vendor is currently providing services, and those receiving said services are satisfied with the level and quality of services, the department may elect to allow that vendor to continue providing services provided an acceptable agreement can be negotiated.

(Rule 1240-06-13-.02, continued)

- (a) The department shall determine pricing of products to be sold. The department shall ensure that prices are fair and do not exceed prices normally charged by licensed blind vendors in other government buildings. To the extent practical, the department will attempt to ensure consistency in pricing from one unassigned location to another.
- (b) The department shall negotiate a fair and competitive commission rate to be paid by the third party vendor to the department for use pursuant to 1240-6-14-.02. The third party vendor shall be required to submit written reports verifying sales and the accuracy of the commission payments. Such reports are subject to audit by the department and/or other state entities. The department shall have the right to establish other procedures as appropriate to ensure it is receiving all funds to which it is entitled.
- (c) If a property management official fails to comply with subsection (1) above and arranges for vending services on his/her own and it comes to the attention of the department, representatives of the department shall notify the property management official of the non-compliance and make arrangements for the private vendor to send all future commissions from the vending machines to the department. The department shall negotiate a fair commission rate and may replace the third party vendor if an agreement cannot be reached with the company providing the service.
- (d) The department, in its sole discretion, may elect to share revenue from the vending machines with the state or local government entity. This will be done primarily to offset any loss in revenue by the government entity as the result of the department assuming responsibility for the vending machines. Such an income sharing arrangement may be time limited and may impact the pricing structure of products being sold through the vending machines.
- (e) The department will act to correct any documented deficiencies in service that are brought to its attention. This may include removing and replacing a third party vendor.
- (f) The department, in its sole discretion, may elect to remove a third party vendor from any location and assign the vending to a licensed blind vendor. On an annual basis, the department shall provide sufficient information to the Committee of Blind Vendors so that the Committee can actively participate in decisions as to any of the unassigned locations that could be considered for assignment to a blind vendor.
- (g) If any dispute arises between property management and the department as the result of enforcement of these provisions, either party shall have the right to file a complaint with the Secretary of State's Office pursuant to Tenn. Code Ann. § 71-4-507.
- (h) Revenue from unassigned locations shall be spent in accordance with 1240-6-14-.02 of these rules and regulations.
- (i) The department shall maintain records of all unassigned locations and provide reports on a quarterly basis to the Committee of Blind Vendors.
- (j) After affording the Committee an opportunity for active participation, the department may choose to employ adequate staff or may elect to contract with a third party entity to carry out the provisions of this section.
- (k) These provisions do not apply to vending machines located at interstate rest areas. The installation of such machines and the revenue from those machines are governed by federal guidelines.

(Rule 1240-06-13-.02, continued)

Authority: T.C.A §§ 4-5-201 et seq., 49-11-601 et seq., 71-1-104, 71-1-105(12), 71-4-603, and 71-4-604(c); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 395.14. **Administrative History:** New rule filed April 9, 2007; effective June 23, 2007.

1240-06-13-.03 PRIORITY FOR THE ESTABLISHMENT OF VENDING FACILITIES ON FEDERAL PROPERTIES IN TENNESSEE.

- (1) Property management of each federal agency must assure that adequate space is available and utilities are provided to accommodate the establishment of one or more vending facilities.

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); 20 U.S.C. § 107 et seq.; and 34 C.F.R. § 395 et seq., 34 C.F.R. § 395.30 and 34 C.F.R. Part 3. **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 1240-6-12-.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.

1240-06-13-.04 DECISIONS ON OPENING AND CLOSING FACILITIES.

- (1) The Agency shall make decisions about opening and closing facilities pursuant to policies and procedures developed with the active participation of the Committee and included in the Operations Manual.
- (2) Decisions about adding new satellites to existing vending facilities shall be made by the Agency pursuant to policies developed with the active participation of the Committee and included in the Operations Manual.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(12), and 71-4-604(c); 34 C.F.R. § 395.30 and 34 C.F.R. Part 3. **Administrative History:** Original rule filed April 8, 2005; effective June 22, 2005.